

*K7
Canner
wt/1*

BROWN, TODD & HEYBURN

RUCKER TODD
 GEORGE E. DUDLEY
 EDWARD S. BONNIE
 JOSEPH B. HELM
 MARK B. DAVIS
 W. C. FISHER, JR.
 JAMES PARK, JR.
 JOHN T. BONDURANT
 CHARLES E. CASSIS
 MARSHALL P. ELDRED, JR.
 CARL ARTHUR HENLEIN
 DAVID W. CRUMBO
 JOHN R. MCCALL
 D. PATON PELFREY
 KENNETH J. TUGGLE
 C. EDWARD GLASSCOCK
 WINSTON E. MILLER
 WILLIAM L. SKIERS, JR.†
 PAUL E. SULLIVAN
 IRVIN ABELL III
 TIMOTHY W. MARTIN
 R. JAMES STRAUS
 STEPHEN R. SCHMIDT
 CHARLES R. KEETON
 MAL NANCE BOGARD
 F. GERALD GREENWELL
 JOSEPH L. ARDERT
 CHARLES E. ALLEN III
 DALE C. AHEARN
 KATHERINE RANDALL
 MICHAEL R. MERTER
 FREDERIC H. DAVIS

D. DUANE COOK
 KEITH G. HANLEY
 E. LAMBERT PARKER, JR.*
 STEPHEN E. EMBRY
 HARRI R. FEATHER
 HARRY R. DENNING
 RICHARD E. PLYMALE†
 DEBBIE F. REISS
 ROBERT T. GWIN
 VICTOR S. MADDOCK
 JAY MIDDLETON TANHON
 SCOTT W. DOLSON†
 DAVID B. TACHAU
 RICHARD W. HOPWOOD†
 MICHAEL A. LUVISI
 THOMAS C. WALKER†
 DAN L. OWENS
 CHARLES W. PRITCHETT, JR.
 SUSAN S. WITTE
 RICHARD L. WOOD
 HELEN LUCIER
 KATHERINE K. YUNKER†
 PAUL D. WHITTY
 JAMES A. HOUENARD
 KEITH MOORMAN†
 HARY ROSS TERRY
 MARY ANN QUANTHER**†
 JOEL S. TURNER
 DAVID R. RHEIN
 WARREN J. HOFFMANN†
 DONALD L. MILLER III
 JOHN G. KUNDLET

JO ANN ALEXANDER†
 ROBERT W. DIDERT
 CHRISTOPHER R. FITZPATRICK**†
 ALAN K. MACDONALD
 ROBERTA J. LICHTENSTEIN
 DAVID S. KLINESTICKER†
 JOHN S. DOWDS
 ROBERT L. TREADWAT†
 SCOTT T. DICKENS
 JEFFREY M. KOLTON
 JAMES A. GIESEL
 CYNTHIA L. STEWART
 KATHY P. HOLDERT
 V. NICHELE HULSEY
 ALICE B. HERRINGTON
 TERESA P. JOHNSON
 JEFFREY P. STODGHILL
 R. GREGG HOVIGUS
 W. BRUCE BAIRD
 LINDA J. THOMAS
 LINDA S. BREED
 WILLIAM O. FLOWERS II
 JAMES D. COCARUM
 ELIZABETH J. TURLEY
 DONNA JO JENKINS
 ROBERT J. DEANGELIS, JR.
 JOHN L. DOTSON
 DEBRA HAYS EUCKER†
 BARTON T. ROGERS
 FRANCIS B. JONES BERRY
 TIMOTHY MAZE HARTLET
 TERESA C. BUCKHLEIT

JOHN DAVID DYCHE
 ROBERT L. MADDOX III
 LUCINDA C. SHIROONI
 GARY W. NAPIER†
 H. POWELL STARRG
 THOMAS H. QUINN
 THOMAS J. BIRCHFIELD†
 JOHN W. HAYS†
 COLIN HUGH LINDSAT
 DAVID L. BECKMAN, JR.
 BRENT W. YESSIN
 MICHAEL S. HAYS
 R. KYLE WOODS†

ADMITTED TO BAR
 KENTUCKY AND INDIANA

HENRY R. HEYBURN
 PHILIP P. ARDERY
 MARSHALL P. ELDRED
 RANDOLPH A. BROWN
 KENT P. HOLLINGSWORTH†
 OF COUNSEL

ELI M. BROWN III (1906-1974)
 SAMUEL R. WELLS (1911-1988)

SIXTEENTH FLOOR
 CITIZENS PLAZA
 LOUISVILLE, KENTUCKY 40202-2873
 (502) 589-5400
 TELEEX 852968
 TELECOPIER (502) 381-1087
 (502) 589-9476

LEXINGTON OFFICE
 2700 LEXINGTON FINANCIAL CENTER
 LEXINGTON, KENTUCKY 40507-1742
 (606) 233-4088
 TELEEX 852961
 TELECOPIER (606) 252-5108

INDIANA OFFICE
 SUITE 204
 400 PEARL STREET
 P.O. BOX 588
 NEW ALBANY, INDIANA 47150-0558
 (812) 946-2800

D-2075
 329:lac

July 3, 1989

Mr. Foster S. Burba
 President,
 Louisville Water Company
 435 South Third Street
 Louisville, Kentucky 40202

Dear Foster:

The following is in response to your letter of May 31, 1989 requesting information with respect to the history and legal status of the types of water and sewer utilities subject to or exempt from the jurisdiction of the Public Service Commission. Also you are concerned as to what past actions have and what future actions might place the Louisville Water Company under the jurisdiction of the Public Service Commission.

The Kentucky statutes authorize several forms of public water works systems. Chapter 74 of the Kentucky Revised Statutes ("KRS") provides that a "water district", governed by water commissioners may be established after approval by the Public Service Commission upon application to a county judge/executive. A "water association" may also be formed for the same purpose in the form of a nonprofit corporation, association or a cooperative corporation. Both entities require PSC approval for their formation as provided in KRS 74.012 and, along with privately-owned entities selling water to the public, are explicitly subject to regulation by the Public Service Commission.

RECEIVED
 1989 JUL -5 PM 9:23
 OFFICE OF THE PRESIDENT
 LOUISVILLE WATER CO.

*Copy furnished by Helen E. Lister
 7.7.89
 P. Jones*

Mr. Foster S. Burba
July 3, 1989
Page 2

KRS Chapter 96 specifically authorizes cities of the first to fourth class to own and operate their own utility works or facilities. KRS 96.230 to 96.315 deal with water works in cities of the first class (i.e. Louisville). As you know, in 1988 the Kentucky legislature enacted KRS 96.315 which relates primarily to the financing of main extensions. However, the legislation also provides that the Board of Water Works may extend the Water Company facilities "into counties adjoining its county of origin."

Water utilities, governmentally or privately owned, were not regulated until 1934 when the General Assembly conferred jurisdiction over utilities "distributing or furnishing water to or for the public for compensation." In 1936, however, the legislature modified the definition of "utility" to be "any person except a city, who owns controls or operates or manages...a non-energy facility" (emphasis added).

From the beginning, the definitional exemption was interpreted as precluding Public Service Commission regulation of the Louisville Water Company operations inside the City of Louisville. However, it was not until a Kentucky Court of Appeals decision rendered in 1961 that it was determined that water company operations outside of the city limits were also exempt from Public Service Commission regulation, McClellan v. Louisville Water Company, Ky., 351 S.W. 2d 197 (1961). The McClellan case held that the definitional exemption extended to "all operations of a municipally owned utility whether within or without the territorial boundaries of the city." In dicta the court suggests the only avenue for bringing a city-owned utility within the regulatory control of the Public Service Commission. "While we recognize that this decision deprives non-resident utility customers of the protection afforded by the Public Service Commission against excessive rates or inadequate service, nevertheless matters of this character are of legislative, rather than judicial concern." 351 S.W. 2d 199.

However, the statutory exemption and the McClellan case notwithstanding, the Louisville Water Company appears to be vulnerable under existing law to Public Service Commission regulation in one aspect of its operations, in cases where it contracts with a regulated utility to supply water and/or service. Under KRS 278.200 the Public Service Commission has authority to review certain contracts (to be distinguished from the power to regulate generally). The statute, entitled "Power to regulate rates and service standards fixed by agreement with city", provides:

Mr. Foster S. Burda
July 3, 1989
Page 3

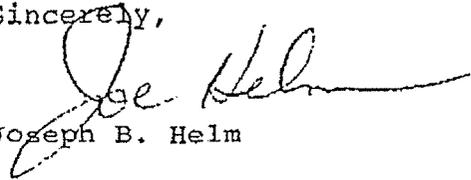
The Commission having jurisdiction over the affected utility may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the Commission in the manner prescribed in this chapter.

In light of the above statute, the Louisville Water Company is vulnerable to limited Public Service Commission regulation anytime it enters into a contract with a regulated utility, noting that we have at least four such contracts in existence at this time. On the other hand, it should be pointed out that to date the Public Service Commission has not undertaken to exercise any authority over such contracts, i.e., it has not undertaken to examine our wholesale or retail rate schedule as applied to a regulated utility or its customers.

After you have had the opportunity to review the above comments, please give me a call if you have any further questions or are in need of further written explanation.

This letter is tendered with the understanding that copies may be supplied to the Board of Water Works.

Sincerely,



Joseph B. Helm