

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE TARIFF FILING OF HENRY COUNTY WATER)
DISTRICT NO. 2 TO ADD TARIFF LANGUAGE FOR) CASE NO. 2001-00393
AN OFFSETTING IMPROVEMENT CHARGE)

O R D E R

On April 7, 2003, Henry County Water District #2 (Henry District) filed a motion requesting that the Commission clarify the meaning of its statement in the July 25, 2002 Order that the Offsetting Improvement Charge may not be required of applicants who have applied for service prior to the effective date of the Offsetting Improvement Charge tariff. Henry District asks whether a developer who submitted his plats to be certified is to be considered an applicant as contemplated in the July 25, 2002 Order. The Commission hereby clarifies its Order to state that developers who submitted plats for certification prior to the tariff s effective date are, in fact, applicants whose requests predate the effective date of the Offsetting Improvement Charge tariff. Accordingly, they are not required to pay the charge.

As further clarification, the Commission states that Henry District inappropriately withheld plat certification for developers pending the effective date of the new tariff. According to the filed rate doctrine, these developers should not have been denied certification.

BACKGROUND

On November 6, 2001, Henry District filed with the Commission revisions to its tariff to allow for the collection of an Offsetting Improvement Charge. On

November 13, 2001, the Commission entered an Order establishing this case to determine the reasonableness of the proposed charge. On July 25, 2002, the Commission issued an Order approving the Offsetting Improvement Charge.

In 2000, Henry District began the practice of requiring new customers to pay an Offsetting Improvement Charge as a condition to receiving service. Initially Henry District imposed this charge through special contracts required of developers who requested plat certification. The charge was assessed even when Henry District's existing facilities were adequate to support the additional customers. To ensure that no revenues from the proposed Offsetting Improvement Charge were lost while the Commission reviewed the reasonableness of the charge, Henry District refused to certify the availability of water service to any proposed development during the pendency of the review.

Henry District now assesses the Offsetting Improvement Charge to any customer that connects to its system after the effective date of the tariff or to any real estate developer that proposes a real estate development that the water district would serve. The real estate developer is assessed at the time the water district certifies to a planning and zoning commission that it will provide water service to the proposed real estate development.

DISCUSSION

KRS 278.160 codifies the filed rate doctrine. It requires a utility to file with the Commission schedules showing all rates and conditions for service established by it and collected or enforced. KRS 278.160(1). It further states:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service

rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

KRS 278.160(2).

The primary effect of KRS 278.160 is to bestow upon a utility's filed rate schedule the status of law. The rate when published becomes established by law. It can be varied only by law, and not by act of the parties. New York N.H. & H.R. Co. v. York and Whitney, 102 N.E. 366, 368 (Mass. 1913). While a utility may file or publish new rate schedules to change its rates pursuant to KRS 278.180, it lacks the legal authority to deviate from its filed rate schedule. It can claim no rate as a legal right that is other than the filed rate. Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246, 251 (1951).

Prior to the effective date of the Offsetting Improvement Charge, Henry District's tariff contained neither a provision requiring a developer to pay an Offsetting Improvement Charge nor a provision allowing Henry District to refuse certification of the plat because it was waiting for the Commission's decision on the Offsetting Improvement Charge. Accordingly, Henry District could not refuse to certify plats simply because it was waiting for the Commission's Order.

The Commission has already so found in Case No. 2002-00045, Randall C. Stivers v. Henry County Water District #2.¹ On February 7, 2002, Randall Stivers, a developer, filed a formal complaint against Henry District, alleging that Henry District

¹ Final Order entered June 14, 2002.

was improperly requiring Mr. Stivers to pay the Offsetting Improvement Charge a charge that was not properly tariffed.

The Commission found that Henry District could not refuse to certify Mr. Stivers s plat for his refusal to pay the Offsetting Improvement Charge. In so finding, the Commission stated:

The filed rate doctrine clearly prohibits HCWD#2 from requiring that the line improvement contract be signed in order for HCWD#2 to certify any plats. HCWD#2 s tariff very clearly contains the requirements for plat certification, but the line improvement contract is not one of these requirements. If Complainant meets the criteria for certification as it is listed in HCWD#2 s tariff, HCWD#2 must certify Complainant s plats.

Henry District s refusal to certify any plats during the course of the case at bar amounted to a refusal of service based upon an untariffed charge or condition of service. Because Henry District had no right to delay certification, it has no right to impose charges that became effective during the delay. Our Order was intended to ensure that those who had, in fact, applied for plat certification would pay the rates tariffed at the time of the application.

IT IS THEREFORE ORDERED that the July 25, 2002 Order in this case is clarified as described herein.

Done at Frankfort, Kentucky, this 6th day of June, 2003.

By the Commission

ATTEST:


Executive Director