

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CRESTBROOK PROPERTIES, LLC)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2001-00202
)	
NORTHERN KENTUCKY WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

On June 17, 2003, the Commission entered an Order finding that Northern Kentucky Water Districts (Northern Kentucky) cross-connection policy unreasonably discriminated between multi-family and single-family residential structures. The Commission ordered Northern Kentucky to amend its cross-connection policy to apply equally to both single-family and multi-family residences.

Northern Kentucky has filed a petition for rehearing on several issues that are contrary to the evidence presented, inconsistent with the facts of the particular situations, or unclear as to meaning.¹ Crestbrook Properties, LLC (Crestbrook) has filed a motion opposing Northern Kentucky's petition for rehearing.

NORTHERN KENTUCKY'S PETITION FOR REHEARING

Northern Kentucky objects to certain findings of the Commission and also seeks clarification on certain issues. Northern Kentucky argues that nothing in the record

¹ Petition for Rehearing at 1.

supports the Commission's finding that the hazard presented from backflow is not related to meter size.

Northern Kentucky also argues that the Commission did not consider how the cross-connection policy will be implemented among its approximately 70,000 customers. Northern Kentucky claims that prioritizing by meter size is a rational basis upon which to implement the program and asks the Commission to clarify if it [Northern Kentucky] may classify customers within a class by meter size for implementation of the policy so that the customers within the class can be grouped by meter size without violating the terms of the Order.² Northern Kentucky claims that the Natural Resources and Environmental Protection Cabinet (NREPC) has notified Northern Kentucky that its cross-connection policy complies with NREPC regulations. Thus, Northern Kentucky argues, the conflicting interpretation (of classifying hazards) between NREPC and the Commission make any action by Northern Kentucky in violation of one or the other.

Northern Kentucky also takes issue with the Commission's finding that a dual-check valve is insufficient to combat the degree of hazard normally presented by a residential building. Northern Kentucky argues that the evidence of record does not support this finding and that the use of dual-check devices is prohibited by 815 KAR 20:120, which allows the use of dual-check devices only on ½-inch to ¾-inch service connections.

Similarly, Northern Kentucky claims that the Commission failed to address the impact of 401 KAR 8:020(2)(2), which provides for NREPC approval of backflow

² Petition at 3.

prevention devices. Northern Kentucky claims that there is no evidence in the record that NREPC has approved the use of dual-check devices.

Northern Kentucky also claims that implementing the installation of backflow prevention devices whenever a meter is repaired or replaced would impose a significant burden on Northern Kentucky. Northern Kentucky claims the Order is unclear as to this requirement and requests that the Commission clarify whether it ordered Northern Kentucky to install a backflow prevention device any time a meter is repaired or replaced.

Northern Kentucky also requests that the Commission clarify whether the remaining portions of the cross-connection policy are still valid.

CRESTBROOK S OBJECTION

Crestbrook argues that rehearing is inappropriate because the Commission Order is quite clear in its findings and is firmly based upon the evidence in the record.³ Crestbrook also argues that granting rehearing is inappropriate because any question as to the language to be included in the Water District s amended tariff can be addressed with the Commission s Staff at the informal conference provided for in the Commission s Order.⁴

In addition, Crestbrook argues that allowing Northern Kentucky to implement its cross-connection policy according to meter size would do nothing more than allow the Water District to violate the Commission s Order.⁵ Crestbrook argues that Northern

³ Objection at 2.

⁴ Id. at 11.

⁵ Id. at 7.

Kentucky should first address those customers who are most likely to contaminate the public's water system. Crestbrook claims that implementation for all residential users should occur once the high and moderate industrial and commercial users have been brought into compliance.

Crestbrook claims that Northern Kentucky fails to grasp the arbitrary classification of multi-family and requirement of installation of an expensive device on multi-family residential meters is discriminatory and therefore impermissible.⁶ Crestbrook expresses concern that it appears Northern Kentucky intends to use meter size to prioritize implementation of the cross-connection policy.

DISCUSSION

The Commission found in this case that Northern Kentucky's practice of requiring multi-family residential structures to install backflow prevention devices, while not requiring the same for single-family structures, was unreasonably discriminatory and must be amended to apply equally to both types of residential structures. The Commission so found because nothing in the record suggested that meter size was the proper way to assess potential hazards due to backflow, despite Northern Kentucky's representations. All the evidence provided, most of which came from Northern Kentucky, indicated that use, not meter size, was the proper factor to consider when classifying hazards or risks. Northern Kentucky has not offered to introduce any new evidence regarding the correlation between meter size and potential hazard. Therefore, the Commission will not grant rehearing on that issue.

⁶ Id. at 10.

The Commission notes, in response to Northern Kentucky's contention at page 7 of its petition for rehearing, that it did not find that the use of a specific device created a significant burden on owners of multi-family residences. The Commission found that requiring multi-family residences to install devices while single-family residences were under no such obligation imposed a burden on owners of multi-family residential structures that single-family residences do not bear. We also clarify our Order in response to Crestbrook's allegation that the Order concluded that the arbitrary classification of multi-family and requirement of installation of an expensive device on multi-family residential meters is discriminatory and therefore impermissible.⁷ We found unreasonable discrimination only insofar as single-family residential structures are not required to install backflow prevention devices. We did not find that it was arbitrary or impermissible to require multi-family residential structures to install a backflow prevention device; nor did we conclude that Crestbrook, specifically, would not be required to install a backflow prevention device.

The Commission has not ordered, and will not order, Northern Kentucky to violate NREPC's, or any other agency's, regulations or statutes. No regulations or laws address the method by which Northern Kentucky should implement its cross-connection policy. Accordingly, a Commission Order regarding implementation of the cross-connection policy does not conflict with pre-existing law.

Moreover, the Commission did not usurp the authority of NREPC to approve appropriate backflow prevention devices or to determine how the devices are installed or tested. If the NREPC does not approve certain devices, Northern Kentucky may not

⁷ Id. at 7.

use them and the Commission may not order their use. Although the Commission did comment that dual check devices did not seem insufficient to combat the hazards normally presented by residential structures, it did not deprive Northern Kentucky of the discretion to determine hazards and prescribe necessary devices. The Order simply requires unreasonable discrimination between single-family residences and multi-family residences to end.

Crestbrook is correct in its contention that a rehearing is the improper forum in which to discuss the issues surrounding the amendment and implementation of the cross-connection policy. Northern Kentucky may request informal conferences with Commission Staff to help develop the language of any proposed amendment.

There being no new evidence to consider, and the Commission being fully advised, IT IS THEREFORE ORDERED that:

1. Northern Kentucky's petition for rehearing is denied.
2. Northern Kentucky shall have 60 days from the date of this Order to file with the Commission its amended cross-connection policy.
3. Northern Kentucky may request informal conferences with Commission Staff to discuss the language of the amended cross-connection policy.

Done at Frankfort, Kentucky, this 23rd day of July, 2003.

By the Commission

ATTEST:


Executive Director

