

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NORTH NELSON WATER)
DISTRICT FOR A DEVIATION FROM)
ADMINISTRATIVE REGULATION 807 KAR 5:066,) CASE NO. 2002-00046
SECTION 11, TO PERMIT AN ALTERNATIVE)
WATER MAIN EXTENSION ARRANGEMENT FOR)
ITS HIGHWAY 48 MAIN EXTENSION PROJECT)

O R D E R

North Nelson Water District (North Nelson) has applied for a deviation from Administrative Regulation 807 KAR 5:066, Section 11, to permit the use of an alternative water main extension arrangement for its Highway 48 project. Finding that the proposed alternative is reasonable and equitable and that good cause exists to permit a deviation from Administrative Regulation 807 KAR 5:066, Section 11, we grant the deviation.

Under the provisions of Administrative Regulation 807 KAR 5:066, Section 11, a water utility must extend its distribution main by as much as 50 feet, without charge, to serve a prospective customer. When an extension of a utility's main to serve a customer or group of customers exceeds 50 feet per prospective customer, the utility may require the total cost of the excessive footage to be deposited with it by the customers. The utility must, over a period of not less than 10 years, refund these customers the cost of 50 feet of the extension in place for each additional customer whose service line is directly connected to the extension installed. This duty to refund continues until the refund period ends or the deposited funds are depleted.

North Nelson, a water district organized pursuant to KRS Chapter 74, provides retail water service to 3,055 customers in Bullitt, Spencer, and Nelson counties, Kentucky. It is a utility subject to Commission jurisdiction. KRS 278.010(3)(d); KRS 278.015; KRS 278.040.

North Nelson proposes to construct 21,500 feet of water distribution main along Kentucky Highway 48 in Nelson County north from Fairfield to the Gordon Farm Subdivision and to several side roads that extend from Kentucky Highway 48.¹ Estimated total cost of this extension is \$183,167. North Nelson estimates that 40 potential customers reside along the route of the proposed extension. Approximately 25 households along the route have applied for service.

While North Nelson generally follows the water main extension practices set forth in Administrative Regulation 807 KAR 5:066, Section 11(2)(b),² it proposes a different arrangement for this extension only. Under this proposed policy, all persons connecting to the proposed extension for the 10 years following its completion must, at the time of connection, contribute \$2,500 or execute a promissory note for \$2,500 payable over 120 months. Each customer contributing to the cost of the main located along the route of the proposed extension would waive any right to a refund. In return, North Nelson would immediately advance the cost of the proposed extension and contribute \$1,000

¹ These roads include: Gordon Drive, Gordon Court, Dotson Court, Whitesides Road, Hibbs Lane, King Road, Snider Lane, Hickman Lane, Roby Lane, and Love Lane.

² North Nelson follows the alternative extension plan that is set forth in Administrative Regulation 807 KAR 5:066, Section 11(2)(b). Under this plan, the water utility's obligation remains the cost of 50 feet of the extension for each applicant for service connecting within 10 years of the extension's construction. Customers connecting to the main extension within the first 5 years of the water main's construction, not only the initial applicants for service, however, are required to pay a portion of the cost of the extension. See North Nelson Water District Tariff, P.S.C.Ky. No. 1, Original Sheet 8.

per customer connecting to the extension. Required contributions would cease when customer contributions and North Nelson's contribution equal the cost of the extension or 10 years from the date of the extension's completion.

The proposed extension arrangement differs from Administrative Regulation 807 KAR 5:066, Section 11, in several respects. It requires North Nelson to assume immediately the cost of approximately 117 feet of the extension footage. It does not require the initial applicants for service to deposit the remaining cost of the main extension. The proposed arrangement further requires all persons contributing to the cost of the main extension to waive any right to refunds should North Nelson recover the full cost of the extension through required customer contributions.

Having reviewed the proposed extension arrangement, we find that it is reasonable and equitable. It requires the utility to assume a greater obligation for the cost of the extension in the construction phase and lessens the burden for initial applicants for service. Under the proposed arrangement, North Nelson will contribute 2.3 times the amount required under Administrative Regulation 807 KAR 5:066, Section 11. By advancing the funds necessary to construct the extension, the water district assumes the risk that additional internal funds, not customer contributions, will be necessary to ultimately pay for the extension. It also assumes the carrying charges related to this advancement of funds.

While the proposed arrangement requires contributing customers to waive their right to any refunds, these customers receive significant benefits. Initial customers are not required to advance the full amount of the customers' contribution toward the main extension. By reducing the amount that the initial customers must pay, the proposed arrangement increases the likelihood that the extension will occur. Without the

proposed arrangement, the initial customer contribution would have been \$172,517. Under the proposed arrangement, the initial applicants deposit only \$62,500. Moreover, given the limited number of potential customers in the area, it appears that the full customer contribution and the potential for refunds are highly unlikely.

The Commission notes that in similar cases where a customer receives some additional benefit from his waiver of rights under Administrative Regulation 807 KAR 5:066, Section 11, and where the likelihood of additional recovery of his contribution is small, a deviation from the requirements of that administrative regulation may be appropriate. See, e.g., West Laurel Water Association, Inc., Case No. 2000-097 (Ky. P.S.C. May 9, 2000). Given these cases and given that the general effect of the alternative arrangement is to promote the extension of water service to part of the Commonwealth previously unserved, we find that good cause exists to permit a deviation from Administrative Regulation 807 KAR 5:066, Section 11,³ and that North Nelson's proposal generally should be approved.

The Commission finds, however, that modifications to North Nelson's proposed promissory note are necessary. The proposed promissory note, which will be part of

³ The Commission is authorized to permit a water utility to make water main extensions under arrangements that differ from those established in Administrative Regulation 807 KAR 5:066, Section 11. Administrative Regulation 807 KAR 5:066, Section 11(4), provides:

Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if such arrangements have received the prior approval of the commission.

Administrative Regulation 807 KAR 5:066, Section 18, provides:

Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.

North Nelson's rate schedules, permits the water district to retain all customer payments made toward the customer's required contribution in the event of the customer's default. It further permits the water district to assess this customer another \$2,500 contribution should the customer subsequently apply for water service at the same property and not credit any of his prior payments to the new assessment. We find this provision to be unreasonable and direct its removal. North Nelson should credit to such customer prior principal payments made toward the contribution, if made for water service to the same address and by the same customer.

IT IS THEREFORE ORDERED that:

1. North Nelson's alternative water main extension arrangement, as modified by Ordering Paragraph 2, is approved for the geographical area set forth in its proposed tariff sheets.
2. North Nelson shall substitute the following paragraph for the Default provisions currently set forth in its Promissory Note Highway 48 Project :

DEFAULT. In the event the CUSTOMER fails to make any installment payment on or before the time specified herein, or within fifteen (15) days thereafter, with time being of the essence hereof, the District may, without notice or demand, declare the entire unpaid balance immediately due and payable. If the CUSTOMER does not pay the remaining unpaid balance, plus accrued interest, by the tenth (10th) day of the following month, then he shall forfeit all payments previously made on this Promissory Note as liquidated damages. The District shall be entitled to keep all prior payments made by the CUSTOMER as liquidated damages and to terminate the customer's water service. However, if the CUSTOMER reapplies for water service at the same location, his prior principal payments, minus any reasonable fees that the District incurred to enforce this Promissory Note, shall be credited to any contribution in aid of construction that the District may require. Any person who subsequently purchases the property after the default and applies for water service to the property, may be required to pay the District a contribution in aid of construction of \$2,500.

3. North Nelson's proposed tariff sheets, as modified by Ordering Paragraph 2, are approved and are effective as of the date of this Order.

4. Approval of the proposed extension arrangement in this instance does not constitute Commission approval of the arrangement for general usage. Unless otherwise ordered by the Commission, North Nelson shall submit each extension arrangement whose terms differ from Administrative Regulation 807 KAR 5:066, Sections 11(1) and 11(2), to the Commission for approval.

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

By the Commission

ATTEST:


Executive Director