

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF RATES OF THE MILFORD)
WATER COMPANY OF MADISON COUNTY, KENTUCKY) CASE NO. 9543

O R D E R

On February 24, 1989, the Commission reopened this case pursuant to an Order of the Franklin Circuit Court entered January 6, 1989 in Milford Water Co. v. Public Service Comm'n, Civil Action No. 86-CI-2128. The Franklin Circuit Court remanded this case to the Commission with directions to "make the adjustments mandated by Public Service Commission v. Dewitt Water District and East Clark Water District v. PSC, Ky., 720 S.W.2d 725 (1987)." Milford, Slip Opinion, page 4. The adjustments mandated by the Supreme Court in Dewitt were the allowance of depreciation expense on contributed property of publicly-owned water districts. Dewitt, 720 S.W.2d at 732.

The application of the Dewitt decision to a privately-owned water company, such as Milford Water Company ("Milford"), was not adjudicated on the merits by the Franklin Circuit Court. Rather, the Commission's Answer to Milford's Complaint stated that based on the Supreme Court's decision in Dewitt, the Commission's "treatment afforded the expense related to contributed property is improper." Commission Answer, Civil Action No. 86-CI-2128, page 1. In compliance with the Court's remand, the Commission entered

an Order on February 24, 1989 finding that, "[T]he revenue requirement of Milford . . . should be increased by an additional \$7,854, reflecting depreciation on contributed property." That Order also approved new rates to allow Milford the recovery of depreciation expense on contributed property.

The Commission, on its own motion, hereby finds that the amount of revenue granted in its February 24, 1989 Order is erroneous and should be corrected. As shown in the Commission's initial rate Order, dated November 11, 1986, at page 5, footnote No. 2, the proper expense for depreciation on contributed property is \$1,411. As a result of this error, Milford's current rates were designed to produce revenue of \$6,443 in excess of its actual depreciation expense on contributed property.¹ Consequently, the Commission finds that Milford's revenue requirement should be decreased by \$6,443 to correct this error and allow Milford to fully recover no more than its depreciation expense on contributed property in accordance with the Franklin Circuit Court decision.

The Commission further notes that while it admitted in the Franklin Circuit Court that the Dewitt decision was applicable to Milford, additional review of Dewitt indicates that the holding is not applicable to private water companies. The Court in Dewitt first noted the unique characteristics which differentiate water districts from private water companies. "[W]ater districts . . . are non-profit utilities organized under Chapter 74 of the

¹ \$7,854 - 1,411 = \$6,443.

Kentucky Revised Statutes. The owners and consuming ratepayers are essentially the same individuals because the districts are political subdivisions of county government. They have no private capital and no corporate investors who must be satisfied as to traditional profits." Dewitt, 720 S.W.2d at 731.

The Supreme Court then summarized its decision by declaring that,

It is the holding of this Court that depreciation expense on publicly-owned water district plant that has been purchased by federal grants and contributions and/or customer tap-on fees should be allowed in the revenue requirements because they have no private investor capital and their rates do not generate a return on rate base.

Dewitt, 720 S.W.2d at 732. Private water companies, in contrast, do have private investor capital and their rates do generate a return on rate base. To allow private water companies to recover through rates depreciation expense on contributed property would result in ratepayers being compelled to pay twice for the same facilities -- first through their contributions and then through depreciation. Consequently, private water companies, and ultimately their investors, would receive a windfall by being able to recoup depreciation on ratepayer-supplied capital. When contributed property needs to be replaced, it is the private water companies and their investors that are obligated to secure the necessary capital.

Based on this analysis of the Dewitt decision, the Commission is of the opinion that it is not improper to deny private water companies, such as Milford, rate recovery of depreciation expense on contributed property. Since the Commission had taken a

contrary, and erroneous, position in the Franklin Circuit Court, the treatment afforded Milford will continue until its next general rate case. The Commission will then review all the facts and circumstances of this issue and determine the most appropriate rate-making policy to be followed prospectively for Milford.

Summary of Findings

1. The Commission's Order entered February 24, 1989 authorizing Milford a revenue increase of \$7,854 to reflect depreciation expense on contributed property is erroneous. Milford's depreciation expense on contributed property is actually \$1,411, not \$7,854.

2. Milford's current rates are not fair, just, or reasonable and should be reduced to correct the calculation error contained in the February 24, 1989 Order and to reflect the proper additional revenue requirement of \$1,411.

3. The rates set forth in Appendix A are the fair, just, and reasonable rates to be charged by Milford on and after the date of this Order. Those rates are designed to produce total revenues of \$139,059, consisting of the \$137,648 revenue requirement approved by the Commission's November 11, 1986 Order plus the \$1,411 revenue requirement for depreciation expense on contributed property.

4. Milford's continued recovery of depreciation expense on contributed property will be fully reviewed in its next general rate case.

IT IS THEREFORE ORDERED that:


1. Milford's current rates are unfair, unjust, and unreasonable.


2. The rates in Appendix A, attached and incorporated hereto, are fair, just, and reasonable and should be approved for service rendered by Milford on and after the date of this Order.

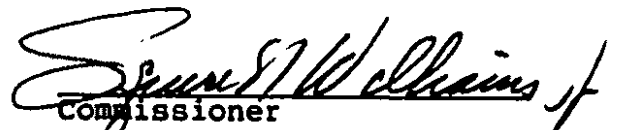
3. Within 30 days from the date of this Order, Milford shall file revised tariff sheets setting out the rates approved herein.

Done at Frankfort, Kentucky, this 28th day of June, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 9543 DATED 6/28/89

The following rates and charges are prescribed for the customers in the area served by Milford Water Company, Inc. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of this Commission prior to the effective date of this Order.

USAGE BLOCKS

First 2,000 gallons
Next 2,000 gallons
Next 2,000 gallons
Over 6,000 gallons

MONTHLY RATES

\$ 9.75 Minimum Bill
2.95 per 1,000 gallons
2.40 per 1,000 gallons
2.00 per 1,000 gallons