

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                  |   |                     |
|----------------------------------|---|---------------------|
| HARDIN COUNTY WATER DISTRICT     | ) |                     |
| NO. 1'S PROPOSED TARIFF ALLOWING | ) | CASE NO. 2007-00461 |
| THE USE OF MASTER METERS IN      | ) |                     |
| MANUFACTURED HOUSING COMMUNITIES | ) |                     |

O R D E R

On October 17, 2007, Hardin County Water District No. 1 ("Hardin District") submitted a proposed tariff related to manufactured housing communities ("MHCs"). On November 2, 2007, the Commission suspended operation of the proposed tariff and established this case to investigate its reasonableness. For the reasons below, the Commission denies Hardin District's proposed tariff as unreasonable.

BACKGROUND

In the late 1980s, Hardin District changed its internal treatment of MHCs without amending its rules and regulations. Instead of keeping each MHC owner as a customer, Hardin District required individual MHC residents to apply for service with the utility. After residential meters were installed, Hardin District no longer billed the MHC owner. Hardin District continues to engage in this practice of metering and billing mobile homes.

Hardin District has since recognized several problems with billing individual mobile home residents. First, due to the transient nature of mobile home residents, Hardin District experiences a high rate of nonpayment.<sup>1</sup> Second, issues related to liability arise when utility personnel are required to enter private property to read meters

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<sup>1</sup> The record in this case does not reveal the extent to which Hardin District's deposit policy mitigates this problem.

and turn service on and off without an easement on that property. Third, meters are often located in inaccessible places, such as under the mobile home or within a fenced-in area. Fourth, the water lines within the MHC were not constructed by the utility and may not meet service standards. Fifth, some MHC residents have diverted water from the unmetered water lines within the MHC. Inadequate water infrastructure and “stolen” water have created health risks and a relatively high percentage of water loss within the MHCs.<sup>2</sup>

At least 10 years ago, Hardin District recognized these problems and explored potential solutions.<sup>3</sup> The utility has met with MHC owners to discuss potential solutions and concerns, has surveyed customers and MHC owners, and has communicated with the Kentucky Manufactured Housing Institute. These actions display Hardin District’s dedication to resolving its perceived problem in a well-reasoned and considerate fashion.

The product of Hardin District’s deliberations is the proposed tariff at issue. The utility seeks to create a new classification of service for MHC owners and residents. Under the proposed tariff, MHC owners would become customers of the utility. Initially, MHC owners would be billed for all water passing through a master meter minus water billed to the individual sub-metered customers. Under certain conditions, such as failure of an MHC owner to pay for water charges, Hardin District would cease billing the sub-metered customers and bill all water usage to the MHC owner. This practice would effectively terminate the utility/customer relationship between Hardin District and the

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<sup>2</sup> Hardin District has suggested that it had an 80-percent line loss rate in MHCs during September 2007. See Advance Prepared Testimony by Jim Bruce at 1.

<sup>3</sup> See, e.g., Memorandum from Jim Bruce, General Manager of Hardin District, to David Wilson, Attorney for Hardin District (Oct. 19, 1998).

MHC's residents. In addition, other triggering events, such as an inaccessible meter, would permit the utility to selectively terminate the billing of individual residents within the park.<sup>4</sup>

The proposed tariff dictates the procedure required to transition to billing exclusively on the master meter readings. Under that transition process, Hardin District would cease billing individual customers and begin billing the MHC owner for all service after a specified date. The MHC owner may pass those charges on to MHC residents, but the owner could not charge more than Hardin District's tariffed rate. Under the proposed tariff, MHC owners would be required to sign a metering agreement, acknowledging the conditions and responsibilities of the parties.

#### DISCUSSION

KRS 278.030(2) permits a utility to "establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." In addition, KRS 278.030(3) permits the utility to "employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates." The burden of demonstrating the reasonableness of a proposed rule or condition of service is upon the utility.<sup>5</sup>

In determining the proposed tariff's reasonableness, issues related to the responsibility of maintaining the MHC water lines located between the master meter and the individual mobile home meters must be addressed. The record suggests that these

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<sup>4</sup> The proposed tariff requires the utility to give notice that water service will be interrupted or sub-metering at that individual location will be discontinued. We presume that when sub-metering will be discontinued, notice would be provided to both the sub-metered customer and the master meter customer, so that the latter knows that some of the master meter bill is attributable to sub-metered customer usage.

<sup>5</sup> See *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980); cf. KRS 278.190(3) (placing the burden of proof for an increased rate or charge on the utility).

lines were constructed and are owned by the MHC owner. In addition, these water lines are located on private property over which Hardin District does not have an easement for servicing deteriorating lines.

Current regulations, however, place the utility's responsibility of maintaining water lines up to the point of service, which is defined by the outlet of a customer's water meter.<sup>6</sup> In addition, a customer is responsible for maintaining water lines from the point of service to the place of consumption. Thus, if these regulations applied, Hardin District would currently be responsible for the water lines that are owned by the MHC owners and located on their properties.<sup>7</sup> The proposed tariff would (in certain circumstances) place the point of service at the master meter, which would effectively transfer responsibility of the water lines downstream of the master meter from Hardin District to the MHC owner.

It could be argued that it is unreasonable to transfer responsibility for water lines without ensuring the lines' integrity and condition. This is particularly true in a situation where the utility required customers to install individual meters downstream of any point at which the utility did not install distribution lines. Nevertheless, the Commission finds that the proposed rule represents a reasonable solution to the problems of significant line loss and unsanitary conditions. In reaching this conclusion, the Commission weighs

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<sup>6</sup> 807 KAR 5:066, Sections 1(5) and 12.

<sup>7</sup> The present version of 807 KAR 5:066, Section 12, was promulgated in 1992. Prior to 1992, the regulation placed on a water utility the responsibility for maintaining the portion of the service line that ran from the distribution main to the curb stop. This earlier version was in effect when a majority of the MHCs were transferred from a master meter to individual meters in the late 1980s. The record in this case is not clear as to the exact nature of Hardin District's and the MHCs' facilities at that time. Although we doubt each mobile home would have had a curb stop when each was equipped with an individual meter, we need not reach a finding as to the applicable regulation because we ultimately find that Hardin District's proposal is not unreasonable based on a transfer of responsibility for maintaining water lines. See generally Case No. 2005-00148, *Application of Northern Kentucky Water District for (A) an Adjustment of Rates; (B) a Certificate of Public Convenience and Necessity for Improvements to Water Facilities if Necessary; and (C) Issuance of Bonds*, at 12-18 (Ky. PSC July 18, 2008) (tracing the legislative history of 807 KAR 5:066, Section 12).

heavily the fact that the water lines are owned by, were installed by, and are located on property of the MHC owners.

The Commission also has several concerns related to the interests of and protections provided to the sub-metered customers under the proposed tariff. First, during the initial (and potentially permanent) period in which MHC owners and MHC residents are customers, the MHC owner is responsible for the water lines between the master meter and the sub-meters. Hence, if a line break or other problem occurred along the owner's portion of the line, the water district would not have the legal responsibility or right to repair the line, even though it would still have the responsibility to serve the sub-metered customer. Hardin District would have an obligation to provide water service to its sub-metered customer, but there would be a portion of the water line that neither the utility nor the sub-metered customer would have responsibility to maintain. Moreover, neither the utility nor the sub-metered customer would have the right to repair those MHC lines. For these reasons, the Commission finds the proposed tariff to be unreasonable.<sup>8</sup>

Second, the Commission finds that the provision that permits the termination of water service at the master meter for the MHC's nonpayment is unreasonable. It would effectively permit the utility to terminate water service to sub-metered customers, who have fulfilled their obligations.<sup>9</sup>

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<sup>8</sup> Hardin District may wish to consider other options, such as master metering only (without an option for sub-metering) or including a provision in the agreement by which Hardin District can obtain the right to repair MHC lines. The Commission notes that these issues are not before us at this time, and we are not making a finding as to each option's reasonableness.

<sup>9</sup> If Hardin District were to file amended proposed tariff provisions, its silence on this issue may also be found to be unreasonable in light of the nonpayment and service termination provisions in its current tariff. In that event, Hardin District may wish to consider a provision that prevents the utility from cutting off service at the master meter for nonpayment. This would not preclude remedies for nonpayment, however, as the utility could still file collection actions in court.

Third, the Commission finds that sub-metered customers who will be affected by a transition to master-meter-only billing should be provided ample opportunity to preserve their rights. When the utility switches service from sub-meters to a master meter, the MHC residents lose their status and protections afforded to customers of a regulated utility. Although the proposed tariff requires notice to sub-metered customers, the utility is not required to provide advance notice for the customers to preserve any rights they may have. Accordingly, the Commission finds the lack of advance notice to be unreasonable.

The Commission notes that Hardin District did not publish public notice of its proposed tariff. As the proposed tariff has the potential to affect adversely mobile home residents throughout Hardin District's territory, the Commission finds that the better practice would be for Hardin District to publish public notice that provides a brief description of the utility's proposed rules and their consequences should the water district revise its proposal and file with us again.

On August 12, 2008, Hardin District filed a motion for a formal hearing.<sup>10</sup> KRS 278.190(3) requires that the Commission render a final decision on a proposed tariff no later than 10 months after the filing of its schedule. In this case, the filing was made on October 17, 2007, and the 10-month period in this case will end on August 17, 2008. As August 17, 2008 is a Sunday, KRS 446.030(1)(b) provides that this statutory period ends on August 18, 2008. A party cannot waive the 10-month statutory

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<sup>10</sup> See Memorandum from M. Todd Osterloh, Staff Attorney, Public Service Commission, to Case File No. 2007-00461 (July 21, 2008).

deadline.<sup>11</sup> In light of the imminent statutory deadline, there is insufficient time to conduct a hearing. We therefore deny Hardin District's motion for a formal hearing.

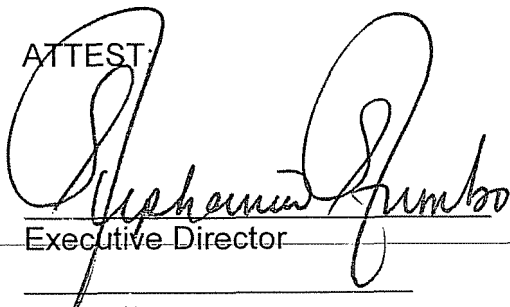
IT IS THEREFORE ORDERED that:

1. Hardin District's proposed tariff is denied.
2. Hardin District's motion for a formal hearing is denied.
3. This case is closed and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 14<sup>th</sup> day of August, 2008.

By the Commission

ATTEST

  
Executive Director

<sup>11</sup> See *The Petition for Hardin County Water District No. 1 for a Certificate of Public Convenience and Necessity*, Case No. 1990-00019 (Ky. PSC Jan. 24, 1991).