

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                              |   |                     |
|------------------------------|---|---------------------|
| ROY G. COOKSEY               | ) |                     |
|                              | ) |                     |
| COMPLAINANT                  | ) |                     |
|                              | ) |                     |
| v.                           | ) | CASE NO. 2013-00109 |
|                              | ) |                     |
| WARREN COUNTY WATER DISTRICT | ) |                     |
|                              | ) |                     |
| DEFENDANT                    | ) |                     |

ORDER

Complainant has filed a formal complaint against Warren County Water District ("Warren District") in which it seeks an Order directing Warren District to petition the Warren County Judge/Executive to extend Warren District's territory to include Complainant's farm in its entirety and directing Warren District to extend water and sewer service to the portion of his farm that Warren District does not presently serve. Contending that the Commission's decision in Case No. 2009-00190<sup>1</sup> precludes the current complaint, Warren District moves to dismiss. We deny the motion and direct Warren District to answer the Complaint.

Warren District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities in Warren County, Kentucky providing water service to 25,924

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<sup>1</sup> Case No. 2009-00190, *Roy G. Cooksey v. Bowling Green Municipal Utilities Board and Warren County Water District* (Ky. PSC Apr. 16, 2010).

customers<sup>2</sup> and sewer service to 4,970 customers.<sup>3</sup> In existence since 1964, it serves mostly the non-incorporated areas of Warren County.<sup>4</sup> It does not own or operate any water or sewage treatment facilities, but purchases its total water requirements from Bowling Green Municipal Utilities Board ("BGMU")<sup>5</sup> and transports all collected sewage to BGMU for treatment.<sup>6</sup>

Complainant owns a 101-acre farm in Warren County, Kentucky, which he acquired in 1976.<sup>7</sup> The farm is located outside the corporate limits of Bowling Green, Kentucky. Warren District or its predecessor has provided water service to the farm since before Complainant's acquisition of the property. Warren District also provides sewer service to the farm.

In 2006, the governing bodies of BGMU and Warren District adopted service areas for their water services.<sup>8</sup> The following year, the governing bodies of BGMU and

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<sup>2</sup> *Annual Report of Warren County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2012 (Water Operations)* ("2012 Water Annual Report") at 27.

<sup>3</sup> *Annual Report of Warren County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2012 (Sewer Operations)* ("2012 Sewer Annual Report") at 12.

<sup>4</sup> *2012 Water Annual Report* at 4. Warren District is the product of the mergers of three water districts: Northside Water District, Westside Water District, and Morgantown Road Water District. See Case No. 5909, *The Proposed Merger of Northside Water District, Warren County, Kentucky, and Westside Water District* (Ky. PSC Dec. 18, 1973); Case No. 7186, *The Proposed Merger of the Warren County Water District, Warren County, Kentucky, and Morgantown Road Water District, Warren County, Kentucky* (Ky. PSC Jan. 16, 1979).

<sup>5</sup> *2012 Water Annual Report* at 30.

<sup>6</sup> *2012 Sewer Annual Report* at 11.

<sup>7</sup> Complaint at 2 (filed Mar. 15, 2013).

<sup>8</sup> Resolution of the Board of Directors of the Bowling Green Municipal Utilities (Aug. 14, 2006); Reciprocal Resolution of the Board of Commissioners of the Warren County Water District (Aug. 29, 2006). This resolution did not amend or alter Warren District's existing territorial boundaries. Only the Warren County Judge Executive, after a public hearing, may make such revisions. See KRS 74.110.

Warren District adopted similar service areas for their sewer services.<sup>9</sup> These limits for water and sewer services divide the Complainant's farm. Approximately 70 acres of Complainant's farm are within BGMU's service area and the remaining 31 acres of the farm are within Warren District's service area.<sup>10</sup>

On May 18, 2009, Complainant filed a complaint against BGMU and Warren District in which he requested the Commission order BGMU and Warren District to adjust their agreed service areas and declare Warren District the *exclusive* provider of water and sewer service to his farm. He also requested termination of BGMU's rights to provide water or sewer service to the farm.<sup>11</sup> We docketed his complaint as Case No. 2009-00190.

Upon BGMU's motion, we dismissed the complaint. We found no statutory authority to permit us to preclude BGMU from serving Complainant's farm or to direct a revision to BGMU's service area and dismissed the complaint and expressly stated that we lacked the authority to declare Warren District the *sole* provider of water and sewer service to the Complainant's farm.<sup>12</sup>

In his present complaint, which he filed on March 15, 2013, Complainant requests an order from the Commission for Warren District to extend water and sewer service under KRS 278.280 to his entire farm despite Warren District's voluntary

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<sup>9</sup> Resolution of the Board of Directors of the Bowling Green Municipal Utilities (July 9, 2007), Reciprocal Resolution of the Board of Commissioners of the Warren County Water District (June 26, 2007). This resolution did not amend or alter Warren District's existing territorial boundaries.

<sup>10</sup> Case No. 2009-00190, Complaint at ¶¶ 1 and 3 (filed May 18, 2009); Order of Apr. 16, 2010 at 3.

<sup>11</sup> Case No. 2009-00190, Complaint at 5.

<sup>12</sup> *Id.*, Order of Apr. 16, 2010 at 9.

agreement with BGMU.<sup>13</sup> Complainant states that approximately 30 acres of his farm are within Warren District's territorial boundaries and the remainder lies outside the city of Bowling Green's corporate limits and Warren District's territory.<sup>14</sup> He states that, pursuant to KRS 278.280(3), the Commission may direct Warren District to make reasonable extensions of service and may further direct Warren District to seek an expansion of its existing boundaries to make a reasonable extension of service.<sup>15</sup>

Moving to dismiss the current complaint, Warren District argues that the Commission found in Case No. 2009-00190 that the Commission lacked the authority to declare Complainant's entire farm within Warren District's service area and that this decision precludes the current complaint. On this point, Warren District is mistaken. In Case No. 2009-00190, the Commission held only that the Commission lacked jurisdiction to direct revisions to a municipal utility's service area or to prohibit or otherwise limit a municipal utility's service to a geographical area.<sup>16</sup> Lacking such jurisdiction, we found no authority to declare Warren District the *sole* provider of water or sewer service to Complainant's farm.<sup>17</sup>

While lacking the authority to consider the previous complaint, the Commission foresaw the possibility that the Complainant or others might seek relief that is within our

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<sup>13</sup> Case No. 2013-00109, Complaint at 7-8.

<sup>14</sup> *Id.* at 3. Given that Complaint states in his Complaint that his farm is 101 acres and that 70 acres of the farm are located in the BGMU designated area and the remainder in Warren District's territory, it would appear that 31 acres, not 30, are located in Warren District's territory.

<sup>15</sup> *Id.* at 4-6.

<sup>16</sup> Case No. 2009-00190, Order of April 16, 2010 at 9.

<sup>17</sup> *Id.*

statutory authority. For this reason, we expressly limited the scope of our ruling and identified a potential issue that was not being addressed. In a footnote, we stated:

In dismissing this case, we make no finding as to whether a voluntary agreement between a municipal utility and a public utility regarding the allocation of service areas limits the Commission's authority under KRS 278.280 to require the public utility to make extensions of service that are contrary to or inconsistent with such agreement.<sup>18</sup>

This issue is the very issue that the Complaint now presents to us.

Warren District asserts that the Commission's statement regarding the application of KRS 278.280 "indicated that the Commission was reserving a ruling on the scope of its authority in a future separate case involving different parties given the statutory enactment in KRS 278.280. Had the Commission felt that it needed to construe that issue to these parties in the 2009 case it certainly would have done so prior to entering the dismissal order."<sup>19</sup> As the Complainant in that proceeding was represented by legal counsel, as his complaint contained a detailed request for specific relief, and as the requested relief was not within the Commission's authority to grant, the Commission was neither obligated nor did public policy require to us to go beyond the issue specifically presented to us.

Warren District also argues that, as the Commission in our Order of April 16, 2010, found that Complainant's entire farm was located within Warren District's territory, Complainant's request that Warren District be required to seek an amendment to its

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<sup>18</sup> *Id.* at 9, fn. 27.

<sup>19</sup> Warren District's Reply Brief in Support of Motion to Dismiss at 5-6 (filed Apr. 12, 2013).

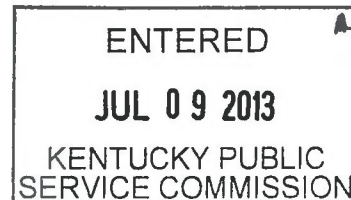
territory boundary is moot. It notes that, as the Complainant did not seek judicial review of the Commission's Order, he is bound by that finding.<sup>20</sup>

Based upon our review of the record in Case No. 2009-00190, we find that our earlier finding should not preclude taking evidence on whether Complainant's farm is located within Warren District's boundaries. The earlier finding was not essential to the Commission's holding in the Order of April 16, 2010. Neither the location of the Complainant's farm nor Warren District's boundaries had any effect on that holding. Moreover, we can find no basis in the record to support the finding. In the absence of such evidence, the Commission will not preclude either party from introducing evidence on Warren District's existing territorial boundaries.

IT IS THEREFORE ORDERED that:

1. Warren District's Motion to Dismiss is denied.
2. Warren District shall file an answer within 14 days of entry of this Order.

By the Commission



ATTEST:

  
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Executive Director

<sup>20</sup> *Id.* at 5. See Case No. 2009-00109, Order of April 16, 2010 at 3, fn. 11.

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