

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NORTHERN KENTUCKY WATER)	
DISTRICT FOR AUTHORIZATION TO ACQUIRE THE)	CASE NO. 2000-357
WATERWORKS DISTRIBUTION SYSTEM OF THE)	
CITY OF LUDLOW)	

ORDER

Northern Kentucky Water District (“NKWD”) has applied for Commission approval of its acquisition of the water distribution system of the city of Ludlow, Kentucky (“Ludlow”). This application poses the following issue: Is Commission approval of a public utility’s acquisition of a municipal water utility required when the acquiring utility does not assume any indebtedness or other financial liability as a result of such acquisition? Finding that such approval is not required, we dismiss the application.

NKWD, a water district organized under KRS Chapter 74, provides retail water to approximately 60,300 customers in Campbell and Kenton counties, Kentucky. It also provides wholesale water service to Boone County Water District, Pendleton County Water District, and the cities of Florence, Bromley, Ludlow, Walton and Taylor Mill.

Ludlow is a city of the fourth class that is located in Kenton County, Kentucky. KRS 81.010. It operates a water distribution system that serves persons within its corporate limits. Ludlow lacks any water treatment facilities and purchases its total water requirements from NKWD.

NKWD and Ludlow have executed an agreement for the transfer of all assets of Ludlow’s Water Department. Under this agreement, Ludlow will transfer to NKWD for one dollar all assets currently owned and used by its Water Department to provide

water service free of all encumbrances. NKWD will not assume any liability or obligation related to the asset.

After an extensive review of KRS Chapter 278, the Commission finds no statutory requirement for prior Commission approval of the proposed transaction. KRS 278.020(4)¹ and 278.020(5)² require prior Commission approval of the transfer of control or ownership of any "utility." As a city, Ludlow is not within the statutory definition of "utility." See KRS 278.010(3). KRS 278.020 therefore does not require Commission approval of the proposed transaction. See Kenton County Water District No. 1, Case No. 89-211 (Ky.P.S.C. Nov. 1, 1989) at 3–4.

In Campbell County Kentucky Water District, Case No. 90-219 (Ky.P.S.C. Oct. 2, 1990), a water district applied for Commission approval of its purchase of a municipal utility's water distribution system or, in the alternative, a disclaimer of Commission jurisdiction over the transaction. Finding that purchase involved the issuance of an

¹ No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

² No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise.

evidence of indebtedness, the Commission found that KRS 278.300(1)³ required prior Commission approval of the transaction. We further held that KRS 278.040 requires Commission review of the transaction:

The Commission is “charged with the responsibility and vested with the power, to see that the service of public utilities is adequate” Pub. Serv. Comm’n v. Southgate, Ky., 268 S.W.2d 19, 21 (1954). Insofar as the acquisition of a municipal utility may impact upon a jurisdictional utility’s ability to provide adequate and reasonable service, it follows by necessary implication that the Commission has the authority to prevent such acquisition and its approval for such acquisition is required.

Campbell County Kentucky Water District at 3 (footnote omitted).

We find that KRS 278.300 is not applicable to the application at bar. NKWD is not issuing any new evidences of indebtedness; nor is it assuming any obligations associated with the Ludlow system. Unlike the transaction in Campbell County Kentucky Water District, NKWD will make one payment upon completion, not several payments over the course of 9 years. The purchase agreement therefore does not constitute an evidence of indebtedness, and KRS 278.300(1) does not require prior Commission review or approval of the proposed transaction.

As to the holding of Campbell County Kentucky Water District regarding KRS 278.040, we find that it has no basis within the law. KRS Chapter 278 contains no provision expressly requiring prior Commission review and approval of the acquisition of any municipal utility or permitting the Commission to prohibit or prevent such

³ No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

acquisitions. “The powers of the PSC are purely statutory and it has only such powers as are conferred expressly or by necessity or fair implication. As a statutory agency of limited authority, the PSC cannot add to its enumerated powers.” Boone County Water and Sewer District v. Pub. Serv. Comm’n, Ky., 949 S.W.2d 588, 591 (1997)(citations omitted). While the Commission has extensive powers to regulate utility rates and service, we find no support for the proposition that the authority to review and approve the acquisition of municipal utilities is contained within our rate-making powers. Accordingly, we today overrule that holding of our decision in Campbell County Kentucky Water District.

Finding that Commission approval of the proposed transaction is not required, the Commission HEREBY ORDERS that NKWD’s application for authority to acquire Ludlow’s water distribution system is dismissed as moot.

Done at Frankfort, Kentucky, this 20th day of July, 2000.

By the Commission

ATTEST:

Deputy W. H. Fowler
Executive Director