

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE HOPKINSVILLE WATER)
ENVIRONMENT AUTHORITY'S WHOLESALÉ) CASE NO. 2003-00087
RATE TO CHRISTIAN COUNTY WATER DISTRICT)

O R D E R

Hopkinsville Water Environment Authority ("HWEA") has filed an objection to the Commission's Order of February 6, 2004 in which we approved a "Memorandum Agreement" between HWEA and Christian County Water District ("Christian District") regarding the delivery of water to Christian District. Considering the objection as an application for rehearing,¹ we deny the application.

In our Order of December 17, 2003, we placed HWEA on notice that any future modifications to its 1973 Wholesale Water Supply Agreement with Christian District must be filed with the Commission prior to their implementation. Our action was consistent with our prior rulings regarding municipal utility water wholesale contracts. See, e.g., Submission of Contracts and Rates of Municipal Utilities, Administrative Case No. 351 at 2 (Ky. PSC Aug. 10, 1994) (finding that "30 days prior to placing into effect any change in . . . [municipal wholesale] contracts or in the rates or service provided to

¹ Neither KRS Chapter 278 nor the Commission's rules of procedure, 807 KAR 5:001, make any provision for a party to a Commission proceeding to file an objection to a Commission Order. KRS 278.400 permits a party to apply to the Commission "for a hearing with respect to any of the matters determined."

a public utility, a municipal utility should file the revised contract or rate revision with the Commission” and that “[f]ailure to make such filing will render the revision void.”²

On January 16, 2004, Christian District³ submitted to the Commission a written agreement between it and HWEA that modifies the 1973 Wholesale Water Supply Agreement in several respects. The new agreement, which was executed on January 8, 2004, extends the contract period, places limitations on the quantity of water supplied and on Christian District’s resale of the water, and requires written notice to HWEA of any major Christian District water main extension. On February 6, 2004, we entered an Order in which we approved these modifications.

Contending that the Commission acted outside its jurisdiction, HWEA subsequently filed an objection to our Order. HWEA asserts that the subject matter of the agreement of January 8, 2004 does not pertain to rates. As “the Commission does not have jurisdiction over Hopkinsville with regard to any matters other than the rate to be charged by Hopkinsville for wholesale water service to Christian County,” HWEA contends that the Commission was without authority to take any action on any matter contained in the agreement. Objection to Order at 1.

² See also Auxier Road Water Co. v. City of Prestonsburg, Case No. 1996-00362 (Ky. PSC Apr. 9, 1998); Kingston-Terrill Water District v. City of Richmond, Case No. 1995-00460 (Ky. PSC Jan. 7, 1998).

³ The Commission reminds HWEA that a municipal utility, not its wholesale customer, has the responsibility for submitting any revised agreements or rate changes to the Commission. See, e.g., Winchester Municipal Utilities Commission, Case No. 2001-00230 (Ky. PSC Oct. 19, 2001). We expect HWEA to meet its responsibility in this area when making future revisions to its wholesale arrangements with Christian District.

We find no legal authority to support HWEA's position.⁴ While Kentucky courts have generally held that "all operations of a municipally owned utility whether within or without the territorial boundaries are exempt from Commission jurisdiction," (McClellan v. Louisville Water Co., Ky., 351 S.W.2d 197, 199 (1961)),⁵ this exemption does not extend to municipal utility contracts to provide utility service to a public utility. In Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460, 463 (1994) (emphasis added), the Kentucky Supreme Court expressly declared that "where contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation."

We find nothing in Simpson County Water District to support the proposition that the Commission's jurisdiction is limited to rate issues. To the contrary, the majority opinion in Simpson County Water District expressly acknowledges that Commission oversight of service issues is a principal purpose for the exception:

The rates and service exception effectively insures, throughout the Commonwealth, that any water district consumer/customer that has contracted and become dependent for its supply of water from a city utility is not subject to either excessive rates or inadequate service.

Id. at 465 (emphasis added).⁶

⁴ HWEA failed to provide any legal authority within its pleading to support this position.

⁵ See also City of Mount Vernon v. Banks, Ky., 380 S.W.2d 268, 270 (1964) ("In the operation of a water plant a municipal corporation is not under the jurisdiction of the Public Service Commission.")

⁶ See Winchester Municipal Utilities Commission, Case No. 2001-00230 (Ky. PSC Oct. 19, 2001) at 2 ("Where a municipal utility contracts with a public utility, the Commission's jurisdiction extends to the rates and service that the municipal utility provides to the public utility.").

Finding that our jurisdiction extends to the rates and service provisions of HWEA's contract with Christian District, the Commission HEREBY ORDERS that HWEA's application for rehearing is denied.

Done at Frankfort, Kentucky, this 26th day of March, 2004.

By the Commission

ATTEST:


Executive Director