

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                       |   |            |
|---------------------------------------|---|------------|
| ELECTRONIC PROPOSED ADJUSTMENT OF THE | ) |            |
| WHOLESALE WATER SERVICE RATES OF THE  | ) | CASE NO.   |
| CITY OF PIKEVILLE TO MOUNTAIN WATER   | ) | 2019-00080 |
| DISTRICT                              | ) |            |

ORDER

On July 18, 2019, Mountain Water District (Mountain District), through counsel, filed with the Commission a motion to compel (Motion). The city of Pikeville (Pikeville) filed a response to the Motion (Response) on July 25, 2019. At a July 30, 2019 conference call to discuss a motion by Mountain District to reschedule the hearing initially scheduled for August 22, 2019, counsel for both parties were asked if they would like to be heard on the motion to compel. Counsel for both parties declined to be heard and stated they did not plan to make any more filings on the issue of the Motion. The Commission considers the issue to have been fully briefed.

The Motion requested that the Commission order Pikeville to provide responses to Questions 52, 53, and 54 of Mountain District's initial data request filed July 1, 2019 (Initial Request). The requested information involved financial data from United Management Group (UMG), the private company that manages Pikeville. In its response to Questions 52 and 53 of the Initial Request, Pikeville responded that while it objected to the request on the grounds of relevance, it had requested that UMG provide the requested information

and that UMG had declined to do so. Pikeville responded to Question 54 and Mountain District did not state why it considered the responses to be insufficient.

Both parties make various arguments concerning the relevance of the material requested in the Motion. Question 52 of the Initial Request asked for three years of UMG's financial statements. Pikeville responded that the information was not relevant as UMG's financial information was not relevant to whether Pikeville's expenses are reasonable,<sup>1</sup> but that it had requested the information from UMG, and UMG was declining to provide the information. In its Motion, Mountain District did not respond to the objection on the grounds of relevance by stating how UMG's financial statements, which would include copious amounts of information unrelated to the Pikeville management contract, might reasonably be expected to lead to the discovery of admissible evidence, even though that is the standard that is quoted in the Motion.<sup>2</sup>

Question 53 of the Initial Requests asks for UMG's profit margin on its contract with Pikeville. This is defined in the request as the difference between the total annual fee paid by Pikeville, and the direct costs incurred for operations. Mountain District also requested that Pikeville provide an itemization and justification for any indirect costs incurred by UMG, as well as the calculations included in the determination of UMG's profit margin.

Pikeville objected on grounds of relevancy but stated that it had requested UMG to provide the information and UMG had refused. Pikeville did reference its responses to Question 24 of Commission Staff's Second Request for Information. Commission Staff

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<sup>1</sup> *City of Pikeville Wholesale Water Service Rates Responses to Mountain Water District's Initial Data Requests*, Item 52.

<sup>2</sup> *Motion to Compel*, page 1.

requested a profit and loss statement of all UMG expenses and revenues attributable to Pikeville. Pikeville responded that UMG had declined to provide the information but did provide a breakdown of UMG costs for Pikeville, including the amount of its profit.<sup>3</sup> Mountain District did not respond to the argument that the information was not relevant and did not address the expense statement that UMG had provided and why that was insufficient. It simply made a general argument about the scope of discovery being broad.

The legal arguments notwithstanding, the fact remains that the information requested in Questions 52 and 53 of the Initial Request is not in the control of Pikeville and is the Commission's primary concern.

Pikeville has chosen to file a response citing *Metropolitan Property & Cas. Ins. Co. v. Overstreet*, which held that an insurance company could not be compelled to produce the business records of a doctor when those business records were not in the insurance company's possession, custody, or control.<sup>4</sup> *Metropolitan* also states that "a nonparty witness can be required by subpoena duces tecum to produce in conjunction with the witnesses' deposition or trial testimony relevant and unprivileged documents in his or her possession . . . ."<sup>5</sup>

Under this holding, the Commission could certainly issue a subpoena for the information, or Mountain District could submit a subpoena for the Commission to issue.

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<sup>3</sup> *City of Pikeville Wholesale Water Service Rates Responses to Commission Staff's Second Request for Information*, Item 24.

<sup>4</sup> *Metropolitan Property & Cas. Ins. Co. v. Overstreet* 103 S.W.3d 31, 45 (Ky. 2003).

<sup>5</sup> *Id.* at 45

However, it is neither the Commission's nor Mountain District's burden to prove the reasonableness of the rates proposed. That burden lies with Pikeville.<sup>6</sup>

The Commission has stated its desire to scrutinize expenses associated with management contracts more closely.<sup>7</sup> It seems to the Commission that it would have been prudent to address this issue with a provision in Pikeville's management contract with UMG, which would require UMG to comply with requests for information issued in cases before the Commission. Pikeville has chosen not to do this and therefore must bear any consequences from that decision if the Commission considers the information provided to it to be incomplete.

IT IS THEREFORE ORDERED that Mountain District's July 18, 2019 Motion is denied.

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<sup>6</sup> KRS 278.190(3).

<sup>7</sup> Case No. 2002-00022, Proposed Adjustment of the Wholesale Service Rates of the City of Pikeville, (Ky. PSC Oct. 18, 2002) Order at 12-13.

By the Commission

ENTERED  
SEP 03 2019  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2019-00080

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