

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 03 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

Parksville Water District

v.

City of Danville

Case No. 2007-00405

Response to Parksville Motion to Withhold

The City of Danville ("the City") hereby responds to the motion of Parksville Water District ("Parksville") seeking a Commission order allowing it to withhold payment of part of the amounts billed by the City for wholesale water purchases, pending a final decision in this matter. In its Complaint, Parksville disputes the City's charges for water Parksville has purchased from the City and alleges that amounts it has been billed and paid are in excess of the contract rate. In its Motion, Parksville claims financial "harm" and "hardship," and asks allowance "to pay the last approved purchased water rate for all water purchased after the filing of the Complaint pending the outcome of this proceeding."

The City disputes that it is charging or has charged any rate that deviates from the contract rate. Nonetheless, in late November 2007, through counsel, the City initiated discussions with Parksville to negotiate a resolution of the dispute and to address Parksville's concerns. Those discussions are ongoing, and the City does not intend to restrict Parksville's options or capabilities in any way by this response to the Motion. The City opposes the relief requested because it appears to be unnecessary and may restrict the parties' ability to reach a negotiated compromise.

The relief is unnecessary because there is no reason (apparent or expressed) that Parksville cannot recover what it claims is "excess payment" through a purchased

water adjustment conforming to 807 KAR 5:068 (purchased water adjustment for water districts and water associations). The City understands that the regulation provides for an adjustment based on a preceding 12-month period and thus would not automatically cover the entire past period disputed by Parksville.¹ However, that 12-month limitation does not restrict recovery of any claimed “excess payment” during the pendency of this proceeding, and it is these payments — most of them in the future — that Parksville seeks to withhold.

Furthermore, the effect of the requested Commission allowance to pay something other than the amount billed is unclear. What Parksville apparently wants is for the Commission to prejudge the merits of the dispute and order the City of Danville to continue to provide water to Parksville at something other than contracted-for rates.² This change in the *status quo* is requested without showing any actual harm or hardship to Parksville, let alone an irreparable harm. Parksville does not even propose that it would escrow or set aside any amount in dispute or suggest how it will make the City whole for amounts it has not paid during these proceedings. The requested relief would also complicate or possibly foreclose Parksville’s recovery of its cost of water purchased, whether through a purchased water adjustment or otherwise.

WHEREFORE, the City of Danville respectfully suggests that the Commission deny Parksville’s Motion or, in the alternative, that the Commission enter an order that what Parksville claims is “excess payment” may be recovered through a purchased

¹ It is the City’s understanding that Parksville could petition the Commission for a deviation from the regulation such that recovery could extend farther into the past than “the twelve (12) month period ending within ninety (90) days immediately prior to the effective date of its rate adjustment to its customers,” 807 KAR 5:068, Section 2(2).

² Parksville does not even specify what it thinks is “the last approved purchased water rate” that it wants the Commission to “allow” it to pay.

water adjustment conforming to Commission regulations or Commission-approved deviations therefrom.

Respectfully submitted,

Edward D. Hays
SHEEHAN, BARNETT, HAYS, DEAN
& PENNINGTON, P.S.C.
114 South Fourth Street
P.O. Box 1517
Danville KY 40423-1517

Katherine K. Yunker
YUNKER & ASSOCIATES
P.O. Box 21784
Lexington, KY 40522-1784
859-255-0629
fax: 859-255-0746

By: 

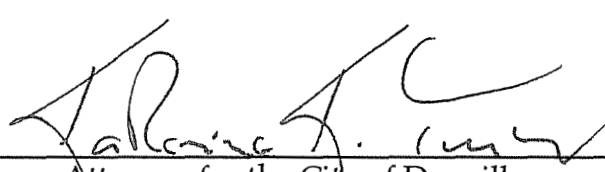
ATTORNEYS FOR THE CITY OF DANVILLE

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 3rd day of January, 2008, the original and ten (10) copies of this Response were hand-delivered for filing with the Commission, a conformed electronic copy was e-mailed to John N. Hughes and to Virginia W. Gregg, and a copy was served on counsel for the other party by first-class U.S. mail addressed to:

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

Attorney for Parksville Water District


Attorney for the City of Danville