

**CASE**

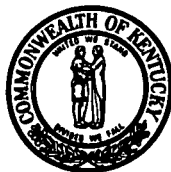
**NUMBER:**

99.276

INDEX FOR CASE: 99-276  
CITY OF WILLIAMSON  
Tariffs  
WHOLESALE WATER SERVICE

IN THE MATTER OF THE PROPOSED ADJUSTMENT OF THE WHOLESALE  
WATER SERVICE RATES OF THE CITY OF WILLIAMSON, WEST  
VIRGINIA

SEQ NBR	ENTRY DATE	REMARKS
M0001	05/25/99	JOHN HUGHES/ATTORNEY-MOTION TO INTERVENE AND OBJECTION TO TARIFF
0001	06/30/99	Order suspending proposed rate to 11/30/99; info due 7/30
0002	06/30/99	Mountain Water District made Party of Record.
M0002	07/30/99	MOUNTAIN WD JOHN HUGHES-BRIEF
M0003	08/02/99	SAM KAPOURALES CITY OF WILLIAMSON-RESPONSE TO QUESTIONS FROM PSC COMMENTS, AND WHERE SALES
0003	08/26/99	Final Order rejecting proposed tariffs and dismissing case.



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 99-276  
CITY OF WILLIAMSON

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on August 26, 1999.

Parties of Record:

Sam Kapourales  
Mayor  
City of Williamson  
P. O. Box 1517  
Williamson, WV. 25661

Hon. John N. Hughes  
124 W. Todd Street  
Frankfort, KY. 40601

Hon. William D. Kirkland  
McBrayer, McGinnis, Leslie &  
Kirkland  
P.O. Box 1100  
Frankfort, KY. 40601 1100

*Stephanie Bell*  
Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE )  
WATER SERVICE RATES OF THE CITY OF ) CASE NO. 99-276  
WILLIAMSON, WEST VIRGINIA )

ORDER

On June 30, 1999, the Commission directed the City of Williamson, West Virginia ("Williamson") and Mountain Water District to address certain issues regarding the Commission's jurisdiction over Williamson's proposed rates. Based upon Williamson's response, the Commission finds that it lacks jurisdiction over the proposed rate, rejects Williamson's filing, and closes this proceeding.

Williamson, a city within the state of West Virginia, provides water service to Mountain Water District. It provides water service at two separate metering points. Each point is located within Williamson's boundaries. Mountain Water District transports the purchased water across the Tug Fork River into Pike County, Kentucky, on water mains that it owns and maintains. None of Williamson's facilities are used for the transportation or distribution of water to Mountain Water District after the metering point.

Williamson proposes to adjust the rate that it presently charges for water service to Mountain District. It has filed a rate schedule with the Commission that reflects the proposed rate adjustment. Prior to its filing, Williamson did not have any rate schedule on file with this Commission.

KRS 278.040(2) provides that "[t]he jurisdiction of the commission shall extend to all utilities in this state [emphasis added]." Assuming arguendo that Williamson is a utility, it is not a utility within the state of Kentucky. Therefore, this Commission has no jurisdiction over Williamson's rates or service. We have no authority to rule on the reasonableness or lawfulness of its proposed rate adjustment or of any conditions of service.

IT IS HEREBY ORDERED that:

1. Williamson's proposed tariff sheets are rejected.
2. This case is dismissed and shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 26th day of August, 1999.

By the Commission

ATTEST:

  
Executive Director



SAM G. KAPOURALES  
MAYOR

# City of Williamson

OFFICE OF THE MAYOR

P. O. BOX 1517 · PHONE (304) 235-1510

Williamson, West Virginia 25661

July 29, 1999

NOISSIWAOC  
BOIAMEB ONIOPD

6661 2 0 904

FRANCES K. FRYE  
CITY CLERK

05/29/99

Ms. Helen Helton  
Public Service Commission  
730 Schenkle Lane  
P. O. Box 615  
Frankfort, Kentucky 40602

**RE: CASE NO. 99-276**

Dear Ms. Helton:

I want to thank you and the Commission for responding to the City of Williamson. The problems of crossing state lines make any rate case harder to manage. You will find below the answers to your questions.

Where does sale of water occur? Mountain Water District purchases water from the City of Williamson at two different points. The master meter is considered the point of purchase. The meters are both located inside the City Limits of Williamson in West Virginia. The Mountain Water District owns and maintains the water lines that cross the Tug Fork River into Kentucky.

Comments regarding The City of Cincinnati, Ohio versus Commonwealth ex ref Reeves- The case involves physical property in the State of Kentucky. This case does not relate because the Mountain Water District is served from a location in the State of West Virginia.

Comments regarding Simpson County Water District versus City of Frankfort, KY - Williamson is not challenging the need for PSC approval since cities in West Virginia unlike Kentucky are under the West Virginia Public Service Commission for all customers. The rate proposed for Mountain Water has already gone through the WV Public Service Commission review process. A copy of the Commission approved rate is attached. The wholesale agreement between Mountain Water District and Williamson does clearly state that WV Public Service Commission approval is needed for any water rate. A copy of the wholesale agreement and the latest PSC tariff are enclosed herewith.

Is Williamson a city? Williamson is a city according to the State of West Virginia.

We believe that a more appropriate case is Big Sandy Water District vs. City of Kenova, WV and Public Service Commission of West Virginia; Town of Ceredo, WV decided by the United States Court of Appeals.

If we can provide any additional information, please contact me.

Very truly yours,

  
SAM KAPOURALES, Mayor

SK:fkf/Enclosures

MAR 11 1999

P.S.C. W. Va. No. 11  
Canceling P.S.C. W. Va. No. 10

Special Studies Section

CITY OF WILLIAMSON, a municipal corporation  
OF  
WILLIAMSON, WEST VIRGINIA  
RATES, RULES AND REGULATIONS FOR FURNISHING  
WATER

Williamson, Mingo County, West Virginia and vicinity

Filed with THE PUBLIC SERVICE COMMISSION  
of  
WEST VIRGINIA

RECEIVED

MAR 11 1999

Public Service Commission of WV  
Utilities Division  
Special Studies Section

~~RECEIVED~~

~~FEB 10 1999~~

~~Public Service Commission of WV  
Utilities Division  
Special Studies Section~~

Issued January 21, 1999

Effective February 23, 1998  
or as otherwise provided herein

Passed by City Council

Issued by CITY OF WILLIAMSON, a municipal corporation

By *[Signature]*

*[Signature]*  
Title

CITY OF WILLIAMSON

P.S.C. W. Va. Tariff No. 11  
Original Sheet No. 1

RULES AND REGULATIONS

I. Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.



SCHEDULE NO. 1

APPLICABILITY

Applicable within the corporate limits of the City of Williamson, Mingo County, West Virginia

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service

RATES

Up to	3,000	gallons used per month	\$10.20 per month
3,000 to	20,000	gallons used per month	\$ 2.50 per 1,000 gallons
Next	30,000	gallons used per month	\$ 2.35 per 1,000 gallons
Next	50,000	gallons used per month	\$ 2.25 per 1,000 gallons
All over	100,000	gallons used per month	\$ 2.15 per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than the following amounts, according to the size of meter installed, to wit:

3/4	inch meter	\$ 10.20 per month
1	inch meter	\$ 26.10 per month
1 - 1/2	inch meter	\$ 58.75 per month
2	inch meter	\$ 104.75 per month
3	inch meter	\$ 235.00 per month
4	inch meter	\$ 433.85 per month
6	inch meter	\$ 940.05 per month
8	inch meter	\$1,671.17 per month

PUBLIC FIRE PROTECTION

A charge of \$10.00 per year per fire hydrant in place shall be made by the City of Williamson to the Williamson Utility Board.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

METER DEPOSIT

There shall be a meter deposit of \$25.00

UNMETERED ACCOUNTS

\$21.74

SCHEDULE NO. 2

APPLICABILITY

Applicable outside the corporate limits of the City of Williamson, Mingo County, West Virginia

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service

RATE (Based upon the metered amount of water supplied):

Up to	3,000 gallons used per month	\$15.08 per per month
3,000 to	20,000 gallons used per month	\$ 3.77 per 1,000 gallons
Next	30,000 gallons used per month	\$ 2.98 per 1,000 gallons
Next	50,000 gallons used per month	\$ 2.75 per 1,000 gallons
Next	900,000 gallons used per month	\$ 2.65 per 1,000 gallons
All over	1,000,000 gallons used per month	\$ 2.50 per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than the following amounts, according to the size of meter installed, to wit:

3/4	inch meter	\$ 15.08 per month
1	inch meter	\$ 28.95 per month
1 - 1/2	inch meter	\$ 65.15 per month
2	inch meter	\$ 116.15 per month
3	inch meter	\$ 260.58 per month
4	inch meter	\$ 481.05 per month
6	inch meter	\$1,042.37 per month
8	inch meter	\$1,853.03 per month

WHOLESALE ACCOUNTS

The wholesale rate shall be \$1.87 per 1,000 gallons used per month.

PUBLIC FIRE PROTECTION

A charge of \$10.00 per year per fire hydrant in place shall be made by the City of Williamson to the Williamson Utility Board.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

CITY OF WILLIAMSON

P.S.C. W. Va. Tariff No. 11  
Original Sheet No. 4

SCHEDULE NO. 2 (Continued)

METER DEPOSIT

There shall be a meter deposit of \$25.00

UNMETERED ACCOUNTS

\$21.74

DISCONNECTION OR RECONNECTION FEE

A disconnection or reconnection fee for new service and/or removal for delinquent charges shall be Ten Dollars (\$10.00).

(N)

SCHEDULE NO. 3

The rate for the sale of water to the Mountain Water Public Service District will be \$1.87 per thousand gallons of water sold.

DELAYED PAYMENT PENALTY

The above schedule is net. Any bill not paid in full within twenty (20) days, ten percent (10%) will be added to the net amount thereof. This delayed payment penalty is not interest and is only to be collected once for each bill where it is a appropriate.

(N) Indicates new

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MAY 13 1987

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 27th day of August, 19 82, between the Williamson Utility Board

P. O. Box 1517, Williamson, West Virginia 25661

(Address)

hereinafter referred to as the "Seller" and the Pond Creek Water District

P. O. Box 129, Belfry, Kentucky 41514

(Address)

hereinafter referred to as the "Purchaser",

WITNESSETH:

Whereas, the Purchaser is organized and established under the provisions of KRS Chapter 72 of the Code of Kentucky, for the purpose of constructing and operating a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser and to accomplish this purpose, the Purchaser will require a supply of treated water, and

Whereas, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by the said Purchaser as shown in the plans of the system now on file in the office of the Purchaser, and

Whereas, by Resolution No. \_\_\_\_\_ enacted on the 14th day of June, 19 82, by the Seller, the sale of water to the Purchaser in accordance with the provisions of the said contract was approved, and the execution of this contract carrying out the said Resolution by the Chairman, and attested by the Secretary, was duly authorized, and

Whereas, by Resolution of the Pond Creek Water District of the Purchaser, enacted on the 3rd day of June, 19 82, the purchase of water from the Seller in accordance with the terms set forth in the said Pike County Housing Authority Contract was approved, and the execution of this contract by the Chairman, and attested by the Secretary was duly authorized;

Now, therefore, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. The Seller Agrees:

1. (Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the West Virginia Department of Health

in such quantity as may be required by the Purchaser not to exceed 40 million gallons per month.

2. (Point of Delivery and Pressure) That water will be furnished at a reasonably constant pressure calculated at approx. 70 psi/ (see below) from an existing \_\_\_\_\_ inch main supply at a point located \_\_\_\_\_

If a greater pressure than that normally available at the point of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.

3. (Metering Equipment) To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the Purchaser and to calibrate such metering equipment whenever requested by the Purchaser but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate

shall be corrected for the TWO months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless Seller

and Purchaser shall agree upon a different amount. The metering equipment shall be read on last workday of month. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings.

4. (Billing Procedure) To furnish the Purchaser at the above address not later than the first day of each month, with an itemized statement of the amount of water furnished the Purchaser during the preceding second month.

B. The Purchaser Agrees:

1. (Rates and Payment Date) To pay the Seller, not later than the \_\_\_\_\_ day of each month, for water delivered in accordance with the following schedule of rates:

- a. \$ N/A for the first \_\_\_\_\_ gallons, which amount shall also be the minimum rate per month.
- b. \$ N/A cents per 1000 gallons for water in excess of \_\_\_\_\_ gallons but less than \_\_\_\_\_ gallons.
- c. \$ \_\_\_\_\_ cents per 1000 gallons for water in excess of \_\_\_\_\_ gallons.

All accounts are net 20 days after receipt. Ten Percent (10%) penalty attaches after 20 days.

d. Wholesale Rate effective September 27, 1982 - \$1.31 per 1000 gallons.

e. There shall be two (2) delivery points - one from the six-inch main adjacent to U. S. Highway 52 on the Tug River near mile 55.2, and the other shall be from a twelve-inch line at the intersection of Third Avenue and Short Street in the City of Williamson.

2. (Connection Fee) To pay as an agreed cost, a connection fee to connect the Seller's system with the system of the Purchaser, the sum of COST dollars which shall cover any and all costs of the Seller for installation of the metering equipment and at the locations above

C. It is further mutually agreed between the Seller and the Purchaser as follows: and thereafter at pleasure of Buyer

1. (Term of Contract) That this contract shall extend for a term of 40 years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser and, thereafter may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and Purchaser.

2. (Delivery of Water) That N/A days prior to the estimated date of completion of construction of the Purchaser's water supply distribution system, the Purchaser will notify the Seller in writing the date for the initial delivery of water.

3. (Water for Testing) When requested by the Purchaser the Seller will make available to the contractor at the point of delivery, or other point reasonably close thereto, water sufficient for testing, flushing, and trench filling the system of the Purchaser during construction, irrespective of whether the metering equipment has been installed at that time, at a flat charge of \$ N/A which will be paid by the contractor or, on his failure to pay, by the Purchaser.

4. (Failure to Deliver) That the Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.

5. (Modification of Contract) That the provisions of this contract pertaining to the schedule of rates to be paid by  
(See Condition 9)

the Purchaser for water delivered are subject to modification at the end of every N/A year period. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder, but such costs shall not include increased capitalization of the Seller's system. Other provisions of this contract may be modified or altered by mutual agreement.

6. (Regulatory Agencies) That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

7. (Miscellaneous) That the construction of the water supply distribution system by the Purchaser is being financed by a loan made or insured by, and/or a grant from, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Purchaser are conditioned upon the approval, in writing, of the State Director of the Farmers Home Administration.

8. (Successor to the Purchaser) That in the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Purchaser hereunder.

9. The rate charges for water may vary from time to time as the rates are subject to change by the appropriate action of the City Council of the City of Williamson, which rates, if changed, cannot become effective until the expiration of 45 days from the adoption of the rate ordinance. All rate changes shall be subject to the laws of the State of West Virginia and the rules and regulations of the West Virginia Public Service Commission and shall not be discriminatory between Public Service Districts served by Seller.

10. Seller agrees to furnish water to the Purchaser on a twenty-four (24) hour per day basis each day of the year, except for emergencies occasioned by supply line breaks, power failures, floods, excessive use of water in fighting fires, earthquakes, or other catastrophes which shall excuse the Seller from the provision requiring twenty-four (24) hour service for such reasonable periods of time as may be necessary to restore service.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in TWO counterparts, each of which shall constitute an original.

Seller:

WILLIAMSON UTILITY BOARD

By *J. Brewer Lamm Jr*

Title Chairman

Attest: *Charles D. Jagers*  
Secretary

Purchaser:

POND CREEK WATER DISTRICT

By *Bill Ferech*

Title Chairman

Attest: *Neil A. Englund, D.M.D.*  
Secretary

This contract is approved on behalf of the Farmers Home Administration this 7<sup>th</sup> day of September, 19183.

By *David R. King*  
Title County and Basin Program Spec

The rights of Pond Creek Water District under this contract are assigned to the Farmers Home administration as partial consideration for contract between Pond Creek Water District and Farmers Home administration.

*Neil A. Englund*  
Secretary  
Pond Creekwater

*Bill Ferech*  
Chairman Pond Creek Water



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

Tariff Filing of ) Case No. 99-276  
City of Williamson )

JUL 30 1999

PUBLIC SERVICE  
COMMISSION

**BRIEF OF MOUNTAIN WATER DISTRICT**

Mountain Water District, by counsel, submits this brief in response to the Commission's order of June 30, 1999:

The Commission raises several questions to be addressed by the parties. However, there are two questions not asked that are dispositive of the jurisdiction of the Commission over the tariff filing of Williamson. First, what authority does the Commission have to disregard or vacate an injunction issued by the United States District Court for the Eastern District of Kentucky? Williamson attempted to raise its water rate to Mountain in 1997 to the same rate it has filed with the Commission - \$1.87 per 1000 gallons. Mountain challenged that effort in the District Court claiming that the contract between the parties had not been followed in justifying the rate increase. The Court agreed and issued an injunction as part of its final judgment on December 4, 1998, copy attached. That injunction still is in effect and prohibits Williamson from raising its rate to Mountain until the Court allows it to do so.

In 1998 Williamson tried in West Virginia state court to increase its rate to \$1.87. That effort was removed to the United States District Court for the Southern District of West Virginia. "City of Williamson v. Mountain Water District", 98-CI-1046. Subsequently, that case was transferred to the United States District Court of the Eastern District of Kentucky, 99-CV-100. The Court reviewed Williamson's cost of service study supporting its proposed rate increase.

The Court found that it was deficient and could not be used to increase the rate. A copy of the Court's judgment is attached.

Thus, there are two federal court judgments rejecting the same proposed rate increase as Williamson has tendered to this Commission. The injunction issued in Case 97-CV-249 remains in effect. The Commission has no authority to vacate or otherwise modify or ignore this injunction. Williamson's effort to circumvent that injunction must be rejected. As the United States Supreme Court said many years ago:

It may not be doubted that the judicial power of the United States as created by the Constitution and provided for by Congress pursuant to its constitutional authority is a power wholly independent of state action, and which therefore, the several states may not by any exertion of authority in any form, directly or indirectly, destroy, abridge, limit, or render inefficacious. The doctrine is so elementary as to require no citation of authority to sustain it. Indeed, it stands out so plainly as one of the essential and fundamental conceptions upon which our constitutional system rests, and the lines which define it are so broad and so obvious, that unlike some of the other powers delegated by the Constitution, where the lines of distinction are less clearly defined, the attempts to transgress or forget them have been so infrequent as to call for few occasions for their statement and application. Benjamin F. Harrison v. St. Louis and San Francisco Railroad Co., 232 U.S. 318, 328 (1914).

The second question that was not raised by the Commission is what authority beyond that granted by statute does the Commission have to regulate utilities? KRS 278.040(2) states: "The jurisdiction of the commission shall extend to all utilities **in this state.**" Obviously, Williamson

Utility is outside Kentucky and beyond the scope of the Commission's jurisdiction. As the Kentucky Supreme Court has said on a number of occasions, the Commission has only that power delegated by the legislature. It cannot expand its power beyond that specified in the statutes. See Boone County Water and Sewer District v. PSC, Ky., 949 S.W.2d 588 (1997); PSC v. Attorney General, Ky. App., 860 S.W.2d 296 (1993); South Central Bell Tele. v. Utility Regulatory Commission, Ky., 637 S.W.2d 649 (1982). Because the statute limits the jurisdiction to in state utilities, the Commission cannot extend its authority across the border to regulate Williamson.

Williamson's previous efforts to increase its rate relied on several arguments inconsistent with its claim of jurisdiction by this Commission. It argued in the federal cases that the West Virginia PSC had jurisdiction over the rate for several reasons. The contract, attached, provides that it is to be governed by the laws of West Virginia. Williamson filed the proposed rate with the W.Va. PSC and argued that the filing validated the increase. Additionally, the W.Va. PSC in a response to Williamson's efforts to force Mountain to appear before the W.Va. PSC found that the filing of the proposed rate with that commission invoked its jurisdiction: "If an ordinance was passed by the City of Williamson regarding the rates to be charged Mountain Water District, such rates may not go into effect prior to compliance with the statutory requirements and the Commission's Rules." Letter of March 18, 1998, attached.

Williamson also argued before the federal courts that "...West Virginia PSC is the designated expert in regulating municipal utilities and has jurisdiction conferred upon it to regulate public utilities...As a result, the Court should dismiss this action so that Mountain Water can seek to resolve its disputes in front of the West Virginia PSC." Defendants' Reply to Plaintiff's Response to Motion to Dismiss for Lack of Subject Matter Jurisdiction, Civil Action

97-CV-249, September 22, 1997.

In that same pleading, Williamson addresses one of the Commission's questions in this case: "The Water Purchase Contract between Mountain Water and the City of Williamson clearly establishes that the transmission of services occurs in West Virginia... The Water Purchase Contract establishes the transmission point as within the boundaries of West Virginia. Contract Provision A.2 governs point of delivery and refers to Provision B.1.e, which states:

There shall be two (2) delivery points - one from the six inch main adjacent to U.S. Highway 52 on the Tug River near mile 55.2 [in West Virginia] and the other shall be from the twelve inch line at the intersection of Third Avenue and Short Street in the City of Williamson [West Virginia]."

Based on Williamson's arguments before the federal court, it has already admitted that there is no physical contact between Mountain and Williamson in Kentucky. That lack of contact seems to vitiate any applicability of City of Cincinnati, Ohio v. Commonwealth ex rel. Reeves, Ky., 167 S.W.2d 709 (1942). Furthermore, KRS 278.040(2) explicitly limits jurisdiction to utilities in Kentucky. The legislation involving taxes of out of state businesses did not contain that limitation.

If Williamson is not a Kentucky city, but more importantly is not a utility jurisdictional to the Commission, the Simpson County Water District v. City of Franklin, does not apply. That case only recognized the jurisdiction of the Commission over utilities that otherwise would be subject to regulation. Williamson being beyond the scope of the commission's jurisdiction cannot be included in the applicability of Simpson County, because it is not a utility or a city that is within the state.

Based on the facts of the case and the arguments previously made by Williamson, there

is no legal basis for it to seek relief from this Commission for a rate increase. It has tried the West Virginia PSC, West Virginia state court, federal court twice and now this Commission to get its rate increased. It has failed to follow the procedures of the contract and has failed to prove that its expenses have increased to warrant an adjustment of its rate. It now is bound by two judgments of the United States District Court for the Eastern District of Kentucky prohibiting any rate increase unless and until authorized by that Court. Its effort to get validation of its actions from the Commission is in complete disregard of the federal judgments. Even apart from those judgments, there are no facts that provide Williamson any legal sanction to petition this Commission for approval of a rate increase.

For these reasons, the tariff should be rejected.

Submitted By:

William D. Kirkland  
McBrayer, McGinnis, Leslie &  
Kirkland  
P.O. Box 1100  
Frankfort, KY 40601-1100

John N. Hughes  
124 W. Todd St.  
Frankfort, KY 40601

(502) 227-7270

By: 

ATTORNEYS FOR MOUNTAIN  
WATER DISTRICT

**Certification:**

I certify that a copy of this Brief was served on Dennis Vaughan, Jr., Vaughan & Withrow, Suite 200 Capital Centre, 232 Capitol St., Charleston, W. Va. 25301, and Robert Duncan, 175 E. Main St., Suite 500, Box 2150, Lexington, KY 40595-2150 Attorneys for Plaintiff, and Mayor Sam Kapourales, Box 1517, Williamson, W. Va., 25664 by First Class mail the 30th day of July, 1999.

  
John N. Hughes

**DECEMBER 4, 1998 JUDGMENT**

FILED

DEC 4 1998

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

AT FRANKFORT  
LESLIE G. WHITNER  
CLERK, U.S. DISTRICT COURT

CIVIL ACTION NO. 97-249

MOUNTAIN WATER DISTRICT,

PLAINTIFF,

V.

JUDGMENT

CITY OF WILLIAMSON, ET AL.,

DEFENDANTS.

\* \* \* \* \*

In accordance with the Order of even date and entered contemporaneously herewith,

IT IS HEREBY ORDERED:

(1) That this action be, and the same hereby is, STRICKEN FROM THE ACTIVE DOCKET;

(2) That this Order is FINAL AND APPEALABLE and THERE IS NO JUST CAUSE FOR DELAY.

This the 4<sup>th</sup> day of December, 1998.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service:

Eastern District of Kentucky  
FILED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

DEC 4 1998

AT FRANKFORT  
LESLIE G. WHITNER  
CLERK, U.S. DISTRICT COURT  
PLAINTIFF,

CIVIL ACTION NO. 97-249  
MOUNTAIN WATER DISTRICT,

V.

O R D E R

CITY OF WILLIAMSON, ET AL.,

DEFENDANTS.

\* \* \* \* \*

The plaintiff has moved the Court [Record No. 54] to modify its October 9, 1998, order, and the defendants have responded [Record No. 56]. This matter is now ripe for decision.

On October 8, 1998, a status conference was held in the above-styled action, and on October 9, 1998, the Court entered the minutes from the status conference into the record. The minutes contained the following language:

**ORDERS** that judgment is hereby GRANTED to the plaintiff on its complaint and the defendants are hereby ENJOINED from charging a rate increase until they can show this Court a demonstrable basis for defendants' cost. The plaintiff shall continue to pay the same rate (\$1.31) that was being charged prior to the new rate increase in 1987.

The plaintiff claims that the above language gives the defendant an opportunity to submit additional cost studies in order to justify a retroactive rate increase, and this is contrary to the Court's prior orders. The Court, however, disagrees.



In this action, it is undisputed that the defendant can raise its rate if it can demonstrate an increase in its costs.<sup>1</sup> The defendant claimed that the study conducted by Vallet & Associates justified the rate increase, and the plaintiff argued that the study did not support such a finding. After having a Special Master review the study, it was clear that the Vallet & Associates' study did not justify the defendants' proposed rate increase. The Court granted the plaintiff judgment on its complaint and issued an injunction precluding the defendant from raising its rates until it can show a demonstrable increase in its costs.

It should be pointed out that the Court did not allow the Special Master to consider any studies other than the one performed by Vallet & Associates because this was the only study that the defendants relied on to raise their rates; hence, the issue of whether there were other studies that would justify the rate increase was not before the Court. In the future, if the defendants can produce studies that justify a retroactive rate increase, they will be allowed to come forward with such evidence.

If the defendants can produce studies which show that their costs have increased, they are free to file a new complaint in a separate action asking the Court to set aside the injunction. As for now, however, the injunction will

---

<sup>1</sup> The subject contract is clear on this point.

remain in place, and this action will be stricken from the Court's active docket.<sup>2</sup> Accordingly,

**IT IS ORDERED:**

(1) That plaintiff's motion to modify [Record No. 54] be, and the same hereby is, **DENIED**;

(2) That Judgment be, and the same hereby is, **GRANTED** as to the plaintiff's complaint, and it will entered contemporaneously herewith;

(3) That defendants shall pay the plaintiff's attorney's fees associated with this action.<sup>3</sup>

This the 4<sup>th</sup> day of December, 1998.

*Joseph M. Hood*  
\_\_\_\_\_  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: DEC - 4 1998

NOTICE IS HEREBY GIVEN OF THE  
ENTRY OF THIS ORDER OR JUDGMENT  
ON.....12/4/98.....

LESLIE G. WHITMER, CLERK

BY *Malinda B...*.....D.C.

<sup>2</sup> In order to address the plaintiff's concern that this litigation will never end because the defendants will keep putting forward new studies until they get their rate increase, the Court will award the plaintiff its attorney's fees if the defendants submit another study for the Court's consideration that does not demonstrate an increase in costs.

<sup>3</sup> Plaintiff's attorney's fees must be reasonable, and the Court expects the parties to be able to agree on the amount without its Court's intervention.

FILED

DEC 4 1998

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT

CIVIL ACTION NO. 97-249

MOUNTAIN WATER DISTRICT,

PLAINTIFF,

V.

JUDGMENT

CITY OF WILLIAMSON, ET AL.,

DEFENDANTS.

\* \* \* \* \*

In accordance with the Order of even date and entered contemporaneously herewith,

**IT IS HEREBY ORDERED:**

(1) That this action be, and the same hereby is, **STRICKEN FROM THE ACTIVE DOCKET;**

(2) That this Order is **FINAL AND APPEALABLE** and **THERE IS NO JUST CAUSE FOR DELAY.**

This the 4<sup>th</sup> day of December, 1998.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: DEC -4 1998

NOTICE IS HEREBY GIVEN OF THE  
ENTRY OF THIS ORDER OR JUDGMENT  
ON...12-4-98.....

LESLIE G. WHITMER, CLERK

BY: *Melinda C. [Signature]*.....D.C.

59

**APRIL 29, 1999 JUDGMENT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

APR 29 1999

CIVIL ACTION NO. 99-100

CITY OF WILLIAMSON,

V.

JUDGMENT

MOUNTAIN WATER DISTRICT,

DEFENDANT.

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT  
PLAINTIFF,

\* \* \* \* \*

In accordance with the Court's Memorandum Opinion and Order of even date and entered contemporaneously herewith,

IT IS HEREBY ORDERED:

- (1) That this action be, and the same hereby is, DISMISSED WITH PREJUDICE and STRICKEN FROM THE ACTIVE DOCKET;
- (2) That this action is FINAL AND APPEALABLE and THERE IS NO JUST CAUSE FOR DELAY.

This is the 29<sup>th</sup> day of April, 1999.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: APR 30 1999

NOTICE IS HEREBY GIVEN OF THE ENTRY OF THIS ORDER OR JUDGMENT ON.....4/30/99.....

LESLIE G. WHITMER, CLERK

BY: *Malinda Kewin*.....D.C.

*42*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

Eastern District of Kentucky  
FILED

APR 29 1999

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT  
PLAINTIFF,

CIVIL ACTION NO. 99-100

CITY OF WILLIAMSON,

V. MEMORANDUM OPINION AND ORDER

MOUNTAIN WATER DISTRICT,

DEFENDANT.

\* \* \* \* \*

This matter is before the Court on Defendant's motion for summary judgment [Record No. 36]. The plaintiff filed a late response [Record No. 40]. Sufficiently briefed, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Defendant is a water district existing under the provision of K.R.S. Chapter 74. It exists for the purpose of providing a potable water supply to the public in and around the area of Pikeville and Pike County, Kentucky. The defendant purchases a portion of its potable water supply from the plaintiff through its Williamson Utility board within the defendant's boundaries in Pike County. A 1982 contract exists between the parties and provides that the plaintiff is to provide the defendant with up to 40 million gallons of water per month at the cost of \$1.31 per 1,000 gallons.

According to the complaint, Plaintiff passed an ordinance

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in January of 1998 stating that the sale price per 1,000 gallons of water would be increased to \$1.87. Defendant has continued paying the old rate of \$1.31 per 1,000 gallons based on the fact that Defendant believes the increase was not lawfully effectuated and the cost study upon which the increase was based was invalid.

The above-styled action is virtually identical to Pikeville Civil Action No. 97-249, *Mountain Water District v. City of Williamson*, which was recently before this Court. In Civil Action No. 97-249, *Mountain Water District*, the defendant herein, refused to pay the cost increase per 1,000 gallons set forth by the City of Williamson, the plaintiff herein. This Court ruled on October 9, 1998 that the City of Williamson was enjoined from raising its water rate to \$1.87 per 1,000 gallons until it can show this Court a demonstrable basis for said action. While Civil Action No. 97-249 was ongoing, the City of Williamson filed a state court action in Mingo County, West Virginia on September 8, 1998. This state court action eventually became the above-styled action after it was removed to federal court in West Virginia, and then transferred to the Undersigned on March 17, 1999.

#### CONCLUSIONS OF LAW

In deciding whether to grant summary judgment pursuant to Fed. R. Civ. P. 56, the Court must view the facts presented in a light most favorable to the non-moving party. See *Kocsis v. Multi-Care Management, Inc.*, 97 F.3d 876, 882 (6th Cir. 1996). If the Court finds that there are no genuine issues of material fact for the jury to consider, summary judgment may be granted. See *Street v. J.C. Bradford*, 886 F.2d 1472, 1479 (6th Cir. 1989).

In an effort to justify the rate increase in the above-styled action, the City of Williamson had a cost study prepared by the accounting firm of Smith, Cochran & Hicks. Todd Dingess, an expert on behalf of the City of Williamson, prepared the cost of service study. Mr. Dingess has stated that the Smith, Cochran & Hicks study was intended to validate a 1987 rate increase prepared by Vallet & Associates. Ironically, the Vallet & Associates study was the cost study presented in Civil Action No. 97-249. On October 9, 1998, this Court concluded that the Vallet & Associates study failed to present a demonstrable basis for an increase in the rates charged by the City of Williamson.

A review of the record leads this Court to conclude that the above-styled action is merely a repeat of Civil Action No.



97-249, with only a change in the name of the study. The Court discredits the Smith, Cochran & Hicks study for the above-stated reasons and finds that no genuine issues of material fact exists which would preclude summary judgment.

Accordingly,

IT IS ORDERED that Defendant's motion be, and the same hereby is, GRANTED.

This is the 29<sup>th</sup> day of April, 1999.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: APR 30 1999

NOTICE IS HEREBY GIVEN OF THE  
ENTRY OF THIS ORDER OR JUDGMENT  
ON 4/30/99  
LESLIE G. WHITMER, CLERK

BY Malinda [Signature] D.C.

**WATER SUPPLY CONTRACT**

USDA-FHA  
Form FIA 442-30  
(Rev. 4-19-72)

RECEIVED  
5/3

MAY 13 1987

PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 27th day of AUGUST, 1982, between the Williamson Utility Board

P.O. Box 1517, Williamson, West Virginia 25661  
(Address)

Pond Creek Water District

P.O. Box 129, Belfry, Kentucky 41514  
(Address)

hereinafter referred to as the "Purchaser";

WITNESSETH:

KRS Chapter 72

Whereas, the Purchaser is organized and established under the provisions of \_\_\_\_\_ of the

State of Kentucky for the purpose of constructing and operating a water supply distribution

system serving water users within the area described in plans now on file in the office of the Purchaser, and to accomplish

Whereas, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the

Resolution No. \_\_\_\_\_ enacted on the 14th day

of June, 1982, by the Seller, the sale of water to the Purchaser in accordance

with the provisions of the said contract was approved, and the execution of this contract

carrying out the said Resolution by the Chairman

Whereas, by Resolution of the Pond Creek Water District

of the Purchaser, enacted on the 3rd day of June, 1982

the purchase of water from the Seller in accordance with the terms set forth in the said Pike County Housing

Authority Contract by the Chairman

was approved, and the execution of this contract by the \_\_\_\_\_ and

attested by the Secretary was duly authorized;

Now, therefore, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. The Seller Agrees: \_\_\_\_\_

1. (Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the term of

this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the \_\_\_\_\_

West Virginia Department of Health

in such quantity as may be required by the Purchaser not to exceed 40 million gallons per month.

2. (Point of Delivery and Pressure) That water will be furnished at a reasonably constant pressure calculated approx. 70 psi/ (see below) from an existing          inch main supply at a point located         

Greater pressure than that normally available at the point of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failures of pressure or supply due to main supply line break, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the Seller from its provision for such reasonable period of time as may be necessary to restore service.

3. (Metering Equipment) To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring quantity of water delivered to the Purchaser, and to calibrate such metering equipment whenever requested by the Purchaser not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the last reading shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate

shall be corrected for the two months previous to such test in accordance with the percentage of accuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless Seller

and Purchaser shall agree upon a different amount. The metering equipment shall be read on last workday of month. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying readings.

4. (Billing Procedure) To furnish the Purchaser at the above address not later than the first day of each month, with an itemized statement of the amount of water furnished the Purchaser during the preceding second month.

The Purchaser Agrees:

(Rates and Payment Date) To pay the Seller, not later than the          day of each month, for water furnished in accordance with the following schedule of rates:

N/A for the first          gallons, which amount shall also be the minimum rate per month.

N/A cents per 1000 gallons for water in excess of          gallons but not less than          gallons.

         cents per 1000 gallons for water in excess of          gallons.

All accounts are net 20 days after receipt. Ten Percent (10%) penalty attaches after 20 days.

Wholesale Rate effective September 27, 1982 - \$1.31 per 1000 gallons.

There shall be two (2) delivery points - one from the six-inch service main adjacent to U.S. Highway 52 on the Tug River near mile 55.2, and the other shall be from a twelve-inch line at the intersection of Third Avenue and Short Street in the City of

Williamson.

2. (Connection Fee) To pay as an agreed cost, a connection fee to connect the Seller's system with the system of the Purchaser, the sum of COSE dollars which shall cover any and all costs of the Seller for installation of the metering equipment and at the locations above

C. It is further mutually agreed between the Seller and the Purchaser as follows: and thereafter at pleasure of Buyer

1. (Term of Contract) That this contract shall extend for a term of 40 years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser and, thereafter may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and Purchaser.

2. (Delivery of Water) That N/A days prior to the estimated date of completion of construction of the Purchaser's water supply distribution system, the Purchaser will notify the Seller in writing the date for the initial delivery of water.

3. (Water for Testing) When requested by the Purchaser the Seller will make available to the contractor at the point of delivery, or other point reasonably close thereto, water sufficient for testing, flushing, and trench filling the system of the Purchaser during construction, irrespective of whether the metering equipment has been installed at that time, at a rate charge of N/A which will be paid by the contractor or, on his failure to pay, by the Purchaser.

4. (Failure to Deliver) That the Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.

5. (Modification of Contract) That the provisions of this contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification at the end of every N/A year period. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder, but such rates shall not include increased capitalization of the Seller's system. Other provisions of this contract may be modified or altered by mutual agreement.

6. (Regulatory Agencies) That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

7. (Miscellaneous) That the construction of the water supply distribution system by the Purchaser is being financed by a loan made or insured by, and/or a grant from, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Purchaser are conditioned upon the approval, in writing, of the State Director of the Farmers Home Administration.

8. (Successor to the Purchaser) That in the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Purchaser hereunder.

9. The rate charges for water, may vary from time to time as the rates are subject to change by the appropriate action of the City Council of the City of Williamson, which rates, if changed, cannot become effective until the expiration of 45 days from the adoption of the rate ordinance. All rate changes shall be subject to the laws of the State of West Virginia and the rules and regulations of the West Virginia Public Service Commission and shall not be discriminatory between Public Service Districts served by Seller.

10. Seller agrees to furnish water to the Purchaser on a twenty-four (24) hour per day basis each day of the year, except for emergencies occasioned by supply line breaks, power failures, floods, excessive use of water in fighting fires, earthquakes, or other catastrophes which shall excuse the Seller from the provision requiring twenty-four (24) hour service for such reasonable periods of time as may be necessary to restore service.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this contract

to be duly executed in TWO counterparts, each of which shall constitute an original.

Witness the hand of Williamson Utility Board

Sold by Williamson Utility Board Seller

Witness the hand of W. L. Williams Buyer

Witness the hand of W. L. Williams Chairman

Witness the hand of W. L. Williams Secretary

Witness the hand of W. L. Williams Purchaser

Witness the hand of Pond Creek Water District

Witness the hand of B. O. French Chairman

Witness the hand of W. L. Williams Secretary

Witness the hand of W. L. Williams Purchaser

This contract is approved on behalf of the Farmers Home Administration this 7th day of September

1942

Witness the hand of W. L. Williams Secretary

Witness the hand of W. L. Williams Purchaser

Witness the hand of W. L. Williams Chairman

Witness the hand of W. L. Williams Secretary

Witness the hand of W. L. Williams Purchaser

Witness the hand of W. L. Williams Chairman

Witness the hand of W. L. Williams Secretary

Witness the hand of W. L. Williams Purchaser

Witness the hand of W. L. Williams Chairman

Witness the hand of W. L. Williams Secretary

Witness the hand of W. L. Williams Purchaser

Witness the hand of W. L. Williams Chairman

Witness the hand of W. L. Williams Secretary

Witness the hand of W. L. Williams Purchaser

Witness the hand of W. L. Williams Chairman

Witness the hand of W. L. Williams Secretary

**W.VA. PSC LETTER OF MARCH 18, 1998**

FURTHER JOINT STAFF MEMORANDUM

RECEIVED

98 MAR 18 PH 1:57

W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

TO: SANDRA NEAL  
Executive Secretary

FROM: J. JOSEPH WATKINS  
Staff Attorney

SUBJECT: CASE NO. 97-1660-PWD-W-C  
CHATTAROY PUBLIC SERVICE DISTRICT  
v. CITY OF WILLIAMSON

DATE: March 18, 1998

Attached is a Final Internal Memorandum from William A. Nelson, Utilities Analyst, Water and Wastewater Division, indicating Staff is continuing its investigation in this matter.

On December 30, 1997, the City of Williamson filed a Motion to Dismiss on the basis that the rates and charges for furnishing water service to the Chattaroy Public Service District had been duly adopted by the City of Williamson and were not now subject to review by the Commission. The Motion to Dismiss further stated that since 1987, the City of Williamson had billed the Mountain Water District (an entity located in Kentucky) at the rate of \$1.87 per thousand gallons but had been unable to collect at such rate from the Mountain Water District. The City further stated that the matter was the subject of civil litigation pending in the United States District Court for the Eastern District of Kentucky styled Mountain Water District v. The City of Williamson and the Williamson Utility Board, Civil Action No. 97CV249.

The Commission Staff agrees that the rates charged the Chattaroy Public Service District by Williamson have been in place since 1988. See tariff of City of Williamson on file in the Public Service Commission's tariff office. Accordingly, it is too late for the Chattaroy Public Service District to file a municipal appeal pursuant to West Virginia Code §24-2-4b. However, on January 12, 1998, the Chattaroy Public Service District sent, by facsimile transmission, what appears to be a newspaper article from a Williamson paper. This article, which is undated, states in part as follows:

Mayor Kapourales and Members of Council also approved the second and final reading of an ordinance providing a new rate for the sale of water to the Mountain Water Public Service District in Pike County, KY.

The rate will be effective 45 days after the Council meeting and will be increased from \$1.31 to \$1.87 per thousand gallons of water sold. The Mayor said a public hearing on the matter was held prior to the Council session.

West Virginia Code §24-2-4b, while limiting the Commission's jurisdiction over municipal utility rate increases, does require that certain information regarding municipal utility rate increases be filed with the Commission and that public notice be provided. Additional public notice is required by the Commission's Procedural Rule for Commission Review of Electric Cooperatives, Natural Gas Cooperatives, Telephone Cooperatives and Municipal Rate Changes Pursuant to West Virginia Code §24-2-4b. If an ordinance was passed by the City of Williamson regarding the rates to be charged the Mountain Water District, such rates may not go into effect prior to compliance with the statutory requirements and the Commission's Rules. A check in both



SANDRA NEAL

Case No. 97-1660-PWD-W-C

March 13, 1998

Page 2

the Commission Executive Secretary's office and the Commission Tariff Office indicate that the City of Williamson has not filed any information regarding a rate increase since 1988.

The Staff also notes that notwithstanding the fact that West Virginia Code §24-2-4b limits the Commission's ability to actively regulate the rates charged by the City, the fact remains that if the City is charging disparate rates of similar situated customers, such action would be subject to the Commission's review pursuant to West Virginia Code §24-2-7 as an unreasonable practice or procedure.

As requested by Mr. Nelson, the City should provide verification that it has billed the Mountain Water District the \$1.87 per thousand gallons as contained in the City's tariff. The City should also submit to the Commission copies of the proceedings in the Federal District Court case.

Commission Staff will issue its final recommendation once it has completed its investigation. Staff will also issue a data request upon the Complainant and Defendant in order to obtain the above described information.

JJW/cg  
Attachment

REH   
ALS 

971660AL83B



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

June 30, 1999

Sam Kapourales  
Mayor  
City of Williamson  
P. O. Box 1517  
Williamson, WV. 25661

Hon. John N. Hughes  
124 W. Todd Street  
Frankfort, KY. 40601

Hon. William D. Kirkland  
McBrayer, McGinnis, Leslie &  
Kirkland  
P.O. Box 1100  
Frankfort, KY. 40601 1100

RE: Case No. 99-276

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,  
*Stephanie Bell*

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE )  
WATER SERVICE RATES OF THE CITY OF ) CASE NO. 99-276  
WILLIAMSON, WEST VIRGINIA )

ORDER

The City of Williamson, West Virginia ("Williamson") has proposed to adjust its existing rate for wholesale water service to Mountain Water District ("Mountain District"). Williamson proposes that these revisions become effective on and after July 1, 1999. Mountain District has requested that the Commission suspend and investigate the proposed rate adjustment and has further moved to intervene in any Commission investigation of the proposed rate adjustment.

Having considered the proposed rate adjustment and being otherwise sufficiently advised, the Commission finds that:

1. Mountain District has a special interest in this proceeding which is not otherwise adequately represented, and its intervention is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting this proceeding.

2. Because Williamson is not a Kentucky city, and because the interstate nature of the transactions between Williamson and Mountain District and call the extent of the Commission's jurisdiction into question, the issue of jurisdiction must be explored prior to the institution of any proceedings concerning the reasonableness of the proposed rate.

3. The Commission should conduct further proceedings, pursuant to KRS 278.190, to determine the reasonableness of the proposed rate if jurisdiction is found to exist.

IT IS THEREFORE ORDERED that:

1. Williamson's proposed rate is suspended for five months from July 1, 1999 to November 30, 1999.

2. Mountain District is made a party to this proceeding. Any party filing testimony, exhibits, pleadings, correspondence or any other documents with the Commission shall serve a copy of such documents on Mountain District.

3. Within 30 days of the date of this Order, Williamson and Mountain District shall each file a written brief on the Commission's jurisdiction over the rates charged by Williamson to Mountain District. Each party's brief shall address the following issues:

a. Where does Williamson's sale of water to Mountain District occur?

(1) In what state does Williamson's sale of water to Mountain District occur?

(2) Where is the point(s) of delivery of water sold by Williamson to Mountain District?

b. What effect, if any, does the holding of City of Cincinnati, Ohio v. Commonwealth ex rel. Reeves, Ky., 167 S.W.2d 709 (1942), have on the Commission's authority to regulate the proposed wholesale rate?

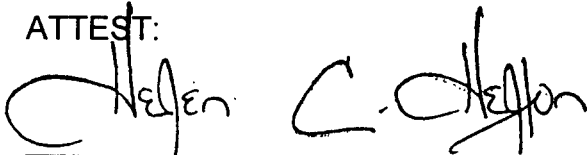
c. Are KRS 278.200 and the holding of Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994) applicable to this case if Williamson is not a Kentucky city?

d. If Williamson is not a "city" as the term is used in KRS 278.010(3),  
is Williamson a utility as defined in KRS 278.010(3)?

Done at Frankfort, Kentucky, this 30th day of June, 1999.

By the Commission

ATTEST:

A handwritten signature in cursive script, appearing to read "Helen C. Steffen". The signature is written in black ink and is positioned above a horizontal line.

Executive Director

99-00214

JOHN N. HUGHES  
*Attorney at Law*  
Professional Service Corporation  
124 WEST TODD STREET  
FRANKFORT, KENTUCKY 40601

Telephone:  
(502) 227-7270

Telecopier:  
(502) 875-7059

May 25, 1999

RECEIVED

MAY 25 1999

PUBLIC SERVICE  
COMMISSION

Helen Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
Frankfort, KY 40601

Re: Tariff Filing No. 08808100

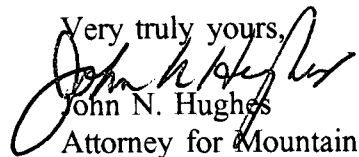
Case No. 99-276

Dear Ms. Helton:

Please file the Motion to Intervene and Objection to Tariff of Mountain Water District in response to the effort of the city of Williamson to raise its wholesale water rate to \$1.87 per 1000 gallons. Mountain believes that the increase is invalid and a direct violation of two federal court orders. Mountain's position is more fully explained in the Motion.

If you have any questions about this matter, please contact me.

Very truly yours,

  
John N. Hughes  
Attorney for Mountain  
Water District

cc: Will Brown  
Bill Kirkland  
Bob Duncan  
Dennis Vaughan  
Sam Kapourales  
Hon. Joseph Hood

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

Tariff Filing of ) Tariff No. 08808100  
City of Williamson )

MAY 25 1999

PUBLIC SERVICE  
COMMISSION

Case No. 99-276

MOTION TO INTERVENE AND OBJECTION TO TARIFF

Mountain Water District, by counsel, moves for full intervention in this matter pursuant to 807 KAR 5:001(8).

1. Mountain is a regulated water and sewer utility.
2. It has filed with the Commission tariffs providing for service to customers in the Pike County area.
3. It has a contract with Williamson Utility Board of Williamson, West Virginia for a portion of its water supply.
4. Its rates and service will be affected by the proposed rate increase filed by Williamson on May 17, 1999.
5. No other party to this action can represent the interest of Mountain.
6. Mountain can assist the Commission in the development of facts and the issues because of its familiarity with the issue presented in this matter.
7. Intervention will not unduly delay or disrupt the proceedings.

Additionally, there are facts that are pertinent to this tariff filing which were omitted from the letter from Mayor Sam Kapourales filed with the tariff. He indicates that Williamson has recently "received a rate change through our West Virginia Public Service Commission". Nothing could be farther from the truth. Indeed, rather than having a rate increase approved, the city has had that very rate increase rejected twice by the United States District Court, Pikeville Division.

A brief background of the city's efforts to raise Mountain's rate over the last several years may be useful. The city and Mountain entered into a water supply contract in August, 1982. That contract provides that the rate shall be \$1.31 per 1000 gallons of water sold. The rate can be increased only if Williamson can "demonstrate" that the cost of providing water to Mountain has increased. According to Williamson, it raised the rate in 1987 to \$1.87 per 1000 gallons. Mountain did not acknowledge this increase and did not pay the adjusted rate. It was not until June 21, 1997, that Williamson notified Mountain that its water sales would be terminated on July 1, 1997, because of the unpaid water bills dating back to 1987. The amount of arrearage claimed by Williamson amounted to almost \$1.5 million.

To avoid termination of service and to dispute the purported rate increase, Mountain filed suit in the United States District Court, Pikeville Division, Case No. 97-249. Mountain claimed among other things that Williamson had not complied with the contract and demonstrated an increase in cost of service to Mountain. After a review of the cost of service study prepared by Williamson to justify the increase by a Special Master appointed by the Court, it was determined that the Study did not support a rate increase. Consequently, the Court ruled on January 6, 1999, that the rate increase was not legally implemented and violated the contract. As part of his order rejecting the rate increase, Judge Hood "enjoined the defendants (Williamson) from charging a



rate increase until they can show this Court a demonstrable basis for defendants' costs.", copy attached.

In spite of the Court's order rejecting the rate increase to \$1.87, Williamson filed a complaint in Mingo Circuit Court, Mingo, West Virginia, to attempt to implement a rate of \$1.87 per 1000 gallons. Williamson claimed in this suit that it had implemented a new rate increase in January, 1997, to become effective in February, 1997. Williamson claimed that it had filed the new rate with the West Virginia PSC, therefore, it was a valid rate. As it was later revealed, Williamson had not filed the tariff in January, 1997, but did so in March, 1999, after the city's failure to do so was exposed during the course of the litigation.

Mountain removed the case from state to federal court in Charleston, West Virginia. The West Virginia Court agreed with Mountain that the case should be transferred to the United States District Court, Pikeville Division, Case No. 99-100. After a review of the record, including depositions of the cost of study experts of both Williamson and Mountain, the Court again rejected Williamson's attempt to raise Mountain's rate. The Court found that the cost of service study relied on by the city should be discredited and could not support the rate increase. The Court dismissed the case, leaving the rate at the original \$1.31 per 1000 gallons, copy attached.

The effect of this activity by Williamson is to confirm that its attempts in 1987, 1997 and now in 1999 are all based on the same unsubstantiated rate studies. Those studies have been rejected twice by the District Court. Yet, in spite of the city's multiple failed efforts to raise the rate to \$1.87, it is again making another attempt. The West Virginia tariff submitted to justify the rate increase is not effective. That tariff was the basis of the city's Mingo County Complaint, which was rejected by the District Court in April of this year. The mayor's representation that

the West Virginia PSC has filed the rate increase is clearly and perhaps intentionally misleading. The mayor is well aware of the two lawsuits. He has been mayor for the tenure of the litigation. Because of the two federal court proceedings involving this \$1.87 rate, there is no authority for the city to raise the rate and any effort to do so is in violation of the Court's orders.

For these reasons, Mountain moves for full intervention and for an order rejecting the tariff filing to increase Mountain's rate to \$1.87 per 1000 gallons.

Submitted By:

William D. Kirkland  
McBrayer, McGinnis, Leslie &  
Kirkland  
P.O. Box 1100  
Frankfort, KY 40601-1100  
(502) 223-1200

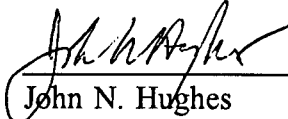
John N. Hughes  
124 W. Todd St.  
Frankfort, KY 40601  
(502) 227-7270

By: 

ATTORNEYS FOR MOUNTAIN  
WATER DISTRICT

Certification:

I certify that a copy of this Motion was served on Dennis Vaughan, Jr., Vaughan & Withrow, Suite 200 Capital Centre, 232 Capitol St., Charleston, W. Va. 25301, and Robert Duncan, 175 E. Main St., Suite 500, Box 2150, Lexington, KY 40595-2150 Attorneys for Plaintiff, and Mayor Sam Kapourales, Box 1517, Williamson, W. Va., 25664 by First Class mail the 25th day of May, 1999.

  
John N. Hughes

FILED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

APR 29 1999

CIVIL ACTION NO. 99-100

CITY OF WILLIAMSON,

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT  
PLAINTIFF,

V.

JUDGMENT

MOUNTAIN WATER DISTRICT,

DEFENDANT.

\* \* \* \* \*

In accordance with the Court's Memorandum Opinion and Order of even date and entered contemporaneously herewith,

IT IS HEREBY ORDERED:

- (1) That this action be, and the same hereby is, DISMISSED WITH PREJUDICE and STRICKEN FROM THE ACTIVE DOCKET;
- (2) That this action is FINAL AND APPEALABLE and THERE IS NO JUST CAUSE FOR DELAY.

This is the 24<sup>th</sup> day of April, 1999.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: APR 30 1999

NOTICE IS HEREBY GIVEN OF THE ENTRY OF THIS ORDER OR JUDGMENT ON.....4/30/99.....

LESLIE G. WHITMER, CLERK

BY: *Malinda Kvern*.....D.C.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

Eastern District of Kentucky  
FILED

APR 29 1999

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT  
PLAINTIFF,

CIVIL ACTION NO. 99-100

CITY OF WILLIAMSON,

V. MEMORANDUM OPINION AND ORDER

MOUNTAIN WATER DISTRICT,

DEFENDANT.

\* \* \* \* \*

This matter is before the Court on Defendant's motion for summary judgment [Record No. 36]. The plaintiff filed a late response [Record No. 40]. Sufficiently briefed, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Defendant is a water district existing under the provision of K.R.S. Chapter 74. It exists for the purpose of providing a potable water supply to the public in and around the area of Pikeville and Pike County, Kentucky. The defendant purchases a portion of its potable water supply from the plaintiff through its Williamson Utility board within the defendant's boundaries in Pike County. A 1982 contract exists between the parties and provides that the plaintiff is to provide the defendant with up to 40 million gallons of water per month at the cost of \$1.31 per 1,000 gallons.

According to the complaint, Plaintiff passed an ordinance

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in January of 1998 stating that the sale price per 1,000 gallons of water would be increased to \$1.87. Defendant has continued paying the old rate of \$1.31 per 1,000 gallons based on the fact that Defendant believes the increase was not lawfully effectuated and the cost study upon which the increase was based was invalid.

The above-styled action is virtually identical to Pikeville Civil Action No. 97-249, *Mountain Water District v. City of Williamson*, which was recently before this Court. In Civil Action No. 97-249, *Mountain Water District*, the defendant herein, refused to pay the cost increase per 1,000 gallons set forth by the City of Williamson, the plaintiff herein. This Court ruled on October 9, 1998 that the City of Williamson was enjoined from raising its water rate to \$1.87 per 1,000 gallons until it can show this Court a demonstrable basis for said action. While Civil Action No. 97-249 was ongoing, the City of Williamson filed a state court action in Mingo County, West Virginia on September 8, 1998. This state court action eventually became the above-styled action after it was removed to federal court in West Virginia, and then transferred to the Undersigned on March 17, 1999.

#### CONCLUSIONS OF LAW

In deciding whether to grant summary judgment pursuant to Fed. R. Civ. P. 56, the Court must view the facts presented in a light most favorable to the non-moving party. See *Kocsis v. Multi-Care Management, Inc.*, 97 F.3d 876, 882 (6th Cir. 1996). If the Court finds that there are no genuine issues of material fact for the jury to consider, summary judgment may be granted. See *Street v. J.C. Bradford*, 886 F.2d 1472, 1479 (6th Cir. 1989).

In an effort to justify the rate increase in the above-styled action, the City of Williamson had a cost study prepared by the accounting firm of Smith, Cochran & Hicks. Todd Dingess, an expert on behalf of the City of Williamson, prepared the cost of service study. Mr. Dingess has stated that the Smith, Cochran & Hicks study was intended to validate a 1987 rate increase prepared by Vallet & Associates. Ironically, the Vallet & Associates study was the cost study presented in Civil Action No. 97-249. On October 9, 1998, this Court concluded that the Vallet & Associates study failed to present a demonstrable basis for an increase in the rates charged by the City of Williamson.

A review of the record leads this Court to conclude that the above-styled action is merely a repeat of Civil Action No.

97-249, with only a change in the name of the study. The Court discredits the Smith, Cochran & Hicks study for the above-stated reasons and finds that no genuine issues of material fact exists which would preclude summary judgment.

Accordingly,

IT IS ORDERED that Defendant's motion be, and the same hereby is, GRANTED.

This is the 29<sup>th</sup> day of April, 1999.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: APR 30 1999

NOTICE IS HEREBY GIVEN OF THE  
ENTRY OF THIS ORDER OR JUDGMENT  
ON 4/30/99  
LESLIE G. WHITMER, CLERK

BY Malinda (B) D.C.

FILED

DEC 4 1998

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT

CIVIL ACTION NO. 97-249

MOUNTAIN WATER DISTRICT,

PLAINTIFF,

V.

JUDGMENT

CITY OF WILLIAMSON, ET AL.,

DEFENDANTS.

\* \* \* \* \*

In accordance with the Order of even date and entered contemporaneously herewith,

**IT IS HEREBY ORDERED:**

(1) That this action be, and the same hereby is, **STRICKEN FROM THE ACTIVE DOCKET;**

(2) That this Order is **FINAL AND APPEALABLE** and **THERE IS NO JUST CAUSE FOR DELAY.**

This the 4<sup>th</sup> day of December, 1998.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service:



Eastern District of Kentucky  
FILED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

DEC 4 1998

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT  
PLAINTIFF.

CIVIL ACTION NO. 97-249  
MOUNTAIN WATER DISTRICT,

V.

ORDER

CITY OF WILLIAMSON, ET AL.,

DEFENDANTS.

\* \* \* \* \*

The plaintiff has moved the Court [Record No. 54] to modify its October 9, 1998, order, and the defendants have responded [Record No. 56]. This matter is now ripe for decision.

On October 8, 1998, a status conference was held in the above-styled action, and on October 9, 1998, the Court entered the minutes from the status conference into the record. The minutes contained the following language:

**ORDERS** that judgment is hereby GRANTED to the plaintiff on its complaint and the defendants are hereby ENJOINED from charging a rate increase until they can show this Court a demonstrable basis for defendants' cost. The plaintiff shall continue to pay the same rate (\$1.31) that was being charged prior to the new rate increase in 1987.

The plaintiff claims that the above language gives the defendant an opportunity to submit additional cost studies in order to justify a retroactive rate increase, and this is contrary to the Court's prior orders. The Court, however, disagrees.

In this action, it is undisputed that the defendant can raise its rate if it can demonstrate an increase in its costs.<sup>1</sup> The defendant claimed that the study conducted by Vallet & Associates justified the rate increase, and the plaintiff argued that the study did not support such a finding. After having a Special Master review the study, it was clear that the Vallet & Associates' study did not justify the defendants' proposed rate increase. The Court granted the plaintiff judgment on its complaint and issued an injunction precluding the defendant from raising its rates until it can show a demonstrable increase in its costs.

It should be pointed out that the Court did not allow the Special Master to consider any studies other than the one performed by Vallet & Associates because this was the only study that the defendants relied on to raise their rates; hence, the issue of whether there were other studies that would justify the rate increase was not before the Court. In the future, if the defendants can produce studies that justify a retroactive rate increase, they will be allowed to come forward with such evidence.

If the defendants can produce studies which show that their costs have increased, they are free to file a new complaint in a separate action asking the Court to set aside the injunction. As for now, however, the injunction will

---

<sup>1</sup> The subject contract is clear on this point.

remain in place, and this action will be stricken from the Court's active docket.<sup>2</sup> Accordingly,

IT IS ORDERED:

(1) That plaintiff's motion to modify [Record No. 54] be, and the same hereby is, DENIED;

(2) That Judgment be, and the same hereby is, GRANTED as to the plaintiff's complaint, and it will entered contemporaneously herewith;

(3) That defendants shall pay the plaintiff's attorney's fees associated with this action.<sup>3</sup>

This the 4<sup>th</sup> day of December, 1998.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: DEC - 4 1998

NOTICE IS HEREBY GIVEN OF THE  
ENTRY OF THIS ORDER OR JUDGMENT  
ON... 12/4/98 .....

LESLIE G. WHITMER, CLERK

BY *Malinda B...* D.C.

<sup>2</sup> In order to address the plaintiff's concern that this litigation will never end because the defendants will keep putting forward new studies until they get their rate increase, the Court will award the plaintiff its attorney's fees if the defendants submit another study for the Court's consideration that does not demonstrate an increase in costs.

<sup>3</sup> Plaintiff's attorney's fees must be reasonable, and the Court expects the parties to be able to agree on the amount without its Court's intervention.

FILED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

DEC 4 1998

AT FRANKFORT  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT

CIVIL ACTION NO. 97-249

MOUNTAIN WATER DISTRICT,

PLAINTIFF,

V.

JUDGMENT

CITY OF WILLIAMSON, ET AL.,

DEFENDANTS.

\* \* \* \* \*

In accordance with the Order of even date and entered contemporaneously herewith,

IT IS HEREBY ORDERED:

(1) That this action be, and the same hereby is, **STRICKEN FROM THE ACTIVE DOCKET;**

(2) That this Order is **FINAL AND APPEALABLE** and **THERE IS NO JUST CAUSE FOR DELAY.**

This the 4<sup>th</sup> day of December, 1998.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: DEC - 4 1998

NOTICE IS HEREBY GIVEN OF THE  
ENTRY OF THIS ORDER OR JUDGMENT  
ON... 12-4-98 .....

LESLIE G. WHITMER, CLERK

BY: *Melinda C. Brown* D.C.

59

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

JAN 6 1999

CIVIL ACTION NO. 97-249  
MOUNTAIN WATER DISTRICT,

AT FRANKFORT  
LESLIE G. WHITMER  
EASTERN DISTRICT COURT

V. ORDER

CITY OF WILLIAMSON, ET AL.,

DEFENDANTS.

\* \* \* \* \*

The defendants have moved the Court to alter, amend, and/or vacate its judgment dated December 4, 1998. The plaintiff has responded [Record No. 61], to which the defendants have responded [Record No. 62]. This matter is now ripe for decision.

Although the defendants note that the Court has invited it to file an action asserting proof of a demonstrable increase in the costs of providing water, they argue that they have already filed a counterclaim which makes such assertions and should not have to file another action. Additionally, the defendants claim that until the counterclaim has been dealt with by the Court that it should not have to pay any attorney's fees.

The Court, however, disagrees with the defendants' position. This particular case was about the Vallet & Associates study. This study was reviewed by the Special Master, and plaintiff won. This Court has already told the defendants that it was not going to let them change course in midstream and that if they wanted to file another action, they were free to do so.

Furthermore, if the Court was going to entertain the defendants' additional studies in this action, it would have allowed them to present the additional studies to the Special Master for his consideration. The Court, however, refrained from doing this<sup>1</sup> because all of the defendants' prior correspondence to plaintiff asserted that they were basing the increase of costs on the Vallet & Associates study.<sup>2</sup> There is simply no reason to complicate this action by bringing up additional studies when this case was about only one study.<sup>3</sup>

Accordingly,

IT IS ORDERED that defendants' motion to reconsider be, and the same hereby is, DENIED.

This the 6<sup>th</sup> day of January, 1999.

*Joseph M. Hood*  
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: JAN -7 1999

<sup>1</sup> Any studies brought up in the defendants' counterclaim that were not analyzed by the Special Master are dismissed without prejudice. Additionally, judicial economy would not be served because a Special Master would still have to be appointed and review the additional studies.

<sup>2</sup> This action has always been about the defendants attempting to increase plaintiff's rate based on the Vallet & Associates study; this is why plaintiff brought suit.

<sup>3</sup> Because defendants were trying to improperly increase plaintiff's costs on the basis of the Vallet & Associates study, plaintiff is entitled to its costs. The Court expects the parties to be able to agree on plaintiff's costs without its intervention.

NOTICE IS HEREBY GIVEN OF THE  
ENTRY OF THIS ORDER OR JUDGMENT  
ON.....1-7-99.....

LESLIE G. WHITMER, CLERK

BY: *Leslie G. Whitmer* D.C.



SAM G. KAPOURALES  
MAYOR

*City of Williamson*

OFFICE OF THE MAYOR

P. O. BOX 1517 • PHONE (304) 235-1510

*Williamson, West Virginia 25661*

C60-562

RECEIVED

MAY 17 1999

PUBLIC SERVICE  
COMMISSION  
FRANCIS K. FRYE  
CITY CLERK

May 14, 1999

Ms. Helen Helton  
Executive Director  
Kentucky Public Service Commission  
730 Schenkel Lane  
Post Office Box 615  
Frankfort, Kentucky 40602

Case No. 99-276

Dear Ms. Helton:

08808100

The City of Williamson is unsure how to proceed with carrying out a change in the wholesale water rate to the Mountain Water District in Pike County, Kentucky. The Williamson Utility Board provides wholesale water to the Water District. The City has just received a rate change through our West Virginia Public Service Commission. The Public Service Commission regulates Cities in West Virginia. I understand this is not the case in Kentucky.

A member of my staff contacted Ms. Carryn Lee who said we should fill out the forms provided in the December 18, 1998 *Instructions to All Municipal Utilities Providing Wholesale Utility Service to Jurisdictional Public Utilities*. The completed form is attached. Ms Lee also said the City must notify the Water District. A copy of the letter to the Water District is also attached.

We are completely unaware of the regulations needed in Kentucky. If additional information is required, please call our City Clerk Francis Frye. She will get whatever other information is needed. A copy of the WV PSC Tariff has been included.

Sincerely,

Mayor Sam Kapourales

Public Service Commission  
of W. Va. Tariff Office

MAR 11 1999

Special Studies Section

P.S.C. W. Va. No. 11  
Canceling P.S.C. W. Va. No. 10

CITY OF WILLIAMSON, a municipal corporation  
OF  
WILLIAMSON, WEST VIRGINIA  
RATES, RULES AND REGULATIONS FOR FURNISHING  
WATER

Williamson, Mingo County, West Virginia and vicinity

Filed with THE PUBLIC SERVICE COMMISSION  
of  
WEST VIRGINIA

RECEIVED

MAR 11 1999

Public Service Commission of WV  
Utilities Division  
Special Studies Section

RECEIVED

FEB 10 1999

Public Service Commission of WV  
Utilities Division  
Special Studies Section

Issued January 21, 1999

Effective February 23, 1998  
or as otherwise provided herein

Passed by City Council

Issued by CITY OF WILLIAMSON, a municipal corporation

By

*[Signature]*  
*[Signature]*

Title



CITY OF WILLIAMSON

P.S.C. W. Va. Tariff No. 11  
Original Sheet No. 1

**RULES AND REGULATIONS**

I. Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

SCHEDULE NO. 2

APPLICABILITY

Applicable outside the corporate limits of the City of Williamson, Mingo County, West Virginia

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service

RATE (Based upon the metered amount of water supplied):

Up to	3,000 gallons used per month	\$15.08 per per month
3,000 to	20,000 gallons used per month	\$ 3.77 per 1,000 gallons
Next	30,000 gallons used per month	\$ 2.98 per 1,000 gallons
Next	50,000 gallons used per month	\$ 2.75 per 1,000 gallons
Next	900,000 gallons used per month	\$ 2.65 per 1,000 gallons
All over	1,000,000 gallons used per month	\$ 2.50 per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than the following amounts, according to the size of meter installed, to wit:

3/4	inch meter	\$ 15.08 per month
1	inch meter	\$ 28.95 per month
1 - 1/2	inch meter	\$ 65.15 per month
2	inch meter	\$ 116.15 per month
3	inch meter	\$ 260.58 per month
4	inch meter	\$ 481.05 per month
6	inch meter	\$1,042.37 per month
8	inch meter.	\$1,853.03 per month

WHOLESALE ACCOUNTS

The wholesale rate shall be \$1.87 per 1,000 gallons used per month.

PUBLIC FIRE PROTECTION

A charge of \$10.00 per year per fire hydrant in place shall be made by the City of Williamson to the Williamson Utility Board.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

CITY OF WILLIAMSON

P.S.C. W. Va. Tariff No. 11  
Original Sheet No. 4

SCHEDULE NO. 2 (Continued)

METER DEPOSIT

There shall be a meter deposit of \$25.00

UNMETERED ACCOUNTS

\$21.74

DISCONNECTION OR RECONNECTION FEE

A disconnection or reconnection fee for new service and/or removal for delinquent charges shall be Ten Dollars (\$10.00).

(N)

SCHEDULE NO. 3

The rate for the sale of water to the Mountain Water Public Service District will be \$1.87 per thousand gallons of water sold.

DELAYED PAYMENT PENALTY

The above schedule is net. Any bill not paid in full within twenty (20) days, ten percent (10%) will be added to the net amount thereof. This delayed payment penalty is not interest and is only to be collected once for each bill where it is a appropriate.

(N) Indicates new



SAM G. KAPOURALES  
MAYOR

*City of Williamson*  
OFFICE OF THE MAYOR  
P. O. BOX 1517 • PHONE (304) 235-1510  
*Williamson, West Virginia 25661*

RECEIVED

MAY 17 1999

PUBLIC SERVICE  
COMMISSION

FRANCES K. FRYE  
CITY CLERK

May 14, 1999

Ms. Toni Akers  
Chairperson of Mountain Water District  
347 Branham Heights  
Pikeville, Kentucky 41501

Dear Ms. Akers:

Water rate increases are never popular. Just like Mountain Water District did only a couple of years ago, Williamson is having financial problems. The City has filed and just received an approved water rate increase under the West Virginia Public Service Commission. The Public Service Commission regulates the City of Williamson just as the KY PSC regulates the Mountain Water District. It is our understanding that Cities in Kentucky are not covered by the PSC.

The rate affects not only the Mountain Water District but also our other three wholesale customers. The rate is being raised from \$1.37 to \$1.87. The new rate is being submitted to the Kentucky Public Service Commission in accordance with their instructions. The rate has been the same since 1982. A change after 17 years would certainly be understandable. Your utility has likewise had rate increases over that time.

The relationship between two entities is always difficult but the State line makes that even worse. A regular dialog between both staff and officials might begin to improve the communication and understanding. Williamson has a 4.5 mgd water plant and is only pumping 2 mgd. We want growth in eastern Pike County just as you do. The area holds a great potential for both of us.

I am more than willing to work with you and the other Board members.

Respectfully,

Mayor Sam Kapourales

CITY OF WILLIAMSON, A MUNICIPAL CORPORATION

OF

WEST VIRGINIA

Rates, Rules and Regulations for Furnishing  
WATER

AT

CITY OF WILLIAMSON

MINGO COUNTY

WEST VIRGINIA AND VICINITY

Filed with PUBLIC SERVICE COMMISSION OF  
KENTUCKY

ISSUED....., 19.....

EFFECTIVE....., 19.....

ISSUED BY CITY OF WILLIAMSON, WV

(Name of Utility)

BY *[Signature]*

Form for filing Rate Schedules

For Community, Town or City

P.S.C. NO. \_\_\_\_\_

\_\_\_\_\_ SHEET NO. \_\_\_\_\_

CANCELLING P.S.C. NO. \_\_\_\_\_

\_\_\_\_\_ SHEET NO. \_\_\_\_\_

CITY OF WILLIAMSON, WV  
Name of Issuing Corporation

CLASSIFICATION OF SERVICE

	RATE PER UNIT
WHOLESALE WATER RATE TO THE MOUNTAIN WATER DISTRICT PER 1,000 gallons.	1.87

DATE OF ISSUE May 14, 1999

DATE EFFECTIVE July 1, 1999

ISSUED BY *Sam Kaporales*  
Name of Officer

TITLE Sam Kaporales, Mayor

Issued by authority of an Order of the Public Service Commission of Kentucky  
in Case No. \_\_\_\_\_ dated \_\_\_\_\_.

FOR \_\_\_\_\_

P.S. Ky. No. \_\_\_\_\_

Sheet No. \_\_\_\_\_

Cancelling P.S.C. Ky. No. \_\_\_\_\_

Sheet No. \_\_\_\_\_

CITY OF WILLIAMSON, WV \_\_\_\_\_

RULES AND REGULATIONS

DELAYED PAYMENT PENALTY

The rate schedule is net. Any bill not paid in full within twenty (20) days, ten percent (10%) will be added to the net amount thereof. This delayed payment penalty is not interest and is only to be collected once for each bill where it is appropriate.

DATE OF ISSUE May 14 1999      DATE EFFECTIVE July 1 1999  
Month      Day      Year                      Month      Day      Year

ISSUED BY *Sam Kaporales*      Sam Kaporales, Mayor      \_\_\_\_\_  
Name of Officer                      Title                      Address