

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

IN THE MATTER OF

JAMES S. WAYNE, INDIVIDUALLY AND AS)
TRUSTEE OF THE JAMES S. WAYNE)
LIVING TRUST)
COMPLAINANT)

) CASE NO. 2009-0264

vs.)

HENRY COUNTY WATER DISTRICT #2)
DEFENDANT)

**RESPONSE TO COMMISSION STAFF'S FIRST REQUEST
FOR INFORMATION TO HENRY COUNTY WATER DISTRICT NO. 2**

Comes the Defendant, Henry County Water District #2, and for its Response to Commission Staff's First Request for Information to Henry County Water District No. 2, served upon Defendant pursuant to Kentucky 400 KAR 1:040, states as follows:

1. Please list the names and addresses of current or former employees of Henry District who had any involvement with the 3" water line which is the subject of this complaint?

ANSWER: (1) James T. Simpson, Current Chief Operating Officer, Henry County Water District No. 2; 2240 Sunnyside Road, Eminence, Kentucky 40019; (2) Gene K. Powell, Former Superintendent; Henry County Water District No. 2; 3201 Hwy 146, Lagrange, Kentucky 40031; (3) Jay Armstrong; 52 College Court, Campbellsburg,

Kentucky 40011, Distribution Foreman; (4) Trevor Brown; 160 Cane Run Road, Turners Station, Kentucky 40075; Distribution Operator (5) Chris Troxell; P.O. Box 671, New Castle, KY 40050, Laborer.

2. When did the Henry District first become aware that a 3” water line was being installed across land owned by Larry Congleton (“Congleton”)?

ANSWER: Spring 1997

3. What discussions took place between Henry District, Congleton and the prior owner of property located at 1054 McCarty Lane in Campellsburg, Kentucky (“Property”) regarding the installation of a 3” water line on property owned by Congleton?

ANSWER:

- a. When were these discussions? Spring 1997.
 - b. Who was present? It is my understanding that discussions took place between the prior owner Clarence Davis, Mr. Congleton and Mr. Powell regarding the Henry District taking over the 3’ line after installation, and once the Henry District was no longer under a Division of Water tap-on ban. I have no personal knowledge regarding these discussions.
 - c. What were the results? The Henry District did not obtain an easement to the line at the time of these early discussions.
4. What discussions have taken place between Henry District, Congleton and James S. Wayne (“Complainant”) regarding the ownership and control of the 3” water line on property owned by Congleton?

ANSWER:

- a. When were these discussions? The discussions referred to in 4.b. took place within the last three years.
- b. Who was present? Prior to 2008, there were discussions between Henry County Water District # 2 and Mr. Wayne (either by phone conversations, letters or in person between myself and Mr. Wayne) about allowing current residents on McCarty Lane to connect to the 3” water line. There was a conversation, as I recall by phone, between Mr. Wayne and myself about allowing current residents to connect to the 3” water line. During this discussion Mr. Wayne stated to the effect that he would allow current residents to connect to 3” water line only if the current residents would change their deeds to say that they would never develop their property. After Mr. Wayne discontinued service, Mr. Congleton requested the service in his name and subsequently offered an easement to the Henry District. On July 23, 2008 a letter was sent to Mr. Wayne telling him that Mr. Congleton had made an easement offer to District for the 3” water line. The easement was obtained in September 2008. In October 2008, after the Henry District had obtained an easement from Congleton, I went to the property and talked with Mr. Wayne. At that time repair work was being conducted on the water line by the Henry District. Mr. Wayne stated that the water district could take over the line if they followed condemnation procedures. I told Mr. Wayne I would stop work until I obtained advice from the district’s legal counsel. After consultation with legal counsel, the Henry District continued with repair work on the water line. Sometime after that, I spoke with Mr. Wayne by phone and told

him I had consulted with the district's attorney and that is the reason we had moved forward with the repair work. I also sent Mr. Wayne a letter on November 19, 2008 explaining it was the Henry District's opinion that condemnation was not necessary. It is my understanding that Mr. Congleton and Mr. Wayne had discussions within the last three years about Mr. Congleton wanting to tap on to the 3" water line. At that time, the meter was in Mr. Wayne's name and I told Mr. Congleton he would need to contact Mr. Wayne. I have no personal knowledge regarding the conversations between Mr. Wayne and Mr. Congleton. Mr. Congleton did tell me at some point in time that Mr. Wayne would not agree to him getting water service from the line.

c. What were the results? After Mr. Wayne discontinued service and service was transferred to Mr. Congleton, Mr. Congleton offered an easement to the Henry District. The Henry District obtained an easement in September 2008 and proceeded to take over the water line.

5. Did Henry District, at any time, make representations, promises or commitments to the Complainant regarding the 3" water line located on property owned by Congleton? If so, describe.

ANSWER: Yes. I told Mr. Wayne that Henry County Water "District # 2 would move the meter from Mr. Congleton's property and install the meter on Mr. Wayne's property and that Mr. Wayne would no longer have to maintain the 3" line. Mr. Wayne expressed that he did not want any development on McCarty Lane. This conversation occurred sometime prior to Mr. Wayne discontinuing service.

6. Who initiated the issue of Henry District taking over the 3" water line from Congleton?

ANSWER: After Mr. Wayne discontinued water service on March 5, 2008, Mr. Congleton asked for the service to be placed in his name. Sometime soon thereafter, he offered an easement to the Henry District. The Henry County Water District No. 2 Board then had discussions regarding taking over the line.

- a. When did any discussions take place? About one month after Mr. Wayne had service disconnected.
 - b. Who was present? Mr. Congleton called me sometime after March 20, 2008 and inquired about having service connected in his name. I advised Mr. Congleton that I would need to contact the PSC on the issue. On March 24, 2008 I called Ginny Smith at the PSC and explained the situation to her, including that there had been a dispute between the two property owners over the meter and water line. Ms. Smith told me it would be allowable for Mr. Congleton to pay a connection fee and have the meter in his name.
 - c. Mr. Congleton had the meter put into his name on April 4, 2008. On July 23, 2008 a letter was sent to Mr. Wayne telling him that Mr. Congleton had made an easement offer to District for the 3" water line. On September 9, 2008 Mr. Congleton granted an easement to the Henry District. The Henry District Board approved taking over the 3" line.
7. Provide all documentation concerning installation of the 3" line in 1997. The response should include board minutes, all correspondence, and documents filed with the Kentucky Division of Water requesting approval of the original connection.

ANSWER: Henry District did not install the 3" water line. As of the date of answering this request, no documents responsive to this request have been located in the Henry

District's records. The answer will be supplemented if any responsive documents are discovered.

8. What type of water service is typically provided by a 3" line?

ANSWER: Potable drinking water service to customers.

9. What was the water service provided by the 3" water line in question when it was installed?

ANSWER: Residential water service.

10. When Complainant discontinued service with Henry District, what happened to the meter that had been used by Complainant?

ANSWER: The meter base stayed on Mr. Congleton's property.

11. When water service is discontinued and the meter is transferred to another customer, does Henry District notify the prior customer?

ANSWER: No.

12. Was Congleton charged a fee to have the meter previously used by the Complainant transferred to him? If so, how much? Was Congleton charged to have new water service? If so, how much?

ANSWER: Yes. Mr. Congleton was charged a \$25.00 connection fee for the transfer of the service into his name. Yes, Mr. Congleton received a monthly bill for the new water service.

13. When Henry District became aware of high water usage registering on the Complainant's meter, other than sending a notice to the Complainant, did Henry District make any repairs to the meter or to the water line on Henry District's side of the meter? On Congleton's side of the meter?

ANSWER: The leaks were in the 3” water line. The meter was checked to confirm reading and the meter service line to the meter was visually checked for any leaks. No leaks were found on Henry District’s side of the meter. No repairs were made by Henry District on Congleton’s side of the meter until after Henry District took over the line.

14. Describe any discussions or communication Henry District had with the Complainant at the time water service to the subject property was disconnected.

ANSWER: Mr. Wayne came into the office and stated he could not get the line repaired and he wanted service disconnected. The Henry District disconnected the water at Mr. Wayne’s request.

15. When did Henry District become aware of a dispute between Complainant and Congleton regarding the 3” water line? Please describe the circumstances.

ANSWER: About three years ago, I learned about the original dispute between Mr. Wayne and Mr. Congleton regarding Mr. Congleton’s step-son connecting to the 3” water line. I am also aware that Mr. Congleton would not let Mr. Wayne’s contractor on to the property to repair the leaks in the water line. I have no personal knowledge of the conversations between Mr. Wayne and Mr. Congleton.

16. Describe any discussions between Henry District, Complainant and Congleton regarding Henry District taking over ownership and control of the 3” water line on Congleton’s property? Was the Complainant’s claim to the water line known at the time?

ANSWER: See Answers to #4 and #6 above. In mid- October 2008, when I spoke with Mr. Wayne about consulting legal counsel, I understood Mr. Wayne did not believe the water line belonged to the Henry District.

17. Was the transfer of the 3” water line done in the normal course of business by Henry District?

ANSWER: Yes.

18. Did Henry District utilize the same process in obtaining the easement from Congleton as it had done in obtaining easements prior to this transfer? Is this the same process that would be utilized currently? If not, please explain.

ANSWER: Yes, this the same process used in obtaining other prior easements, and is the process currently used. The difference in this matter is that the water line was already in existence.

19. Has the Complainant requested that water service be reconnected to the subject property? If so, when and how?

ANSWER: Yes. It is my understanding that the Mr. Graddy made the request to the Ms. Curry by telephone on or about October 19, 2009. Around October 28, 2009, I received a copy of a follow up letter from Mr. Graddy to Ms. Curry and the reconnection fee.

20. Has the Henry District denied Complainant service to the Property? Is so, please explain.

ANSWER: The Henry District has never denied service to the Complainant.

21. Who is Ray Powell and why was the original service connection placed in his name?

ANSWER: It is my understanding that Ray Powell was a business partner of Clarence Davis and that they bought and sold real estate together.

22. Provide Complainant’s customer agreement.

HENRY COUNTY WATER DISTRICT #2 - Work Order 5539

COPY

CAMPBELLSBURG, KY 40011
502-532-6280

JAMES & DEBRA WAYNE
CAMPBELLSBURG RD
CAMPBELLSBURG, KY 40011

ORDER NO: 5539
ACCOUNT: 107608
LOCATION: 06-18990

CLASS: HENRY

MID:
ORDER TYPE: DISCONNECT

ISSUE DATE	BEGIN DATE	DATE CLOSED	PRINT DATE
3/5/2008		3-6-08	3/5/2008

Location Note: R6 SP FAR RS OF HS OVER FNCE STAKE

OLD METER ID	OLD READING	NEW METER ID	NEW READING
98325922	87422		
OLD SERIAL #		NEW SERIAL #	
	874220		

EXPENSE	DESCRIPTION	EXPENSE	AMOUNT
MATERIAL		MAT. \$.00
EQUIPMENT		EQUIP. \$.00
EMPLOYEES		LABOR \$.00
LABOR HRS		TRAVEL \$.00
MISC EXP		MISC. \$.00

REMARKS: DISCONNECT WATER SERVICE

PLEASE DISCONNECT SERVICE CUSTOMER STATES THAT THEY HAVE A LEAK AND AREN'T SURE WHEN THEY WILL BE ABLE TO FIX.

Updated By: VC1 On: 3/5/2008 Taken By: *mkf*

Exhibit A

ANSWER: The Henry District has a customer agreement when meter was installed. At the time Mr. Wayne obtained service we were not obtaining new customer service agreements, but only obtained billing address from the new customer.

23. Refer to Work Order #5539 provided in Henry District's response dated 8/11/09. The written statement says, ". . . as requested by Mr. Wayne."

ANSWER:

- a. How was the request made- by phone, in person, in writing, etc? In person.
- b. Provide all documentation concerning the request. Copy of Work Order attached as Exhibit A

INDEX OF ATTACHMENTS	PAGE
Exhibit A- Copy of Henry County Water District #2 Work Order 5539	10

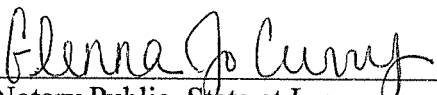
COMMONWEALTH OF KENTUCKY
COUNTY OF OLDHAM

Comes James T. Simpson, Chief Operating Officer, Henry County Water District No. 2, and after first being duly sworn states that he is the person responsible for responding to Questions 1-23 of the Commission Staff's First Request for Information to Henry County Water District No. 2 and that the foregoing Answers are true and accurate to the best of his knowledge, information and belief formed after a reasonable inquiry.



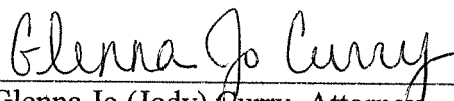
JAMES T. SIMPSON

Subscribed and sworn to before me by James T. Simpson this 11th day of November, 2009.



Notary Public, State at Large
My Commission expires: 10-7-11

Respectfully submitted,

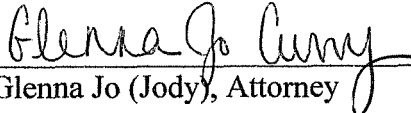


Glenna Jo (Jody) Curry, Attorney
1900 East Mt. Zion Road
Crestwood, Kentucky 40014
(502) 222-9808
Facsimile (502) 225-0924
COUNSEL FOR HENRY COUNTY
WATER DISTRICT NO. 2

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **RESPONSE TO COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION TO HENRY COUNTY WATER DISTRICT NO. 2** was mailed, US mail, postage prepaid to the following this 17th day of November, 2009:

W. Henry Graddy, Attorney
W. H. Graddy & Associates
P. O. Box 4307
Midway, KY 40347



Glenna Jo (Jody), Attorney