

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF CANNONSBURG WATER)
DISTRICT TO ALLOW DISCOUNTED WATER) CASE NO. 2008-00220
RATES FOR THE COMMISSIONERS AND)
EMPLOYEES OF THE DISTRICT)

O R D E R

Cannonsburg Water District ("Cannonsburg District") proposes to revise its rate schedules to permit reduced rate water service for its employees and the members of its board of commissioners. Its proposal presents the following question: Is a water district's provision of free or reduced-rate water service to its employees or members of its board of commissioners *per se* contrary to public policy? While answering this question in the negative, we further find that Cannonsburg District has failed to demonstrate that its proposed rate revision is reasonable and we deny the proposal.

Cannonsburg District, a water district established and organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to approximately 3,542 customers in Boyd and Greenup counties, Kentucky.¹ During Calendar Year 2007, it had total water revenues of \$1,878,154.² As of December 31, 2007, it had total assets of \$4,154,624.³ It employs 11 persons and has a total payroll of \$401,534.⁴

¹ *Annual Report of Cannonsburg Water District to the Kentucky Public Service Commission for the Calendar Year Ending December 31, 2007* ("Annual Report") at 5 and 27.

² *Id.* at 27.

³ *Id.* at 7.

⁴ E-mail from Cannonsburg District to Gerald Wuetcher, Executive Advisor, Public Service Commission (Dec. 16, 2008); Annual Report at 28. Total payroll does not include salaries paid to members of Cannonsburg District's Board of Commissioners nor employee benefits or pensions.

A three-member board of commissioners “controls and manages” Cannonsburg District’s operations.⁵ Each member receives an annual salary of \$6,000.⁶ Boyd County Fiscal Court establishes this salary level.⁷

Cannonsburg District proposes to revise its rates to permit its full-time employees and members of its board of commissioners to receive reduced-rate water service. It proposes to charge these persons a monthly minimum bill for water service regardless of their water usage. Under the water district’s present rate structure, this reduced rate would generally reduce an employee’s monthly water bill by \$16.32, or \$196 annually.⁸

KRS 278.170(2) permits a utility to provide “free or reduced rate service to its officers, agents, or employees,” but “[n]otice must be given to the commission and its agreement obtained for such reduced rate service.” In determining whether a proposed rate should be allowed, the Commission reviews the proposed rate under a reasonableness standard.⁹

The Commission has previously rejected similar proposals for free and reduced-rate service as unreasonable because a water district’s ratepayers would ultimately

⁵ *Id.* at 6.

⁶ *Id.*

⁷ KRS 74.020(6).

⁸ Cannonsburg District has the following rate structure for customers receiving water service through a 5/8-inch x 3/4-inch meter:

First 2,000 gallons	\$15.08 Minimum Bill
Next 3,000 gallons	5.44 per 1,000 gallons
Next 15,000 gallons	5.06 per 1,000 gallons
Next 30,000 gallons	4.68 per 1,000 gallons
Next 50,000 gallons	4.31 per 1,000 gallons
Over 100,000 gallons	3.91 per 1,000 gallons

⁹ Case No. 2007-00211, *Tariff Filing of West Shelby Water District to Allow Free Water for Water District Commissioners* (Ky. PSC Aug. 29, 2007).

bear the cost of such service.¹⁰ Unlike an investor-owned utility whose shareholders assume the cost of any free or reduced-rate service, we have reasoned that water districts "have no shareholders to which the foregone revenue can be charged."

In light of Cannonsburg District's request, we have reexamined the reasoning for our earlier decisions in which we denied free or reduced-rate water service to water district employees and officials and find that reasoning unconvincing. Free or reduced-rate water service represents a form of non-salary compensation for water district commissioners and employees. The Commission has previously approved other forms of such compensation and permitted the costs of such compensation to be recovered from ratepayers through general rates.¹¹ We have found no explanation as to why these other forms of non-salary compensation are acceptable and the provision of free or reduced-rate water service is not. Clearly, that ratepayers must bear the cost of such compensation is not alone an adequate reason for denial.

Advocates have advanced several arguments in support of free or reduced-rate water service for water district commissioners and employees. They assert that the statutory limit on a water district commissioner's salary is relatively low and does not

¹⁰ Case No. 2007-00211, *The Tariff Filing of West Shelby Water District to Allow Free Water for District Commissioners* (Ky. PSC Aug. 29, 2007); Case No. 2005-00060, *Request of Bronston Water Association, Inc. to Provide Free Water Service to Churches Pursuant to KRS 278.170(2)* (Ky. PSC Oct. 12, 2005); Case No. 1994-00054, *The Application of Cumberland Falls Highway Water District for Authorization to Allow Commissioners to Receive Free Water* (Ky. PSC Apr. 7, 1994); Case No. 1993-00358, *South 641 Water District Request to Provide Free Water Service* (Ky. PSC Jan. 3, 1994); Case No. 1992-00094, *An Inquiry of East Logan Water District Regarding Free Water Service to Commissioners and Management of the District* (Ky. PSC Mar. 16, 1992).

¹¹ Case No. 2001-00211, *The Application of Hardin County Water District No. 1 for (1) Issuance of Certificate of Public Convenience and Necessity, (2) Authorization to Borrow Funds and to Issue Its Evidence of Indebtedness Therefor, (3) Authority to Adjust Rates, and (4) Approval to Revise and Adjust Tariff* (Ky. PSC Mar. 1, 2002) (furnishing health insurance coverage to commissioners). See also KRS 65.150(1) (authorizing expenditure of funds for liability insurance for commissioners for claims arising out of an action of omission committed in the scope and course of performing legal duties).

adequately compensate commissioners.¹² In some instances, commissioners receive no salary for their service. Free or reduced-rate water service serves as another means to compensate commissioners, to recognize their service, and to induce other members of the community to serve as water district commissioners.

Advocates further argue that water districts are currently permitted to provide other forms of compensation, such as health and liability insurance coverage, to their commissioners. They assert that no rational distinction exists between these forms of compensation and free or reduced-rate water service, nor does any statutory prohibition against such service exist. They contend that the cost of such service, in most cases, will be minimal.

Notwithstanding these arguments, several policy reasons exist for denying free or reduced-rate service to water district commissioners. First, KRS 74.020(6) clearly places responsibility for establishing an appropriate salary level for water district commissioners on county judge/executives and county fiscal courts. Permitting free or reduced-rate water service does not require the consent of these officials and would allow water districts to circumvent these officials' review of one element of commissioners' compensation.¹³

¹² KRS 74.020(6) limits a water district commissioner's salary to \$3,600 annually. Commissioners who complete during an educational year a minimum of six instructional hours of Commission-approved water district management training, however, may receive an annual salary of not more than \$6,000.

¹³ KRS 74.020(6) addresses only salaries, not other forms of compensation. Salary limits do not include fringe benefits. See *Caldwell County Fiscal Court v. Paris*, 945 S.W.2d 952, 954 (Ky. App. 1997) ("compensation" and 'salary' . . . mean the actual salary or fees paid to an officer"). See also Case No. 2001-00211, *Hardin County Water District No. 1* (Ky. PSC Mar. 1, 2002) (holding that salary limits do not prevent water district from furnishing health insurance coverage to commissioners). Payment of fringe benefits may be included in salary if part of a scheme "to raise the salary of a particular official through the subterfuge of paying certain benefits for him not uniformly available to similarly situated officials." *Caldwell County Fiscal Court* at 955.

Second, absent unusual conditions, free or reduced-rate service has limited value as an inducement for a person to serve as a water district commissioner. For most water districts, the monetary value of free service is significantly less than the maximum level of compensation established in KRS 74.020(6). Direct monetary payments can easily substitute for such service.

Third, free or reduced-rate service reduces the transparency of the water district's payments to its commissioners. Free or reduced-rate service is difficult to discern and is not generally reported. In contrast, monetary payments are easily traceable and are reflected as a line item in the annual reports of water districts to the Commission.¹⁴ Local government officials and the general public can easily monitor monetary payments.

Fourth, free or reduced-rate service separates commissioners from other water district ratepayers and may undermine public confidence in the water district's governance. In the public's mind, when commissioners receive free or reduced-rate service, they are effectively insulated from the adverse effects of their decisions. Such commissioners do not pay higher rates or suffer any adverse financial effects resulting from an increase in water service rates. No matter how conscientious or diligent the members of the board of commissioners, public cynicism and distrust is likely to erode public support for the water district and create a more difficult environment for the water district to perform its mission.

Based upon our review of the policy arguments, we find that free or reduced-rate service should not generally be authorized for water district officials absent the

¹⁴ See, e.g., *Annual Report* at 6 and 27.

existence of special circumstances. We do not find, however, that the provision of such service is unreasonable *per se*. A water district that applies for such service for its commissioners should provide with its application evidence regarding the level of official compensation, including: fringe benefits; the officials' workload; the size and scope of the water district's operations; the water district's past history of attracting qualified persons to serve in positions of responsibility; the cost of such service; and the effect of the provision of such service on internal morale and the public's perception of the water district.¹⁵

In the present proceeding, Cannonsburg District has not demonstrated the need for reduced-rate service or that the institution of such service will not result in adverse effects. In the absence of such demonstration, we find that Cannonsburg District's proposed rate should be denied.

IT IS THEREFORE ORDERED that:

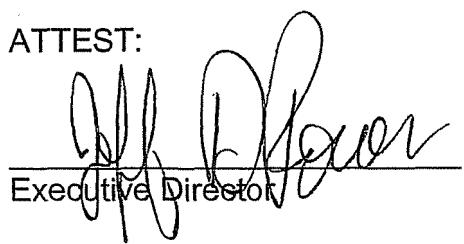
1. Cannonsburg District's proposed reduced water service rate for members of its board of commissioners and its employees is denied.
2. This case is closed and shall be removed from the Commission's docket.

¹⁵ Requests for free or reduced-rate service for water district commissioners also raise implications regarding the requesting commissioners' eligibility to continue to serve as water district commissioners. KRS 74.020(3) provides that "[a] commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office." To the extent that members of a board of commissioners vote to request free or reduced-rate service, they are participating in an official action that results in a direct financial benefit. In light of KRS 278.020(3), members of boards of commissioners that are pursuing free water service to commissioners should consider making the provision of such service prospective in nature and not applicable to current members of their board of commissioners.

Done at Frankfort, Kentucky, this 10th day of March, 2009.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Amy D. Brown".

Amy D. Brown

Executive Director

Case No. 2008-00220

Danny R Clarkston
Manager
Cannonsburg Water District
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Ashland, KY 41102