

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTHERN WATER AND )  
SEWER DISTRICT FOR AN ADJUSTMENT IN ) Case No. 2012-00309  
RATES PURSUANT TO THE ALTERNATIVE RATE )  
FILING PROCEDURE FOR SMALL UTILITIES )

ATTORNEY GENERAL'S  
WRITTEN COMMENTS  
ON REPORT OF COMMISSION STAFF

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COMMISSION

The Attorney General submits his Written Comments on the Report of Commission Staff. While the Attorney General reserves the right to participate in any additional proceedings this Commission may hold in this matter, he does not request an evidentiary hearing and notes that the matter may be submitted for a decision based upon the existing record.

## I. ANNUAL PAYMENT TO FLOYD COUNTY FISCAL COURT

On 8 May 2002, Southern Water and Sewer District submitted an application for a Certificate of Public Convenience and Necessity, financing, and to increase rates for a \$6,172,900 waterworks improvement project.<sup>1</sup> The Commission's 7 June 2002 Order describes the elements of the funding for the project. The elements include a \$2,474,000 contribution from the Floyd County Fiscal Court.<sup>2</sup>

Southern's current rates (\$20.00 first 2,000 gallons; over 2,000 gallons - \$7.00 per 1,000) were established in Case No. 2006-00327 through an Order dated 26 October 2009 in Case No. 2009-00398.<sup>3</sup> As with Case No. 2002-00166, the Order authorizing construction, financing, and an increase in rates is consequent to a request for approval through the framework of KRS 278.023. Nonetheless, the terms of the Orders resulting from a KRS 278.023 proceeding are just as binding as any other Commission Order as are the corresponding findings of fact.

In Case No. 2002-00166, the \$2,474,000 amount from the Floyd County Fiscal Court is described as a contribution. There is no repayment obligation recognized through the 7 June 2002 Order, and there is no enforceable right to repayment (in whole or in part) under the Order. Whether the U.S. Department of Agriculture's Rural

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<sup>1</sup> *In the Matter of: The Application of Southern Water and Sewer District of Floyd and Knott Counties, Kentucky, for a Certificate of Public Convenience and Necessity to Construct, Finance and Increase Rates Pursuant to KRS 278.023*, PSC Case No. 2002-00166.

<sup>2</sup> PSC Case No. 2002-00166, Order, 7 June 2002, page 1.

<sup>3</sup> *In the Matter of: Application of Southern Water and Sewer District of Floyd and Knott Counties, Kentucky for a Certificate of Public Convenience and Necessity to Construct, Finance and Increase Rates Pursuant to KRS 278.023*, PSC Case No. 2009-00398.

Development (RD) could have (in 2002-00166) ordered that the amount from the Floyd County Fiscal Court be carried as a separate loan and set rates for also servicing that debt obligation is unclear. But, that question is moot because RD did not. Accordingly, there is no Commission authorization for Southern to treat the amount, in whole or in part, as a debt for financing the utility.

While the Attorney General is sympathetic to the fact that the Floyd County Fiscal Court's contribution was a key element to funding the project, the Attorney General has a concern as to the precedent that would be set by an authorization for water districts to voluntarily repay grant and contribution amounts. True: It may be the case that in the absence of such contributions there will be a scaling back or abandonment of projects. Nonetheless, a precedent creating uncertainty in the actual liability and obligations of a water district with regard to the financing of various projects would likely prove very disruptive. It would also stand to significantly undermine the Commission's role to supervise financing under KRS 278.300.

As the report of Commission Staff notes, there is no formal agreement between the parties requiring the payment, and no Commission approval was obtained under KRS 278.300.<sup>4</sup> The plain language of the 7 June 2002 Order in Case No. 2002-00166 describes the \$2,474,000 amount from the Floyd County Fiscal Court as a contribution. The payments are not authorized, and they should be excluded from rates.

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<sup>4</sup> Case No. 2012-00309, Staff Report, page 10.

## II. WATER LOSS

The water loss for the test year was determined to be at a rate of 44.35 percent.<sup>5</sup> Therefore, almost one out of every two gallons produced and put into the distribution system does not produce revenue. This rate is unacceptable. It reflects a water loss percentage well in excess of reasonable operations.

While the Commission will remove the water loss in excess of 15 percent for ratemaking purposes, the non-revenue water problem remains. At this stage the Attorney General is reluctant to request a management audit or an investigation; however, he does believe that, consistent with the Commission's plenary authority, the Commission may, through this proceeding, order the District to submit a plan for managing its assets that describes the steps that it plans to take to reduce its percentage of water loss. While the District does not necessarily have to immediately reduce the water loss amount to 15 percent, if the District cannot take steps toward significantly reducing the amount down from 44.35 percent, then such a waste of treated water would warrant an investigation and/or audit.


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<sup>5</sup> Case No. 2012-00209, Staff Report, page 7.

WHEREFORE, the Attorney General submits his Written Comments.

Respectfully submitted,

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*Notice Regarding Filing and Certificate of Service*

Counsel certifies that an original and ten copies of these Written Comments were served and filed by hand-delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. A copy was served on the Applicant by United States Mail, first-class, postage-prepaid, to Hubert Halbert, Chairman, Southern Water & Sewer District, P.O. Box 610, McDowell, Kentucky 41647. The filing and service took place on 15 November 2012.

  
Assistant Attorney General