

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CHRISTIAN COUNTY WATER)
DISTRICT FOR DEVIATION FROM PURCHASED) CASE NO. 2005-00460
WATER ADJUSTMENT REGULATION)

ORDER

Christian County Water District (“Christian District”) has applied for a deviation from Administrative Regulation 807 KAR 5:068, Section 4, to use a refund of \$192,533 from its water supplier to purchase radio read water meters in lieu of refunding these monies to its customers. Christian District’s application presents the following issue: May the Commission permit a deviation from the refunding provision of its purchased water adjustment regulation? Finding in the negative, the Commission denies the application.

Christian District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to approximately 4,894 customers in Christian County, Kentucky.¹ It purchases its entire water supply from Hopkinsville Water Environment Authority (“HWEA”).

In 2004 Christian District discovered that one of the master meters through which HWEA provides water was over registering water usage. According to the meter’s manufacturer, the incorrect type of measuring chamber had been installed in this meter. Christian District estimated that the installation of the incorrect measuring chamber

¹ Annual Report of Christian County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2004 at 27.

caused the meter to measure water at 156 percent of its designed capacity. It further estimated that the incorrect measurement had occurred over a period of 9 years. After Christian District informed HWEA of this discovery, HWEA conducted its own investigation and confirmed that the meter in question was not registering properly. After negotiations, Christian District agreed to accept a payment of \$192,533.70 in 12 equal monthly installments. HWEA began these payments in January 2005. Christian District has placed these payments in its Depreciation Contingency Account.

Christian District has previously used KRS 278.012 and Administrative Regulation 807 KAR 5:068 to adjust expeditiously its rates to reflect increases in the rates of its wholesale water suppliers.² Administrative Regulation 807 KAR 5:068, Section 2(4),³ requires a water district that “receives a refund from its supplier for

² See, e.g., Case No. 2004-00024, Application of Christian County Water District for a Purchased Water Adjustment (Ky. P.S.C. Feb. 19, 2004); Case No. 1993-00215, Application of Christian County Water District for a Rate Adjustment Pursuant to the Purchased Water Rate Adjustment Clause (Ky. P.S.C. June 25, 1993); Case No. 9963, Purchased Water Adjustment of Christian County Water District (Ky. P.S.C. Aug. 6, 1987).

³ In the event a water district or water association receives a refund from its supplier for amounts previously paid, the water district or water association shall immediately apply to the commission for authority to make adjustments on the amounts charged customer’s bills under this administrative regulation as follows:

(a) The total refund received by the utility shall be divided by the number of cubic feet or gallons of water the utility estimates it will sell to its customers during the two (2) month period beginning with the first day of the month following receipt of the refund, yielding the refund factor to be applied against each cubic foot or gallon of water sold thereafter.

(b) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility will reduce by the refund factor any purchased water adjustment that would otherwise be applicable during the period. The period of reduced purchased water adjustments shall be adjusted, if necessary, in order to most nearly approximate the total amount to be refunded. The water utility shall make full distribution of the refund within two (2) months.

(c) In the event a water utility receives a large or unusual refund, the utility may apply to the commission for a deviation from the procedure for distribution of refunds specified herein.

amounts previously paid . . . [to] immediately apply to the commission for authority to make adjustments on the amounts charged customer's bills" under the purchased water adjustment procedure. It further prescribes the methodology for making these adjustments to pass through this refund to the water district's customers.

Notwithstanding Administrative Regulation 807 KAR 5:068, Section 2(4), Christian District requests Commission authorization to retain the refund from HWEA and use it toward the purchase of radio read water meters. In support of its request, it refers to Administrative Regulation 807 KAR 5:068, Section 2(4)(c), which provides that "[i]n the event a water utility receives a large or unusual refund, the utility may apply to the commission for a deviation from the procedure for distribution of refunds specified herein." Christian District argues that, because the refund is relatively small and is based on a meter error, a refund is neither required nor appropriate. It further argues that the proposed use of the refund proceeds would benefit all water district customers as the radio read meters would eliminate the task of customers reading their own meters and assist the water district in monitoring and controlling its water loss.

While the Commission's interpretation of its own regulations is entitled to substantial deference, its interpretation must comply with the actual language of the regulation.⁴ The clear language of Administrative Regulation 807 KAR 5:068, Section 2(4), allows a deviation from the "manner" in which a refund is distributed to a water district's customers, not "whether" the refund is distributed to customers. To hold

⁴ Fluor Constructors, Inc. v. Occupational Safety and Health Review Com'n, 861 F.2d 936, 939 (6th Cir. 1988).

otherwise would add a provision to the purchased water adjustment regulation that does not currently exist.⁵

The Commission notes that, unlike other Commission regulations, 807 KAR 5:068 does not include a provision for blanket deviations.⁶ It contains only a provision that permits deviations to the methodology by which adjustments are made to customers' bills to pass through a wholesale water supplier's refund.

In its present form, Administrative Regulation 807 KAR 5:068, Section 2(4), limits a water district's discretion in the handling of refunds from water suppliers. It may, with prior Commission approval, deviate from the procedure used to make adjustments on the amounts charged customer's bills, but is not permitted to apply those refunds to any purpose but refunding to its customers.

IT IS THEREFORE ORDERED that:

1. Christian District's application for a deviation from Administrative Regulation 807 KAR 5:068 is denied.
2. Christian District's application for authority to apply the refund received from HWEA to the purchase of radio read water meters is denied.
3. Within 20 days of the date of this Order, Christian District shall apply the refund from HWEA to make adjustments on customer's bills in accordance with Administrative Regulation 807 KAR 5:068, Section 2(4)(a)-(b).

⁵ Id. ("An agency is bound by the regulations it promulgates and may not attempt to circumvent the amendment process through changes in interpretation unsupported by the language of the regulation.").

⁶ See, e.g., 807 KAR 5:001, Section 14 ("Deviation from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules."). See also 807 KAR 5:006, Section 27; 807 KAR 5:022, Section 18; 807 KAR 5:026, Section 10.

Done at Frankfort, Kentucky, this 29th day of March, 2006.

By the Commission

ATTEST:



Executive Director