

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST OF BRONSTON WATER)	
ASSOCIATION, INC. TO PROVIDE FREE WATER)	CASE NO. 2005-00060
SERVICE TO CHURCHES PURSUANT TO KRS)	
278.170(2))	

ORDER

Bronston Water Association, Inc. (“Bronston”) has requested Commission approval to provide free water service to all churches in its service area. At issue is whether, given Bronston’s status as a non-profit entity and the nature of the beneficiary class, the provision of such service is reasonable and appropriate. Finding in the negative, we deny the request.

Bronston is a Kentucky corporation organized under the provisions of KRS Chapter 273. It owns and operates facilities that provide water service to 1,600 households in Pulaski and Wayne counties, Kentucky.¹ It is a utility subject to the Commission’s jurisdiction. KRS 278.010(3); KRS 278.015; KRS 278.040(1).

In August 2004 Commission Staff conducted a review of Bronston’s financial records and found that Bronston is providing free water service to churches in its service area without Commission approval.² In its response to Commission Staff’s

¹ Annual Report of Bronston Water Association, Inc. to the Kentucky Public Service Commission for the year ending December 31, 2004 at 5 and 27.

² Letter from Daniel Hinton, Commission Staff Auditor, to Glen Dalton, President, Bronston Water Association (Nov. 18, 2004).

Report of Findings, Bronston requested approval for its provision of free service. It stated that the utility had provided such service for approximately 35 years. It further stated that any church receiving the service was required to pay all published connection fees.

KRS 278.170(2) permits a utility to provide free or reduced rate service under limited conditions. It provides:

Any utility may grant free or reduced rate service to its officers, agents, or employees, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents, and employees of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity. The terms "officers" and "employees," as used in this subsection, include furloughed, pensioned, and superannuated officers and employees, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.

Based upon our review of the record, we find that Bronston has not demonstrated whether the persons to whom it is providing free service qualify as a charitable or eleemosynary institution. It does not specifically identify the churches in question or describe their charitable or eleemosynary activities nor does it state whether these churches are recognized as charitable organizations by either the state or federal governments. While a church is clearly a religious organization, religious organizations are not specifically identified in KRS 278.170(2) as eligible for free or reduced rate

service. Moreover, a church is not per se a “charitable”³ or “eleemosynary”⁴ organization.

Assuming arguendo that the churches in question are charitable or eleemosynary organizations, we find that Bronston’s form of organization as a non-profit corporation makes the provision of free or reduced rate service unreasonable. This Commission has previously held that water districts and water associations should not be permitted to provide free water service since they “have no shareholders to which the foregone revenue can be charged.”⁵ Unlike an investor-owned utility whose shareholders assume the cost of any free or reduced rate service, Bronston’s ratepayers bear the cost of such service.

That the beneficiaries of this free service are religious organizations makes Bronston’s proposed actions more problematic. By passing the cost of free water service to its ratepayers, Bronston effectively requires its ratepayers to make a donation to these religious organizations. Courts have found such compelled financial support to be unreasonable and in conflict with the constitutional rights of ratepayers.⁶

³ Charitable is generally defined as “[d]edicated to a general public purpose, usu. for the benefit of needy people who cannot pay for benefits received.” Black’s Law Dictionary at 228 (7th Ed.).

⁴ Black’s Law Dictionary defines “eleemosynary” as “[o]f, relating to, or assisted by charity.” Id. at 538.

⁵ East Logan Water District, Case No. 92-094, (Ky.PSC Mar. 16, 1992); South 641 Water District, Case No. 93-358 (Ky.PSC Jan. 3, 1994) at 2; Cumberland Falls Highway Water District, Case No. 94-054 (Ky.PSC Apr. 7, 1994).

⁶ Cahill v. Public Service Commission, 556 N.E.2d 133 (NY. 1989) (holding that the policy of the New York Public Service Commission authorizing utilities to pass along to ratepayers part of the cost of corporate charitable contributions violated ratepayers’ rights under First Amendment to U.S. Constitution).

IT IS THEREFORE ORDERED that:

1. Bronston's request for authority to provide free water service to churches within its service territory is denied.

2. Bronston shall cease providing free water service to churches within its service territory as of the date of this Order and shall commence charging for such service in accordance with its filed rate schedules.

Done at Frankfort, Kentucky, this 12th day of October, 2005.

By the Commission

ATTEST:



Executive Director