

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AUXIER WATER COMPANY)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 96-362
)	
CITY OF PRESTONSBURG AND)	
PRESTONSBURG CITY'S UTILITY)	
COMMISSION)	
)	
DEFENDANTS)	

O R D E R

The parties have jointly moved for Commission approval of a Water Contract and Water Line Acquisition and Joint Development Agreement which resolve all outstanding issues in this matter. Having reviewed these agreements and finding that they afford a reasonable resolution of this matter, the Commission grants the joint motion, approves the agreements, and dismisses this proceeding.

Auxier Water Company ("Auxier") is a privately owned corporation organized under the laws of Kentucky. It provides retail water service to approximately 794 customers in Floyd and Johnson counties, Kentucky. Auxier has no water production facilities but purchases its total water requirements from the Prestonsburg City's Utilities Commission ("PCUC") - a municipal utility.

On July 25, 1996, Auxier filed with the Commission a complaint against PCUC in which it alleged that PCUC's wholesale service rate was unreasonable and contrary to

the parties' 1976 Water Purchase Contract, that the 1976 Water Purchase Contract was to end shortly and the continuity of Auxier's water supply was thus threatened, and that PCUC was infringing upon or intending to infringe upon Auxier's exclusive service territory. Auxier requested that the Commission establish a new wholesale service rate, determine the length of time for which PCUC must provide wholesale water service and the volume of such water service, and enjoin PCUC from serving those areas not contiguous with Prestonsburg's city boundaries.¹

As a result of settlement negotiations lasting several months, the parties on March 18, 1998, submitted for Commission review a Water Contract and a Water Line Acquisition and Joint Development Agreement. The Water Contract resolves the parties' dispute over rate and service issues and replaces the 1976 Water Purchase Contract which expired on September 25, 1996. The Water Contract runs for a period of 10 years and may be extended upon mutual agreement of the parties. It recognizes PCUC's current rates as the appropriate rates for water service to Auxier. The parties further agreed that PCUC may adjust its wholesale rate annually to correspond with the Consumer Price Index but that no increase shall exceed 2 percent. PCUC retained the right to apply to the Commission for larger rate adjustments.

The Water Contract establishes higher water purchase volumes for Auxier. Under its terms, PCUC agrees to increase the maximum quantities which Auxier may purchase monthly from 3,000,000 gallons to 10,000,000 gallons and permits Auxier to purchase

¹ On April 2, 1997, the Commission dismissed the third count of Auxier's Complaint for lack of subject matter jurisdiction. After the Commission's denial of rehearing on this Order, Auxier brought an action for review in Franklin Circuit Court. Auxier Water Company v. City of Prestonsburg, No. 97-CI-00824 (Franklin Cir. Ct. filed May 23, 1997). That action remains pending before the Court.

as much as 500,000 gallons in a 24-hour period. The Water Contract further provides for an "overrun rate" should Auxier exceed 5 percent of the contract maximum volumes.

The Water Line Acquisition and Joint Development Agreement resolves the parties' dispute over the right to provide water service to a new federal prison facility which is expected to be constructed in Martin County, Kentucky. Under the Agreement, Auxier agrees to sell its 6,000 linear foot 10-inch water line to PCUC for \$100,000. Upon acquiring the water line, PCUC intends to extend this line to the Honey Branch Industrial Park in Martin County, Kentucky. Under the terms of the Agreement, Auxier will retain its right to serve existing retail customers connected to the water line and have the right to serve new retail customers who connect to the existing line or the extensions that PCUC constructs. The Agreement is contingent upon PCUC obtaining the contract to provide water service to the federal prison facility and Auxier's dismissal of all outstanding litigation.

Having reviewed the Water Contract and the Water Line Acquisition and Joint Development Agreement and being otherwise sufficiently advised, the Commission finds that they strike a reasonable compromise between the parties, more clearly define the parties' relationship, are reasonable and in the public interest and should be accepted. The Commission further finds that, consistent with KRS 278.160(2)² and Administrative

² KRS 278.160(2) states:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.


Regulation 807 KAR 5:011, Section 13,³ PCUC should file a copy of each with the Commission.⁴

IT IS THEREFORE ORDERED that:

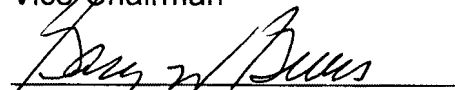
1. The Joint Motion is granted.
2. The parties' Water Contract and Water Line Acquisition and Joint Development Agreement are approved.
3. Auxier's Complaint is dismissed with prejudice.
4. PCUC shall file an executed copy of the Water Contract and Water Line Acquisition within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 9th day of April, 1998.

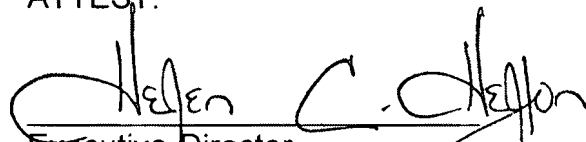
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

³ Administrative Regulation 807 KAR 5:011, Section 13, states:

Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this regulation applicable to tariffs containing rates, rules and regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

⁴ These documents contain provisions which specify the rates which PCUC must charge Auxier for water service and several conditions under which such service must be provided. Under the provisions of Administrative Regulation 807 KAR 5:011, Section 13, it is a "special contract" and must be separately filed with the Commission as part of PCUC's filed rate schedules.