

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A SPECIAL CONTRACT BETWEEN HENRY)	
COUNTY WATER DISTRICT NO. 2 AND PEARCE)	CASE NO. 2001-00351
BROTHERS READY MIX CONCRETE SUPPLY)	
COMPANY, INC.)	

O R D E R

Before the Commission is a special contract between Henry County Water District No. 2 (Henry District) and Pearce Brothers Ready Mix Concrete Supply Company, Inc. (Pearce Brothers). This agreement required, inter alia, that Pearce Brothers construct approximately \$30,000 of system improvements as a condition for receiving water service to a proposed concrete plant in Henry County, Kentucky. Henry District acknowledges that the system improvements were not needed to provide water service to the proposed concrete plant and were not the product of voluntary negotiations.

Kentucky law clearly prohibits a utility from imposing conditions for utility service that are not set forth in its filed rate schedules. See KRS 278.160. Our regulations, moreover, prohibit such conduct. Administrative Regulation 807 KAR 5:006, Section 5, provides:

- (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.
- (2) A customer who has complied with commission administrative regulations shall not be denied service for failure to comply with the utility's rules which have not been made effective in the manner prescribed by the commission.

In the present case, Henry District clearly required Pearce Brothers to enter into the proposed contract as a condition for receiving service. Henry District's Chief Operating Officer concedes to the Commission that Pearce Concrete . . . [was] required by HCWD2 to enter into the contract.¹ Henry District's engineer, who was deeply involved in the discussions for water service, openly acknowledges that [t]here is simply no reasonable way to interpret these contracts as voluntary² No provision in Henry District's then-existing rate schedules provided any basis for this requirement.

We recognize that water utilities will frequently condition the provision of water service on a prospective customer's assumption of the cost of improvements necessary to provide that service. In those instances, the water utility usually does not have the facilities necessary to provide the requested service, or readily available financial resources to construct such facilities, or would be required to incur unreasonable costs to provide the service. Absent some unique circumstance, the utility would not have any legal obligation to extend water service to the prospective customer immediately.³

¹ Letter from Don Heilman, Chief Operating Officer, Henry County Water District No. 2, to Thomas M. Dorman, Executive Director, Public Service Commission (Jan. 30, 2002).

² Tom Green, Senior Engineering Technician, Commonwealth Technology Inc., to Robert Spurlin, Commissioner, Public Service Commission (July 5, 2002) at 2.

³ A water utility has an obligation to make reasonable extensions of service. See KRS 278.280(3). In those circumstance where the water district lacks facilities to provide the requested service and could not readily construct such facilities without obtaining significant sources of capital, it may not be reasonable for the water utility to construct such facilities immediately or to assume the entire cost of such construction. Administrative Regulation 807 KAR 5:066, Section 11, which deals with a water utility's obligation to extend service, recognizes such limitations.

To obtain water service in a timely manner, a customer voluntarily assumes the obligation to construct the facilities or to bear the cost of the necessary improvements in return for the opportunity to receive water service.

In the present case, Henry District had the ability to provide the requested service without the construction of additional facilities. While providing service to Pearce Brothers would have reduced its capacity to serve additional customers, Henry District's service in the general vicinity of the proposed concrete plant would have been within acceptable quality standards. Henry District was legally obligated to make the service connection regardless of the Pearce Brothers' willingness to contribute to the cost of any improvement. As evidenced by the statements of Henry District's officials, Henry District refused to make that connection without additional consideration. In such circumstances, the contract was plainly an adhesion contract.

Based upon the evidence of record, we find that:

1. Henry District conditioned its provision of water service to Pearce Brothers upon Pearce Brothers entering into the proposed special contract.
2. At the time of the contract's execution, Henry District had the ability to provide water service to Pearce Brothers without the construction of any additional facilities and within appropriate service standards.
3. When Pearce Brothers applied for water service from Henry District, Henry District's rate schedule did not contain any requirement that an applicant for service must execute a contract to assume the cost of any improvements deemed necessary to restore Henry District's water distribution to the same hydraulic conditions that existed before the applicant's connection.

4. Henry District's refusal to provide water service to Pearce Brothers unless Pearce Brothers executed the proposed special contract is in violation of KRS 278.160 and Administrative Regulation 807 KAR 5:006, Section 5.⁴

5. Henry District procured the proposed contract in an unlawful and unreasonable manner.

6. At the time of its execution, the proposed contract's terms were unlawful.

IT IS THEREFORE ORDERED that:

1. The proposed contract between Henry District and Pearce Brothers is rejected.

2. Within 30 days of the date of this Order, Henry District shall refund to Pearce Brothers the cost of all improvements that it required as a condition for water service.

3. Upon completing its refund, Henry District shall advise the Commission in writing of the completion of the refund.

⁴ See Stivers v. Henry County Water District No. 2, Case No. 2002-00045 (Ky.PSC June 14, 2002). Since the execution of the proposed contract, Henry District has proposed revisions to its filed rate schedules to permit the assessment of an Offsetting Improvement Charge. This charge is similar to the assessment of costs that Henry District attempted to make through the proposed contract. While the Commission has recently approved a modified form of this charge, our approval does not alter the unlawful nature of Henry District's conduct in this case or cure the deficiencies in the proposed contract.

Done at Frankfort, Kentucky, this 1st day of August, 2002.

By the Commission

ATTEST:

Deputy W^m H. Fowler
Executive Director