

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED REVISION OF RULES)
REGARDING THE PROVISION OF)
WHOLESALE WATER SERVICE BY THE) CASE NO. 2011-00419
CITY OF VERSAILLES TO NORTHEAST)
WOODFORD WATER DISTRICT)

ORDER

The Electric and Water Plant Board of the City of Frankfort, Kentucky ("FEWPB") has moved to intervene in this matter. The City of Versailles, Kentucky ("Versailles") and Northeast Woodford Water District have filed responses to this motion. Finding that FEWPB has failed to state sufficient grounds in its motion to satisfy the requirements of 807 KAR 5:001, Section 3, we deny the motion.

Versailles, a city of the fourth class,¹ owns and operates water treatment and distribution facilities that provide retail water service to persons residing in and outside its boundaries and wholesale water service to Northeast Woodford Water District and South Woodford Water District.

Northeast Woodford Water District, a water district organized pursuant to KRS Chapter 74, provides water for compensation to 979 customers in Fayette and Woodford Counties, Kentucky.² It has been in operation since February 1969.³

¹ KRS 81.010(4).

² *Report of Northeast Woodford Water District to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2010* ("Annual Report") at 5, 27.

³ *Id.* at 4.

Versailles has been the sole provider of water to Northeast Woodford Water District since the water district's inception. On May 17, 1966, Versailles and Northeast Woodford Water District entered into a water purchase contract in which Versailles agreed to provide the water district five million gallons of water monthly for a 40-year period. In 1994, Versailles and Northeast Woodford Water District agreed to amend the original water purchase agreement to extend the term of the agreement for an additional 30 years and to increase the monthly volume of water that Northeast Woodford Water District may purchase to 15 million gallons. Versailles expanded the capacity of its water treatment facilities between 2001 and 2006 at a cost of \$13.36 million allegedly, in part, to meet its contractual obligations to Northeast Woodford Water District.⁴

Northeast Woodford Water District recently sought an additional supply of water. On April 19, 2011, it executed a water purchase agreement with FEWPB that requires Northeast Woodford Water District to purchase three million gallons of water monthly from FEWPB for a 42-year period. Northeast Woodford expects to commence purchasing water from FEWPB in "late spring or early summer of 2012"⁵ when the facilities necessary to connect the two water systems are expected to be completed.

On September 20, 2011, Versailles filed with the Commission a proposed regulation to govern its water sales to Northeast Woodford Water District. This proposed regulation would require Northeast Woodford Water District to purchase from Versailles a minimum of 15 million gallons of water monthly before purchasing water from other suppliers. Northeast Woodford filed objections to the proposed regulation,

⁴ Testimony of Bart Miller at ¶ 9 (filed Nov. 15, 2011).

⁵ Northeast Woodford Water District's Response to Commission Staff's Requests for Information, Item 3 (filed Mar. 29, 2012).

requested that the Commission investigate the reasonableness of the proposed regulation, and sought to intervene in such proceeding. On October 27, 2011, the Commission initiated this proceeding and granted Northeast Woodford Water District leave to intervene.

FEWPB has moved to intervene in this matter. In support of its motion, it states that the adoption of the proposed regulation may affect FEWPB's "wholesale rate charged to Northeast Woodford District as well as its other wholesale customers."⁶ It further asserts that "the minimum requested by the City of Versailles would not permit Northeast Woodford [Water] District to purchase water from . . . [FEWPB] to the detriment of the District's customers."⁷ It also notes that, when filing the proposed regulation, Versailles asserted FEWPB "would be better served by establishing a minimum purchase requirement for NWWWD [Northeast Woodford Water District] before it purchases from any other source."⁸ FEWPB disagrees with this assertion.

While Northeast Woodford Water District supports FEWPB's motion, Versailles has filed a response in opposition. Versailles argues that FEWPB has no special interest in this proceeding. It asserts that the only issue before the Commission involves its existing water purchase contract with Northeast Woodford Water District. The contract between FEWPB and Northeast Woodford Water District, Versailles argues, is not before the Commission and will not be affected by this proceeding's outcome. Permitting FEWPB's intervention, Versailles further argues, will unduly

⁶ FEWPB's Motion for Full Intervention at ¶ 6.

⁷ *Id.*

⁸ *Id.* at ¶ 4.

complicate the current proceedings by injecting a separate and unrelated issue into the proceedings.

The only person entitled to intervene as a matter of statutory right in Commission proceedings is the Attorney General.⁹ Intervention by all others is permissive and is within the Commission's discretion.¹⁰ In exercising its discretion to determine permissive intervention, the Commission follows 807 KAR 5:001, Section 3(8), which provides:

If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.¹¹

In its request, FEWPB has failed to articulate a special interest in this proceeding. It is not a customer of Versailles nor is it a party to the water purchase agreement between Versailles and Northeast Woodford. FEWPB has failed to identify how a decision in this proceeding will affect its rates for service. The Commission established FEWPB's current wholesale rates in a separate proceeding on March 16, 2011, prior to the execution of a water purchase contract between FEWPB and Northeast Woodford Water District. As these rates were established without regard to possible water sales to Northeast Woodford, we are unable to find any connection between FEWPB present rates and the outcome of this proceeding. Finally, FEWPB

⁹ KRS 367.150(8)(b).

¹⁰ *Inter-County Rural Elec. Cooperative v. Publ. Serv. Comm'n*, 407 S.W.2d 127, 130 (Ky. 1966).

¹¹ 807 KAR 5:001, Section 3(8)(b).

has failed to identify how a decision in favor of Versailles will affect the water purchase agreement between FEWPB and Northeast Woodford Water District.¹²

FEWPB has also failed to demonstrate how its involvement in the proceeding is likely to present issues and develop facts that will assist us in considering Versailles's proposed regulation. In its motion, it does not indicate any knowledge of or experience with the purchased water transactions between Versailles and Northeast Woodford Water District. Based upon our review of the written testimony that both parties have filed with the Commission, FEWPB was not involved.

The Commission acknowledges that the purchase water agreement between FEWPB and Northeast Woodford Water District and the obligations that this agreement imposes on Northeast Woodford will be significant issues in this proceeding and are relevant to our determination of the reasonableness of the proposed regulation. We are of the opinion, however, that Northeast Woodford Water District is in the better position to present those issues, especially with regard to any financial hardships that may arise because of conflicting duties that the proposed regulation and the purchase water agreement with FEWPB impose.

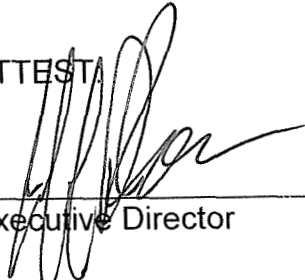
Finding that FEWPB lacks a special interest in this proceeding and that its presence would not likely present issues and develop facts that would assist us in considering Versailles' proposed regulation, the Commission HEREBY ORDERS that FEWPB's Motion For Full Intervention is denied.

¹² FEWPB argues that a favorable outcome to Versailles will result in Northeast Woodford Water District purchasing less water from it. If the proposed regulation is approved, Northeast Woodford Water District may have no need to purchase water from FEWPB. Its contractual obligation to purchase at least three million gallons of water monthly from FEWPB, however, would appear to remain.

By the Commission

ENTERED
APR 06 2012 TW
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST



Executive Director

Case No. 2011-00419

John S Davis
Chairman
Northeast Woodford County Water District
225A South Main Street
Versailles, KY 40383

Joesph M Hoffman
Joseph M. Hoffman and Associates
100 United Drive
Suite 4B
Versailles, KENTUCKY 40383

William K Moore
126 South Main Street
Versailles, KENTUCKY 40383