

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF NORTH SHELBY WATER)
COMPANY TO REVISE ITS RATE FOR FIRE) CASE NO. 2004-00105
PROTECTION SERVICE¹)

ORDER

North Shelby Water Company (“North Shelby”) has proposed to adjust its present rate for fire protection service. At issue is whether North Shelby has presented sufficient evidence to support its proposed adjustment. Finding in the negative, we deny the proposed adjustment.

PROCEDURE

On March 11, 2004, North Shelby submitted a revised tariff sheet to the Commission in which it proposed to reduce its monthly rate for sprinkler fire protection from \$.0075 to \$0.00375 per square foot of floor space.² On April 2, 2004, the Commission suspended the proposed rate and initiated this proceeding. It permitted the Attorney General and Shelby County Board of Education to intervene as full intervenors in this proceeding. Informal conferences between the parties and

¹ As the original case style in this proceeding did not accurately reflect the nature or effect of North Shelby Water Company’s proposed rate revision, the Commission has amended the style.

² North Shelby proposed that the revised rate become effective for service rendered on and after April 30, 2004.

Commission Staff were held on May 19, 2004³ and July 15, 2004. On December 2, 2004, Shelby County Board of Education filed with the Commission an agreement between it and North Shelby that addresses the utility's fire protection service rate.

DISCUSSION

North Shelby is a non-profit corporation that is organized under the provisions of KRS Chapter 273. It owns and operates water distribution facilities that provide water service to 4,223 customers in Franklin, Henry, Jefferson, Oldham, and Shelby counties of Kentucky.⁴ It is a utility subject to Commission jurisdiction. KRS 278.010(3)(d); KRS 278.012.

As of December 31, 2003, North Shelby had two customers to which it provided fire protection service.⁵ North Shelby's present rate schedules make few references to fire protection service. Its regulations state that the utility provides only domestic water service and does not provide fire protection service.⁶ Despite this disclaimer, the utility's rate schedule contains a fire protection rate that is available to all customers and

³ The first informal conference focused upon Shelby County Board of Education's allegations of improper overcharges for fire protection service. North Shelby representatives admitted at the conference that the water utility had erroneously calculated the bill for fire protection service provided to two school facilities. The record indicates that North Shelby has refunded the overcharges and issued corrected bills.

⁴ Annual Report of North Shelby Water Company to the Kentucky Public Service Commission for the Year Ending December 31, 2003, at 27.

⁵ Id.

⁶ Tariff of North Shelby Water Company, P.S.C. Ky. No. 2, Original Sheet No. 10 at ¶ VI.D.

applicable to the utility's entire service area.⁷ This rate is a monthly rate of \$0.0075 per square foot of floor space covered by a fire sprinkler system.

The Commission notes that the present fire protection rate is not consistent with accepted rate design principles. "The most common method of charging for private fire protection service is to base the charge on the size of the customer's fire service connection. The service size is the best measure of the demand that can be put on the system in case of a fire. The service is also what the water utility provides service to; what the customer does with the water beyond the property line is largely outside the control of the utility." American Water Works Association, Principles of Water Rates, Fees and Charges (AWWA Manual M1 2000) at 228.

The Commission is unaware of any accepted methodology that bases a charge for fire protection service on the amount of floor space covered by a fire sprinkler system. We have not uncovered any recognized authority that suggests that floor space is relevant to the demands placed on a water system and hence the cost of providing fire protection service. North Shelby has not provided any basis to suggest a relationship between floor space coverage and the cost of service.

Notwithstanding these concerns, the Commission in Case No. 2000-00046⁸ approved North Shelby's present fire protection rate. As the proposed fire protection rate was a condition of an agreement between North Shelby and Rural Development to

⁷ Tariff of North Shelby Water Company, P.S.C. Ky. No. 2000-046.

⁸ Case No. 2000-00046, The Application of North Shelby Water Company for a Certificate of Public Convenience and Necessity to Construct and Finance Pursuant to the Provisions of KRS 278.023 (Ky.PSC Feb 23, 2000).

finance a construction project, KRS 278.023(3)⁹ directed our approval of the proposed rate regardless of any concerns related to the rate's reasonableness. Our review of the record of Case No. 2000-00046 indicates the absence of any discussion regarding the derivation of the fire protection rate or any evidence to ensure that the fire protection rate reflected the cost of service.

Since our action in Case No. 2000-00046, we have undertaken an investigation of fire protection rates among the Commonwealth's public water utilities.¹⁰ At the close of this investigation, we found that fire protection rates "should reflect the cost of serving the fire protection system" and should recover at least certain costs.¹¹ We further placed all public water utilities on notice that in future proceedings involving general rate adjustments or fire protection rates that each would be required to provide a cost-of-service study that fully considers the cost of fire protection services and to clearly

⁹ The commission shall review the project and the agreement, may recommend changes to the utility and the federal agency, but shall not modify or reject any portion of the agreement on its own authority. The commission shall issue a certificate of necessity and convenience and such other orders as may be required to implement the terms of the agreement no later than thirty (30) days after filing.

¹⁰ Administrative Case No. 385, An Investigation into Fees for Fire Protection Services (Ky.PSC Dec. 7, 2001).

¹¹ Id. at 12 – 13. These costs were: (1) depreciation and debt service or return on investment in the water utility's facilities that directly connect the water distribution main to the fire sprinkler system; (2) expenses associated with periodic inspections to ensure against unauthorized use; (3) expenses associated with meter reading and billing, if a meter is installed for the fire sprinkler system; and (4) expenses for maintenance and inspection of water utility facilities that directly connect the water distribution main to the fire sprinkler system.

demonstrate that its rates for fire protection service rates are cost-based.¹² Following this proceeding, the Commission promulgated an administrative regulation that incorporated many of our earlier findings and conclusions. See 807 KAR 5:095.

In presenting its proposed rate revision to the Commission, North Shelby has failed to comply with these directives. It has not provided any cost-of-service study to support either the current rate or the proposed rate. North Shelby has submitted some cursory calculations that it contends support both the present and proposed rates. These calculations, however, focus solely on the cost of constructing and operating a water storage tank. They do not address the cost of providing fire protection service system-wide or consider all utility facilities that may be necessary in the provision of such service. Furthermore, these calculations provide no explanation of the alleged relationship between the cost of fire protection service and floor space coverage.

When proposing revisions to its existing rates, a utility bears the burden of demonstrating that its proposed rate is just and reasonable. KRS 278.190(3). See also Energy Regulatory Commission v. Kentucky Power Co., Ky.App., 605 S.W.2d 46, 50 (1980) (“Applicants before an administrative agency have the burden of proof.”). In this case, North Shelby has failed to meet that burden.¹³ Accordingly, its proposed rate revision should be denied.

¹² Id. at 13.

¹³ Under other circumstances, the Commission would allow North Shelby additional time to supplement the record of this case and to meet its burden of proof. As KRS 278.190(3) requires that we act upon North Shelby’s proposed rate revision within 10 months of its filing and as that time is about to expire, we cannot provide such opportunity to North Shelby in this proceeding. Our action, however, should not be construed as prohibiting North Shelby from or limiting its ability to apply for revisions to its fire protection rate.

The Commission notes that North Shelby and Shelby County Board of Education have submitted in this proceeding an agreement that provides for a fire protection service rate to Shelby County Board of Education facilities that differs from North Shelby's present rate and its proposed rate. North Shelby, however, has not advised the Commission whether this rate is intended to substitute for its present or proposed fire protection rate or whether it intends to withdraw both of those rates.

In the absence of such notice, the provisions of the agreement conflict with North Shelby's present rate schedules and must be rejected. North Shelby's present fire protection rate applies to all customers in the utility's service area. The agreement, however, creates a different rate for the same service and implies that this rate will be assessed not only to the Shelby County Board of Education, but to future fire protection service customers.

The Commission recognizes that a utility may enter into special contracts for the utility service. See 807 KAR 5:011, Section 13; 807 KAR 5:095, Section 2. In the current case, however, we fail to find any special circumstances that justify the use of a special contract. The service in question is of general nature and, according to North Shelby's filed rate schedule, provided system-wide. The record contains no evidence to support the proposition that the fire protection service provided to the Shelby County Board of Education will differ significantly from that provided to any other customer. The proposed Agreement expressly states that every customer will be assessed "the same rate for each facility protected."¹⁴ It thus suggests that the service to be provided is not unique at all.

¹⁴ Fire Protection Rate Special Contract at ¶4.

By our action today, we do not hold that North Shelby is precluded from using a special contract for fire protection services under all circumstances. If a utility provides fire protection service to a very limited number of customers and under very limited circumstances and if no rate schedule for such service is presently on file with the Commission, the use of special contracts may be appropriate. Based upon the record that is before us, however, those circumstances are not present in this case.

The Commission encourages the parties to continue their discussions on fire protection rates. To this end, we direct the Commission's Executive Director to arrange a conference with all parties to discuss how North Shelby can achieve within the existing statutory and regulatory framework fire protection service rates that are fair and reasonable and acceptable to all.

Finally, this proceeding highlights the importance of a thorough review of water service rates, including fire protection service rates, contained in financing agreements between Rural Development and public water utilities. Without such review and without adequate documentation of the process used to design water service rates, the requirements of KRS 278.023 increase the likelihood of poorly designed fire protection service rates that do not accurately reflect the cost of fire protection service. We recognize the difficult task that confronts Rural Development in this area and we stand ready to assist Rural Development, to the extent permitted by law, in its examination and review of such rates.

IT IS THEREFORE ORDERED that:

1. North Shelby's proposed revision to its fire protection rate is denied.

2. The Fire Protection Rate Special Contract between North Shelby and Shelby County Board of Education is denied.

3. The Executive Director shall arrange an informal conference between the parties and Commission Staff within 20 days of the date of this Order.

4. The Executive Director shall serve a copy of this Order on the State Director of Rural Development.

5. Subject to the filing of timely petition for rehearing pursuant to KRS 278.400, these proceedings are closed. The Executive Director shall place any future filings in the appropriate utility's general correspondence file or shall docket the filing as a new proceeding.

Done at Frankfort, Kentucky, this 11th day of January, 2005.

By the Commission