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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALLEGED FAILURE OF THE CITY OF DANVILLE  
TO COMPLY WITH KRS 278.160 AND 278.180 )  
AND THE COMMISSION'S ORDER OF AUGUST ) CASE NO. 2008-00176  
10, 1994 IN ADMINISTRATIVE CASE NO. 351 )  
)

**RESPONSE OF PARKSVILLE WATER DISTRICT**

**TO DANVILLE'S MOTION TO DISMISS**

Parksville Water District, by counsel, opposes the motion to dismiss filed by Danville on February 9, 2009. In its Order of May 22, 2008, the PSC initiated an investigation into the billing rates of Danville. That order says in part:

The Commission has examined the billing statement for water service that Danville provided Garrard County for the month of January 2008. Based upon the rate schedule presently on file with the Commission and the amount of water billed, Danville should have billed Garrard County \$9,950.76. Danville actually billed Garrard County \$10,585 for water usage and \$168.83 for Kentucky River Authority withdrawal fees.<sup>15</sup>

On September 13, 2007, Parksville District filed with the Commission a complaint against Danville in which it alleged that on or after August 2005 Danville began billing at a rate for wholesale water service that deviated from its filed contract rate.<sup>16</sup> In a response to discovery in this proceeding, Danville has admitted that it has adjusted its wholesale rates three times since September 1, 2005.<sup>17</sup> Commission records do not reveal any evidence that Danville provided the required notice to the Commission of these revisions.

Based upon the foregoing and being otherwise sufficiently advised, the Commission finds that prima facie evidence exists that Danville has violated KRS 278.160, KRS 278.180, and the Commission's Order of August 10, 1994 in Administrative

Case No. 351 by failing to notify the Commission of its proposed increase in its wholesale water service rate prior to implementing such increase.

1. Danville shall show cause in writing within 20 days of the date of this Order:

a. why it should not be subject to the penalties prescribed in KRS 278.990(1) for its alleged failure to comply with the provisions of KRS Chapter 278 and of the Commission's Order of August 10, 1994 in Administrative Case No. 351; and,

b. why it should not be required to refund all monies collected from its wholesale public utility customers that are in excess of the rate set forth in its water purchase contracts with those customers.

2. In its written response to this Order, Danville shall respond to the allegations in this Order regarding its failure to comply with the provisions of KRS Chapter 278 and of the Commission's Order of August 10, 1994 in Administrative Case No. 351.

The Motion filed by Danville says that it has sought clarification of the issues and allegations against it, but such clarification has not been provided. The Order of May 22<sup>nd</sup> clearly specifies the issues in the case. There is *prima facie* evidence based on the Commission's investigation to find that Danville has not complied with the Administrative Order 351 and KRS 278.160 and 278.180.

This case requires Danville to "show cause" to the Commission why it has not violated those mandatory requirements for increasing its wholesale rate. KRS 278.260 gives the Commission authority to initiate investigations independent of a complaint by a customer. The burden to respond to the allegations is entirely on Danville. It has admitted in discovery responses that it has not given notice to the wholesale customers of a rate increase and that it has not filed a tariff change with the Commission. It has admitted that it has increased rates to the wholesale customers three times. Those admissions in

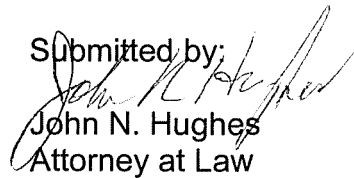
and of themselves are sufficient for the Commission to find that Danville is in violation of the filing requirements and that it should be subject to penalties.

The lack of response from Garrard County Water Association and Lake Village Water Association is not sufficient to dismiss this case. The increases in water rates to Parksville are specifically mentioned in the Order as a basis for the finding of a *prima facie* case against Danville. Even if the other two parties to the case do not actively participate, the issues raised in the Order still apply to the rate increases affecting Parksville and the findings as to Danville's violation of the Commission's statutes and orders. Danville is simply attempting to shift the burden to the customers. Danville knows when the rates were increased, the billing periods affected, the amount billed to each customer and the amount paid by each customer. All facts necessary to conclude this case are in the possession of Danville.

This matter is one between the Commission and Danville based on the actions of Danville in increasing its wholesale rate. The Commission's findings and its responsibility to enforce the statutes have not been mitigated by the lack of "clarification" of the issues that Danville alleges. Danville must prove to the Commission that it gave notice of the rate increases. No information from the customers is required for that proof. Dismissing this case will only reward Danville for violating the statutes and for continuing to delay the resolution of this matter.

For these reasons, the motion should be denied.


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Certificate:

I certify that a copy of this pleading was served on the parties listed below by first class mail the 12<sup>th</sup> day of February, 2009.

  
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