

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION AND NOTICE OF CAMPBELL)
COUNTY KENTUCKY WATER DISTRICT TO ADJUST) CASE NO. 91-039
RATES EFFECTIVE MAY 1, 1991)

O R D E R

Campbell County Kentucky Water District ("Campbell District") moved to expunge and delete certain portions of the Commission's Order of May 9, 1991. Having considered Campbell District's motion and being otherwise sufficiently advised, the Commission finds the motion should be denied.

Campbell District contends that the information sought by Items 7, 9, and 10 of the Commission's Order is an attempt to supplement the records of closed cases¹ currently on appeal. It

¹ Case No. 89-014, City of Newport v. Campbell County Kentucky Water District and Kenton County Water District No. 1 and Charles Atkins and Steven J. Franzen v. Campbell County Kentucky Water District; Case No. 89-029, Application and Notice of Campbell County Kentucky Water District (A) To Issue Revenue Bonds in the Approximate Principal Amount of \$5,535,000 (B) To Construct Additional Plant Facilities of Approximately \$4,523,000 (C) Notice of Adjustment of Rates Effective May 1, 1989 (D) Submission of Long Term Water Supply Contract; and Case No. 89-179, The Application of Kenton County Water District No. 1 (A) to Issue Revenue Bonds in the Approximate Principal Amount of \$2,335,000 (B) to Construct Additional Plant Facilities of Approximately \$2,032,000 (C) Submission of Contract to Supply Additional Water (Entire Demand) to Campbell County Kentucky Water District. Campbell District initiated an action to review the final Order in these cases. That action is currently before the Kentucky Court of Appeals. PSC v. Campbell County Kentucky Water District, No. 90-CA-002003 (Appeal docketed March 1, 1991).

further contends that the issues raised by those items are not within the Commission's jurisdiction and are not relevant to this proceeding.

The Commission disagrees. Items 7, 9, and 10 address Campbell District's purchased water expenses for the test period. As purchased water expenses account for approximately 38 percent of Campbell District's total operating expenses during the test period, the information sought is relevant. As the information is necessary to evaluate Campbell District's proposed rates, not rates set forth in an Order from which an appeal has been taken, the request is appropriate and within the Commission's jurisdiction. As judicial review of any Commission Order must be based upon the evidentiary record before the Commission at the time of its Order, KRS 278.440, any attempt by the Commission to supplement the record of a closed case for purposes of appeal, as Campbell District alleges, would be an exercise in futility.

Campbell District also seeks to expunge Items 8 and 22. It contends that the information sought is related to declaratory judgment action to which the Commission and Campbell District are parties.² Campbell District suggests that the Commission is using its May 9, 1991 Order to circumvent normal discovery procedures and is thus denying Campbell District's right to due process.

Here again, Campbell District's arguments are wide of the mark. First, the Commission's declaratory judgment action merely

² Public Service Commission of Kentucky v. Attorney General, No. 91-CI-00174 (Franklin Circuit Court filed February 8, 1991).

seeks a judicial interpretation of a statute. It presents no factual issues requiring discovery. Second, Campbell District's efforts to explore the possible merger of its system with other water systems are not the subject of or relevant to that action. Third, Campbell District raised the issue of merger in this proceeding. See Prefiled Testimony of Ronald C. Malone, Question 15. Having opened the door, it cannot object to the Commission walking through it.

Campbell District also asserts that the information sought in Items 7-10 and 22 are privileged. It does not identify the source of this privilege or provide any fact or argument in support of its claim. A mere claim of privilege does not cloak information as privileged. Any information that Campbell District feels is privileged can be filed with a petition for confidentiality pursuant to the Commission regulations.

IT IS THEREFORE ORDERED that Campbell District's Motion to Expunge and Delete is denied.

Done at Frankfort, Kentucky, this 15th day of May, 1991.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director