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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

Parksville Water District)
)
v.) Case No. 2007-00405
)
City of Danville)

REPLY OF PARKSVILLE WATER DISTRICT

Danville's Answer and Response to Parksville's Complaint seem to take the approach that the failure to give notice to Parksville of the rate increases identified in the Complaint and the failure to follow Commission regulations are merely inconvenient procedural defects. However, cities' wholesale rates are regulated just as every other regulated utilities rates. Danville did not give either the Commission or Parksville notice of any rate increase or the effective date of the increase.

The District's first indication of a possible rate increase came after an internal review of bills showed a discrepancy in the amount billed and the effective rate. There was no notice that a rate increase had been approved by the city or that one had been submitted to the Commission. No rate can become effective unless and until that notice is given. No notice of the opportunity to intervene was given to the

Districts. The lack of notice fails to comply with 807 KAR 5:011 (8) and (9).

Contrary to Danville's apparent assumption, the notification to cities given by the Commission on December 18, 1998 is not a suggested directive. It is notification that pursuant to Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994), cities must comply with all applicable regulations. There are not separate rules for cities. That letter says in part that the procedures specified are those that "a municipal utility **must follow when changing its rates...**" The letter then explains the two options for raising the rates. The first involves filing a new rate schedule pursuant to KRS 278.180. A form for using this method is attached to the letter. The Commission emphasizes that "any filing that does not use this form will be rejected". The city did not use this method or submit the necessary forms to comply with this procedure.

Using this method also requires notice to the customer, which should "generally conform to the requirements of 807 KAR 5:001(10)(3)". That regulation requires that the following information be included in the notice: the amount of the rate increase, the effective date of the increase, the procedure for intervention. None of the required information was provided to the District or to the Commission.

The alternative method for filing a rate increase is pursuant to 807 KAR 5:001(10). None of the applicable information for compliance with this method was filed with the Commission. This deprived the District of the opportunity to object to the filing within thirty days after it was submitted to the Commission.

The critical statement of the Commission's letter of December 18th is: "Failure to follow these procedures will prevent the rates from becoming effective." Based on the Commission's regulations, Danville has not met any of the requirements for filing a rate increase or for having an increase approved by the Commission. Thus, the Commission has already established the penalty for the city's non-compliance - rejection of the rate increases.

In a case involving a similar deficient rate filing by a city, the Commission found in its Order of July 3, 2002, page 9 in Case No.2001-00212:

Not only did Russellville lack the authority to request any revision in its wholesale rate; it also failed to comply with the Commission's regulations regarding the filing of tariff changes. We also note the initial lack of compliance with Commission rules regarding the filing of tariff changes. In Simpson County Water District the Kentucky Supreme Court expressly held that "where contracts have been executed between a utility and a city... KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation." 472 S.W.2d at 363. Since Simpson County Water District, we have held that any rate schedules that a municipal utility submits must conform with Administrative Regulation 807 KAR 5:011. See e.g. Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Service to Public Utilities, Administrative Case No. 351 (Ky. PSC Aug. 10, 1994).

Administrative Regulation 807 KAR 5:011, Section 6, provides that "[n]o tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9 of this administrative regulation."

Section 6 clearly provides that the proposed rate revision must be upon proper tariff sheets. Russellville's filing was not on tariff sheets nor did it contain specific notations to the revisions as Section 6 requires. KRS 278.180 requires a utility's notice to the Commission to state "plainly the changes proposed to be made and the time when the changed rates will go into effect." The cost-of-service study and cover letter initially filed did not contain such statements. Administrative Regulation 807 KAR 5:011, Section 8, requires a utility to provide notice of any proposed rate change to affected customers. The record fails to indicate any evidence that the persons allegedly filing on behalf of Russellville complied with the requirements of this Section.

This case was appealed to the Supreme Court, which refused Discretionary Review. A copy of the Court of Appeals decision is attached. Thus, the Commission has previously addressed the issues raised by Parksville's Complaint and found that the city had not complied with the regulations applicable to all municipal utilities proposing a wholesale rate increase and the appellate court has confirmed the necessity of compliance

The Supreme Court has determined that the Commission may reject a filing for failure to comply with applicable regulations. In Union, Light, Heat and Power Co. V. Public Service Commission, Ky., 271 S.W.2d 361, 365 (1954), the Court upheld the Commission's refusal to implement new rates due to the utility's failure to submit necessary financial exhibits.

“An examination of the record reveals that the company did nothing more than comply with KRS 278.180 as to giving the notices...it neglected to follow any of the other requirements governing the procedures under [commission regulation] 17(b) ... nor did the company file with the commission the detailed financial reports specified by rules V-6 and VIII9b). The omission to follow any one of these regulations would justify the entry of the Order of February 29th.”

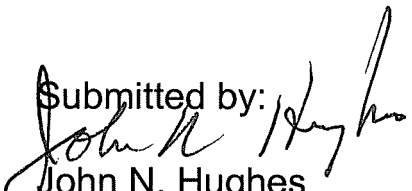
The city attempts to benefit from its failure to follow the regulations by suggesting that Parksville could seek some sort of retroactive application of a purchased water adjustment to allow recovery of a rate increase. There are several problems with this approach. First, there has been no rate filing. Second, there is no filed rate for Parksville to pass on to its customers through the PWA. Third, allowing the city to implement a rate with an effective date for a prior period amounts to retroactive ratemaking. If the city is allowed to impose and collect any rate increase based on the facts exposed by Parksville in its Complaint, the city will be rewarded for ignoring, intentionally or otherwise, the Commission’s regulations. This only encourages disregard for the regulations, rewards non-compliance and penalizes the customers the regulations are intended to protect.

The Commission can avoid these problems by declaring the rate void from the date of increase. The city should not be allowed to

benefit from its violations of the Commission's regulations. "It is an old truth that one will not be permitted to profit from his own wrong."

Webster Co. v. Nance, Ky., 362 S.W.2d 723, 725 (1962).

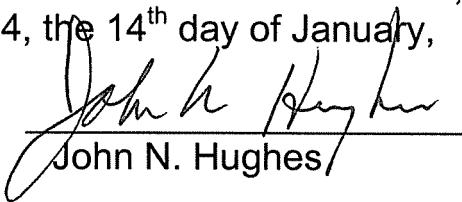
For these reasons, Parksville requests that the Commission reject the city's attempt to raise its wholesale rate and to order the city to provide a schedule of rates charged since January, 2005, the effective dates of the rate changes and the amounts collected at the various rates.

Submitted by: 
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Certificate:

I certify that a copy of this Response was mailed to Edward Hays, Box 1517, Danville, KY 40423-1517 and Katherine Yunker, Box 21784, Lexington, KY 40522-1784, the 14th day of January, 2008.


John N. Hughes