



Paul E. Patton, Governor  
Ronald B. McCloud, Secretary  
Public Protection and  
Regulation Cabinet  
Thomas M. Dorman  
Executive Director  
Public Service Commission

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
211 SOWER BOULEVARD  
POST OFFICE BOX 615  
FRANKFORT, KENTUCKY 40602-0615  
www.psc.state.ky.us  
(502) 564-3940  
Fax (502) 564-3460

Martin J. Huelsmann  
Chairman  
Gary W. Gillis  
Vice Chairman  
Robert E. Spurlin  
Commissioner

November 15, 2001

David A. Koenig, Esq.  
Dallas, Neace & Koenig  
Post Office Box 6205  
Florence, Kentucky 41042

Re: Boone County Water District

Dear Mr. Koenig:

Commission Staff acknowledges receipt of your letter of November 1, 2001 in which Boone County Water District ("Boone District") inquires about the applicability of KRS 278.015 when it changes water suppliers.

In your letter, you present the following facts:

Boone District is a water district that is organized pursuant to KRS Chapter 74. It has no water treatment facilities, but currently purchases its total water requirements from Northern Kentucky Water District ("NKWD"). On March 2, 1999, Boone District executed an agreement with Cincinnati Water Works ("CWW"), the city of Florence, Kentucky ("Florence"), and Boone-Florence Water Commission ("Water Commission") for CWW to exclusively provide Boone District's water requirements beginning no later than January 1, 2004. By a subsequent agreement with the Water Commission, Boone District further agreed to purchase its total water requirements from the Water Commission, which would purchase its water supply exclusively from CWW. Boone District subsequently executed an agreement with NKWD that terminates their existing water supply agreement and provides for Boone District's physical disconnection from NKWD's water distribution system. The Public Service Commission



reviewed these contracts in Case No. 2000-206<sup>1</sup> and found that Boone District's decision to change water suppliers would not result in unreasonable purchased water expenses during the initial years of the contract and that Boone District's Termination Agreement with NKWD was reasonable.

Boone District currently projects that a change in its water suppliers will occur in early 2003. It further projects that the rate that the Water Commission will assess will differ significantly from NKWD's current rates.

Based upon these facts, you pose the following question: May Boone District use the purchased water adjustment procedure set forth in KRS 278.015 and Administrative Regulation 807 KAR 5:068 to adjust its rates to reflect any changes in its cost of water when the change in water suppliers occurs?

The purchase water adjustment procedure set forth in KRS 278.015 and Administrative Regulation 807 KAR 5:068 addresses only changes in the rates of existing water suppliers. KRS 278.015, for example, provides that "[w]hen a wholesale supplier selling water . . . to a water district increases its rates, the water district or combined water, gas, or sewer district shall have the authority to increase its rates commensurate with the wholesale supplier without prior approval by the commission." It further requires that, when applying for a purchase water adjustment, a water district must submit "a copy of the notice from its wholesale supplier showing the increase in the rate charged to the utility . . . and a statement of the volume of purchased water used or sewage treated to calculate the increase in rates." Likewise, Administrative Regulation 807 KAR 5:068, Section 2, refers to "increase in a supplier's base rate" and requires that the amount of the increase due to a change in a supplier's rates be based on the water district's purchases from that supplier during "the twelve (12) month period ending within ninety (90) days immediately prior to the effective date of . . . [the water district's] rate adjustment to its customers."

Commission Staff is of the opinion that, based upon the facts set forth in your letter, the purchase water adjustment procedures set forth in KRS 278.015 and Administrative Regulation 807 KAR 5:068 are not available to Boone District. The increase in Boone District's purchased water costs will not result from an increase in the rates assessed by an existing water supplier, but by Boone District's switch to a new water supplier. Neither NKWD nor the Water Commission is increasing its wholesale rate.

---

<sup>1</sup> Case No. 2000-206, An Investigation of Boone County Water District's Decision To Change Water Suppliers and of The Amendment of Water Supply Agreements Between Northern Kentucky Water Service District and Boone County Water District and The City Of Florence, Kentucky (Ky.PSC Nov. 9, 2000).

Assuming arguendo that the purchased water adjustment procedure would be available, the formula that Administrative Regulation 807 KAR 5:068 requires the Commission to use to calculate a purchased water adjustment would not accurately reflect changes in Boone District's water costs due to the change in suppliers.<sup>2</sup> This formula is based upon a water district's purchases from a supplier for a 12-month period prior to the water district's proposed rate adjustment. In this case, Boone District will not have purchased any water from the Water Commission for the 12-month period before the switch. The formula, therefore, will not reflect Boone District's purchased water costs from the Water Commission.<sup>3</sup>

Boone District may wish to consider using the rate adjustment procedures set forth in Administrative Regulation 807 KAR 5:001, Section 10. If Boone District intends to seek a rate adjustment based solely upon the change in the cost of purchased water, Commission Staff believes that good cause may exist for deviations from the filing requirements set forth in that regulation. If Boone District's requested relief is limited to its recovery of any increase in purchased water costs, Commission review of Boone District's application can be expedited and is likely to be more limited in scope than that required for normal rate adjustment applications. Please note that during such investigation the Commission may review Boone District's test period operations to determine Boone District's ability to absorb any increase in purchased water costs.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,



Thomas M. Dorman  
Executive Director

---

<sup>2</sup> Administrative Regulation 807 KAR 5:068 contains no provision to permit a deviation from its requirements. The Commission lacks any authority to deviate from the required method of calculating purchased water adjustments.

<sup>3</sup> In the event there is an increase in the supplier's base rate, the water district or water association shall determine the increased cost of water purchased based on the twelve (12) month period ending within ninety (90) days immediately prior to the effective date of its rate adjustment to its customers. The cost of purchased water shall be calculated at the supplier's base rate and changed rate, as defined in Sections 1 and 2 of this administrative regulation. The difference in costs shall then be divided by the actual number of cubic feet or gallons sold during the same twelve (12) month period, yielding the purchased water adjustment in cents per cubic foot or gallon unit.