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PUBLIC UTILITIES - COLLECTIONS - DISCONTINUANCE OF SERVICE

Charles E. Nadeau
University of Michigan Law School

PUBLIC UTILITIES — COLLECTIONS — DISCONTINUANCE OF SERVICE — Defendant's rate schedule provided for a minimum charge of $1 per month for each month of the year. Plaintiff was connected to defendant's system in May. The first electric bill included four dollars as the minimum charge for the months from January to May, defendant claiming that the minimum charges ran from the first of the calendar year. Plaintiff paid for the other items but refused payment of the four dollars. Service was discontinued in July. The lower court decided that it did not have jurisdiction to give either an injunction or damages. *Held*, where an account is honestly disputed, the utility must not discontinue service. The jurisdiction of the public utilities commission is not exclusive and a new trial will be ordered in the lower court. *Steele v. Clinton Electric & Power Co.*, (Conn. 1937) 193 A. 613.

Reason dictates that a public utility must be capable of promptly enforcing collections if it is to render efficient, economical service. Except as to matters regulated by public authority, a utility may adopt reasonable and just regulations for the conduct of its business.[1] A variety of measures to obtain settlement of obligations have been tried, not all of which have been found reasonable by the courts. Requiring payment in advance is a most effective regulation,[2] but the nature of such a rule makes it adaptable only to those utilities charging

[1] Railroad Commission v. Louisville & Nashville R. R., 140 Ga. 817, 80 S. E. 327 (1913); Southern R. R. v. Bailey, 143 Ga. 610, 85 S. E. 847 (1915); Huston v. City Gas & Electric Co., 158 Ill. App. 307 (1910).

[2] Hatch v. Consumers' Co., 17 Idaho 204, 104 P. 670, 40 L. R. A. (N. S.) 263 (1909). But requiring payment for water a year in advance is unreasonable. Rockland Water Co. v. Adams, 84 Me. 472, 24 A. 840 (1892). It is immaterial that the regulation is not uniformly enforced. Johnstown Telephone Co. v. Berkebile, (Mo. App. 1926) 283 S. W. 456. In a related field, the majority rule is that there is no unlawful discrimination in extending credit to some and not to others. See the collection of cases on the point in 12 A. L. R. 964 (1921).

a fixed rental. As an alternative to such a method, deposits in guaranty of payment may be required.[3] To further induce payment, interest [4] and penalties [5] in case of delinquency may be charged. But the most important weapon of the utility is its right to refuse to serve the delinquent.[6] Usually the theory on which this right is based is that the cost of legal proceedings would be prohibitive for collecting accounts of this type.[7] It is submitted that a better rationalization of the cases will be had if we start with the doctrine that non-payment in the past indicates probable non-payment for this service in the future, and service will be rendered only to those who pay. This right of the utility is qualified as in the case of other self-help remedies. As illustrated in the immediate case, where the customer has a bona fide adverse claim the utility may not deem itself judge of the dispute and refuse service.[8] Also, by the weight of authority, services may not be discontinued because of delinquencies of the same customer on different premises.[9] Nor can the right be used as a bludgeon to collect collateral obligations owed by the customer to the utility.[10] These rules are difficult to

[3] When the deposit is made, the customer is not entitled to have his unpaid bills paid from it and still receive service. However, the customer is entitled to have the interest on his deposit applied to delinquent payments before the service can be discontinued. Doherty v. Mississippi Power Co., (Miss. 1937) 173 So. 286. A deposit substantially greater than usually demanded cannot be required where the customer has a poor credit rating. Horton v. Interstate Tel. & Tel. Co., 202 N. C. 610, 163 S. E. 694 (1932), noted in 11 N. C. L. REV. 102 (1932).

[4] Atlanta v. Burton, 90 Ga. 486 (1892).

[5] Owosso v. Union Tel. Co., 185 Mich. 349, 151 N. W. 1029 (1925).

[6] A complete discussion of the question will be found in 27 R. C. L. 1453 (1920). Because of individual phones, long distance calls, etc., there are many interesting cases involving telephones. A collection will be found in 70 A. L. R. 894 (1931). See 2 BROOKLYN L. REV. 88 (1932).

[7] 2 POND, LAW OF PUBLIC UTILITIES, 4th ed., § 668 (1932).

[8] Fair Dodd v. Atlanta, 154 Ga. 33, 113 S. E. 166, 28 A. L. R. 465 at 472 (1922). Where the dispute is caused by the customer tampering with company meter, service may be discontinued. Jones v. Southwestern Gas & Electric Co., (La. App. 1936) 171 So. 163. But in such cases a new and responsible tenant may require service. DeSalme v. Union Electric Light & Power, (Mo. App. 1937) 102 S. W. (2d) 779.

[9] Hatch v. Consumers Co., 17 Idaho 204, 104 P. 670 (1909). For the minority view, see DePass v. Broad River Power Co., 173 S. C. 387, 176 S. E. 325, 95 A. L. R. 545 at 556 (1934). It should be noted that a number of the cases holding there is no right to discontinue for non-payment of service on other premises base their result on construction of the contract on which service is rendered. Another interesting situation may arise where a person contracts for telephones in several locations but pays for only one. See Cumberland Tel. & Tel. Co. v. Hobart, 89 Miss. 252, 42 So. 349 (1906).

[10] State ex rel Deeney v. Butte Electric & Power Co., 43 Mont. 118, 115 P. 44 (1911). In the converse situation it has been held that a utility may shut off electricity when the customer did not pay because of an outstanding counterclaim for unliquidated damages caused when the electricity was cut off by a mishap. Central Louisiana Power Co. v. Thomas, 145 Miss. 352, 110 So. 673 (1927). However, where the service has been properly disconnected the utility may require payment of the reconnecting charge before the service will be renewed. Mansfield v. Humphrey Mfg. Co., 82

reconcile with the theory that the prohibitive cost of legal proceedings justifies discontinuance of service in case of delinquency, as that theory would seem to allow the enforcement of any obligation in which the cost of legal action would make such action impracticable. But following the doctrine of future probability of payment, it is logical to say that such delinquencies on collateral obligations or for service on other premises do not indicate that *this* service will not be paid for in the future. A further limitation at common law on the right to discontinue service is derived from the view that the obligation to pay is personal in its nature; [11] consequently, the utility cannot refuse service to a later occupant because of a predecessor's failure to pay, or make the obligation a lien upon the premises.[12] However, in many instances statutes have declared that arrearages owing a utility may become a lien on the premises which must be paid before service will be rendered to any occupant.[13] At all events, service cannot be stopped before the due date of the bills or before a demand for payment has been made.[14] Furthermore, where the contract for service provides a "delinquency" penalty which is payable until a fixed date, the service cannot be discontinued before that date though the customer is in arrears.[15] Or if tender of payment is made after the time required by the company, but before the service is stopped, the right to discontinue the service is lost.[16] Apparently the theory here is that the customer by payment, even though after the due date has elapsed, has negatived any expectation of non-payment for future service. Notice should be given of the intention to shut off the service.[17] Whenever

Ohio St. 216, 92 N. E. 233, 19 Ann. Cas. 842 at 847 (1910). The annotation gives a complete discussion of the problem in reference to water companies.

[11] Thus it is unreasonable to provide that the utility will deal only with the landlord because it compels the tenant to pay the arrearages of the landlord to get service. Bourke v. Alcott Water Co., 84 Vt. 121, 78 A. 715, 33 L. R. A. (N. S.) 1015 (1911). However, where several tenants receive service through one outlet, the service may be charged against the landlord and entirely discontinued for the delinquency of one tenant. Millville Improvement Co. v. Millville Water Co., 92 N. J. Eq. 480, 113 A. 516 (1921).

[12] Turner v. Revere Water Co., 171 Mass. 329, 50 N. E. 634 (1898).

[13] However, an ordinance authorizing the turning off the water for failure to pay does not give a lien. Covington v. Ratterman, 128 Ky. 336, 108 S. W. 297, 17 L. R. A. (N. S.) 923 (1908).

When there is a statute authorizing the lien, the remedy is cumulative and there may still be the right to turn off the supply. Altonna v. Shellenberger, 6 Pa. Dist. 544 (1896). Of course, this is dependent on the wording of the statute. See 1 FARNHAM, WATERS AND WATER RIGHTS, § 166 (1904), and the annotation on the question in 13 A. L. R. 346 (1921), supplemented in 55 A. L. R. 789 (1928).

[14] Wink Gas Co. v. Huskey, (Tex. Civ. App. 1931) 42 S. W. (2d) 819.

[15] Harbaugh v. Citizens Tel. Co., 190 Mich. 421, 157 N. W. 32 (1916).

[16] Royal v. Cordele, 132 Ga. 125, 63 S. E. 826 (1909).

[17] Where the service is stopped without notice to the subscriber and with knowledge on the part of the utility of probable damages such that a jury might find wilful negligence, there is a possibility that the company will be held answerable. Alabama Water Service Co. v. Johnson, 223 Ala. 529, 137 So. 439 (1931).

the utility does not comply with these limitations on the right to discontinue service, it subjects itself to an injunction and damages on suit by the customer.[18]

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[18] Even though the dispute may be handled under a statutory proceeding with the public utilities commission, the customer is entitled to an injunction against the deprivation of service pending determination of the dispute. Spaulding Mfg. Co. v. Grinnell, 155 Iowa 500, 136 N. W. 649 (1912). Of course, the statute might well make the jurisdiction of the commission exclusive.