

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE VERIFIED JOINT APPLICATION OF THE)
CITY OF OWENTON AND KENTUCKY-)
AMERICAN WATER COMPANY FOR)
APPROVAL OF THE TRANSFER OF THE) CASE NO. 2005-00206
OWNERSHIP OF THE ASSETS OF THE CITY)
OF OWENTON TO KENTUCKY-AMERICAN)
WATER COMPANY)

ORDER

Kentucky-American Water Company (“KAWC”) and the city of Owenton (“Owenton”) (collectively “Joint Applicants”) have jointly applied for Commission approval of KAWC’s proposed acquisition of Owenton’s water and wastewater-related assets and for authority for KAWC to assess Owenton’s present rates for service to customers served through these assets. For reasons set forth below, we grant the application as it relates to the assessment of rates but deny the remaining portions.¹

KAWC, a Kentucky corporation, owns and operates facilities that treat and distribute water to approximately 99,267 customers for compensation in Bourbon, Clark,

¹ The Joint Applicants submitted their application to the Commission on May 20, 2005. The Attorney General subsequently moved for leave to intervene in this proceeding. The Commission granted his motion on June 9, 2005. No other persons have moved for intervention in this proceeding. On June 14, 2005, Commission Staff issued interrogatories and requests for production of documents to the Joint Applicants. The Joint Applicants submitted their response on July 5, 2005. No party to this proceeding has requested a hearing on the Joint Application or requested the opportunity to conduct discovery or submit comment on the Joint Application.

Fayette, Gallatin, Grant, Harrison, Jessamine, Owen, Scott, and Woodford counties.² It provides wholesale water service to the cities of Georgetown, Midway, Versailles, and Winchester, Harrison County Water Association, and Jessamine-South Elkhorn Water District. It is a utility subject to Commission jurisdiction. KRS 278.010(3)(d).

KAWC is currently organized into two divisions: Northern Division and Central Division. The Northern Division consists of all facilities located in Gallatin, Grant, and Owen counties, Kentucky. The remaining facilities compose the Central Division.

Owenton is a city of the fifth class that is located in Owen County, Kentucky. KRS 81.010. It operates a water treatment and distribution system and a wastewater system that serves persons within and without its corporate limits.

KAWC and Owenton have executed an Asset Purchase Agreement for the transfer of most of Owenton's water and wastewater assets to KAWC in return for a payment of \$2,595,500. Under the terms of the Asset Purchase Agreement, KAWC will not assume any of Owenton's liabilities or debts. The Joint Applicants have expressly conditioned the proposed transfer upon the Commission's approval of the use of Owenton's present rates to Owenton's existing customers. They further recognize in the Asset Purchase Agreement the Commission's authority to revise periodically these rates.

The Joint Applicants have applied to the Commission for approval of the proposed transfer of ownership. We find, however, no statutory requirement for such

² Annual Report of Kentucky-American Water Company to the Public Service Commission for the Year Ended December 31, 2004 at 5, 30 and 32.

approval. KRS 278.020(5)³ and 278.020(6)⁴ require prior Commission approval of the transfer of control or ownership of any “utility.” As a city, Owenton 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 Ohio County Water District, Case No. 2004-00157 (Ky.P.S.C. July 12, 2004); Northern Kentucky Water District, Case No. 2000-00357 (Ky.P.S.C July 20, 2000) at 2; Kenton County Water District No. 1, Case No. 89-211 (Ky.P.S.C. Nov. 1, 1989) at 3–4.

³ 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.

⁴ 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.

We further find that KRS 278.300(1)⁵ is not applicable to the Joint Application. KAWC is not issuing any new evidences of indebtedness to acquire Owenton's assets;⁶ nor is it assuming any obligations associated with the Owenton system. As the Asset Purchase Agreement makes no provision for the purchase amount to be paid over an extended period of time, it does not constitute an evidence of indebtedness. KRS 278.300(1) does not require prior Commission review or approval of the proposed transaction.

As no statutory requirement or authority for Commission approval of the transfer of ownership of Owenton's water and wastewater assets to KAWC exists, we find that the portion of the Joint Application requesting Commission authorization of the proposed transaction should be denied as moot.

We next turn to the Joint Applicant's request that KAWC be permitted to assess Owenton's present rates for service to customers served through these assets. Joint Applicants argue that Owenton's elected legislative body established those rates and that those rates are needed to produce the revenues necessary for capital improvements to maintain and improve the quality of water that the Owenton facilities produce. Noting that KAWC has pledged to adopt a single rate schedule for its entire system with its next application for general rate adjustment, they contend the current Owenton rates will remain effective only for a short period.

⁵ 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.

⁶ Joint Applicants' Responses to Commission Staff's Interrogatories and Requests for Production of Documents, Items 10.

Absent exceptional circumstances, a public utility should generally assess the same rates to the customers of the acquired non-jurisdictional municipal utility as those assessed to its existing customers. The Commission has examined the public utility's rates and found them to be reasonable and generally reflective of the cost of service. Moreover, the public utility's filed rates are presumed to be reasonable as a matter of law. See, e.g., Keogh v. Chicago & N.W. Ry. Co., 260 U.S. 156, 163 (1922). In contrast, there is no Commission review of municipal utility rates. In many instances, no substantial record of evidence on the development of the municipal utility's rates exists. In the present case, for example, the Joint Applicants acknowledge the lack of any rate study upon which Owenton's current rates are based.⁷

The present case, however, presents unusual circumstances. KAWC has not established a uniform rate for its Northern Division but instead assesses different rates for the two systems⁸ that compose its Northern Division. These rate schedules are in large measure based upon the rates that the previous owners of these systems assessed. Neither system is comparable to Owenton's existing water treatment and distribution systems.⁹ There is no evidence that either of these rate schedules accurately reflects the cost of serving Owenton's customers.

⁷ Id. at Item 3.

⁸ These two systems were formerly known as Tri-Village Water District and Elk Lake Property Owners, Inc.

⁹ Neither system provides any wastewater services. While KAWC operates a small wastewater treatment plant in Clark County, this plant is not similar to the wastewater facilities that Owenton currently operates.

Moreover, Owenton's rates would continue in effect on a short-term basis. KAWC has stated its intent to revise its rate schedules in its next general rate proceeding to provide a single rate schedule applicable to all KAWC customers and based upon the cost of serving all KAWC customers.¹⁰ KAWC further states the customers of Owenton's system would be assessed the present rates only until the Commission approves a single rate schedule.

Given these circumstances, the Commission finds that KAWC should be authorized to assess Owenton's present rates for service to customers served through Owenton's current water and wastewater assets. The Commission places KAWC on notice that KAWC's next application for general rate adjustment should contain a proposal for a single rate schedule applicable to all KAWC customers or, in the alternative, a detailed explanation of why such a rate schedule is unreasonable for KAWC's statewide operations.

IT IS THEREFORE ORDERED that:

1. The Joint Applicant's application for approval of the transfer of ownership of Owenton's water and wastewater assets to KAWC is denied as moot.
2. KAWC is authorized to assess Owenton's present rates for service to customers served through Owenton's current water and wastewater assets.
3. Within 10 days of the completion of the transfer of ownership of Owenton's water and wastewater assets to KAWC, KAWC shall advise the Commission in writing of the transfer's completion.

¹⁰ Joint Applicants' Responses to Commission Staff's Interrogatories and Requests for Production of Documents, Items 8 and 9.

4. Within 10 days of the completion of the transfer of ownership of Owenton's water and wastewater assets to KAWC, KAWC shall file tariff sheets that contain the rates to be assessed to former Owenton customers and that are signed by an officer of KAWC authorized to issue tariffs.

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 utility's general correspondence file or shall docket the filing as a new proceeding.

Done at Frankfort, Kentucky, this 22nd day of July, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director