

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PURCHASED WATER ADJUSTMENT OF)
CUMBERLAND FALLS HIGHWAY WATER) CASE NO. 10494
DISTRICT)

O R D E R

On January 16, 1989, the Public Service Commission ("Commission") entered an Order in this case establishing revised rates pursuant to KRS 278.015 and 807 KAR 5:068, Purchased Water Adjustment ("PWA"). In its Order, the Commission approved an adjustment of \$.31 per 1,000 gallons of water, but denied Cumberland Falls Highway Water District's ("Cumberland Falls") proposal to include an additional \$36,429 to be collected over a 9-month period for the purpose of paying a debt owed for water purchased from April 8, 1987 to November 8, 1988. The Order held the additional amount should be requested in a proceeding separate from the PWA. On January 31, 1989, Cumberland Falls filed a petition for reconsideration or alternatively a petition for formal hearing.

In support of its petition, Cumberland Falls states that the amount in question is futuristic in nature since the rate was not known until the settlement agreement in City of Williamsburg vs. Cumberland Falls Highway Water District, et. al, Whitley Circuit Court, 87-CI-515, was executed and that the Commission erroneously

designated it as a past due amount.¹ The supplier increased its rate to Cumberland Falls effective April 8, 1987. Cumberland Falls disputed the rate, and the court case previously cited was filed by the supplier. A settlement agreement was entered into on November 15, 1988 and modified on January 9, 1989. Both the original agreement and the modified agreement are clear that the increase was effective for water bills dating from April 8, 1987 and refer specifically to the amount to be paid as "past due payments." The fact that a bill or charge is disputed and then agreed to at a later time does not change the fact that it was a charge for services rendered during a prior period, regardless of the specific rate finally agreed to.

Cumberland Falls argues that the Commission would not have entertained a PWA filing in 1986 or at any time when the cost of water was still in question.² Had Cumberland Falls begun paying the increased rate "under protest" at the time it was notified of the increase and filed for a purchased water adjustment, the Commission would have had no choice but to grant the PWA. The possibility of this type occurrence was recognized and provided for in 807 KAR 5:068, Section 2(3) and (4), which specify the procedures to be followed in the event of a decrease in rates or a refund from the supplier.

¹ Memorandum in Support of Petition, pages 4, 6.

² Memorandum in Support of Petition, page 8.

807 KAR 5:068, Section 2(2), specifies the mathematical procedure to be followed in determining the purchased water adjustment and defines the base rate and changed rate to be considered. The cost of the volume of water purchased for a 12-month period ending within 90 days of the date of filing is to be calculated at the base rate and the new rate. The difference in the costs is then divided by the volume sold for the same 12-month period to arrive at the per unit purchased water adjustment. That amount is then added on a per unit basis to all rates regardless of customer class. The Commission may not deviate from that procedure; therefore, the only legitimate question would be whether or not the PWA granted is mathematically correct under that procedure. Cumberland Falls claims the Order nullifies the District's ". . . authority to adjust its rate. . . without prior approval by the Commission" under KRS 278.015. Although KRS 278.015 does grant authority to Cumberland Falls to increase its rates without prior approval by the Commission, it also provides that Cumberland Falls shall file its revised tariff with the Commission and the Commission "shall approve the filing or establish revised rates by order. . . ." Clearly, the Commission has authority to establish rates different from those determined by Cumberland Falls if it finds Cumberland Falls' rates are incorrect.

Cumberland Falls further claims its due process rights to a formal hearing under KRS 278.270 were denied. The purpose of the purchased water adjustment is to provide an alternative method whereby a utility may recover the increased costs of purchased

water without incurring the revenue loss which would result if it were required to comply with the notice, filing and hearing requirements for rate adjustments in other sections of Chapter 278. The Commission is required by KRS 278.015 to issue its Order within 30 days of the date the revised tariff and supporting information is filed either approving the utility's rates or establishing revised rates. The 30-day time limitation obviously does not allow for the "notice and hearing" addressed by KRS 278.270. Further, issuance of an Order by the Commission under KRS 278.015 and 807 KAR 5:068 is not done "upon its own motion or upon complaint" as stated in KRS 278.260 but is in compliance with the mandates of KRS 278.015. Therefore, a formal hearing prior to issuance of an Order was apparently not intended by the legislature.

As further indication of legislative intent, the notice to customers required by 807 KAR 5:068 is at variance with KRS 278.270 in that Cumberland Falls is not required to provide notice prior to adjusting its rates or filing with the Commission, but rather is required to be provided "no later than the rendering of the first bill at the increased rate." Had formal hearings been intended, notifying customers of the rate adjustment and of the hearing would have been necessary in order to protect the due process rights of Cumberland Falls' customers.

Any conflict or ambiguity on the face of a statute or in its application or operation should be resolved, where possible, by statutory construction principles. Judicial construction of a statute generally begins with an analysis of legislative intent.

A presumption exists that the legislature is aware of all prior enactments affecting the same entities or subject matter. This presumption then operates to impute awareness of the remaining provisions of Chapter 278. Any constitutional question remaining after construing the statutes together is not within the purview of the Commission.

Cumberland Falls also requested a conference with Commission Staff which it felt would provide an opportunity for settlement. KRS 278.015 and 807 KAR 5:068 clearly specify the procedures and the parameters for the expedited adjustment of rates necessitated by an increase in purchased water costs. Therefore, a conference for the purpose of settlement is not appropriate in PWA cases.

The Commission, having fully considered Cumberland Falls' petition, the settlement agreements, all other evidence of record, and being advised, hereby finds that:


1. Cumberland Falls petition for reconsideration or alternatively a petition for formal hearing should be denied.


2. The Commission's Order of January 6, 1989 should be affirmed in its entirety.

BE IT SO ORDERED.

Done at Frankfort, Kentucky, this 21st day of February, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director