

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ADEQUACY)
OF THE WATER SUPPLY OF MAGOFFIN) CASE NO. 2008-00443
COUNTY WATER DISTRICT)

O R D E R

This matter is before the Commission on its own motion pursuant to KRS 278.260 and KRS 278.280. On October 10, 2008, Governor Steven L. Beshear signed Executive Order 2008-1056 (the "Executive Order") which declared a state of emergency to exist "in Magoffin County, Kentucky within the watershed of the Licking River, from the headwaters to the intersection of the Licking River and Morgan County line...." The Executive Order contains several recitals which document the existing condition of the water supply in Magoffin County:

WHEREAS, the Commonwealth has experienced severe rainfall shortages in 2007 and 2008, which condition has led to severe and extreme drought in both years, low stream flows, depleted lakes and ponds, reduced flow from springs and a lowered groundwater table; and

WHEREAS, extreme drought conditions have now developed in Magoffin County and caused flows to cease in the headwaters of the Licking River which serves as a primary source of public water supply for the city of Salyersville and Magoffin County Water District; and

WHEREAS, public water supply in Magoffin County now relies on two wells that are not capable of meeting the current demand for public water supply in Magoffin County; and

WHEREAS, these conditions endanger the public health and safety and threaten the public welfare of the citizens of Magoffin County; and

WHEREAS, this threat requires the conservation and efficient use of the remaining sources of public water supply and pursuit of alternative sources of public water supply to address both the immediate condition and prevent future threats to public health and safety[....]

The Executive Order further directs:

1) The Energy and Environment Cabinet, the Cabinet for Health and Family Services and the Public Service Commission shall take every action necessary to prevent a complete loss of public water supply from occurring in the city of Salyersville and Magoffin County. These actions may include, but are not limited to, a temporary restriction on the rate of water withdrawal by Salyersville Municipal Water, providing technical guidance and support for water supply and water treatment issues and other actions as needed.

...

3) The Energy and Environment Cabinet, the Cabinet for Health and Family Services and the Public Service Commission shall coordinate their activities with the Division of Emergency Management in the Department of Military Affairs to maximize the effectiveness of the agencies and to be prepared should a general state of emergency in Magoffin County arise.

The Executive Order was entered following a series of telephone conference calls involving Commission Staff, the Kentucky Department of Military Affairs' Division of Emergency Management ("DEM"), the Energy and Environment Cabinet's Division of Water ("DOW"), the Department of Public Health within the Cabinet for Health and Family Services ("Public Health") and local officials in Salyersville and Magoffin County. These calls took place on October 8, 2008 and October 9, 2008. In the course of the

calls, Salyersville officials advised that an interconnection would be made to the Paintsville municipal water system on Tuesday, October 14, 2008.

Water is supplied to residents of Magoffin County by two principal suppliers – the Salyersville Municipal Water System (“Salyersville”) and Magoffin County Water District (“Magoffin District”). Magoffin District is a water district established pursuant to KRS Chapter 74 and is a utility subject to the Commission’s jurisdiction.¹ Salyersville supplies water to Magoffin District pursuant to a Water Purchase Agreement dated January 26, 1983.² Its provision of water to Magoffin District is subject to the Commission’s jurisdiction.³

Based upon the recitals set forth in the Executive Order, the Commission finds that drought conditions in the upper Licking River watershed have limited the supply of water to Salyersville. The limited water supply to Salyersville has also resulted in a limited supply of water to Magoffin District. Nonetheless, KRS 278.030(2) requires Magoffin District to “furnish adequate, efficient and reasonable service” to its customers.

The Commission finds that there is sufficient cause to commence this investigation pursuant to KRS 278.260 and KRS 278.280. This proceeding is commenced to investigate the adequacy of the source of water supply to the Magoffin District. In addition to the DOW, Magoffin District and Salyersville will be made parties

¹ KRS 278.015.

² The Water Purchase Agreement has been amended several times since its creation. The substance of those amendments does not affect the Commission’s jurisdiction here.

³ KRS 278.200; *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 465 (Ky. 1994).

to this proceeding. A copy of this Order will also be served upon the DEM, Public Health, and the Attorney General. Each agency is invited to make individual determinations as to whether it should seek intervention in this proceeding.

IT IS THEREFORE ORDERED that:

1. The DOW, Magoffin District, and Salyersville are made parties to this proceeding.

2. A copy of this Order shall be served upon the DEM, Public Health, and the Attorney General.

3. Magoffin District, Salyersville, and the DOW shall, no later than October 29, 2008, file written responses to the questions set forth in Appendices A, B, and C.

a. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record and 6 copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, shall be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

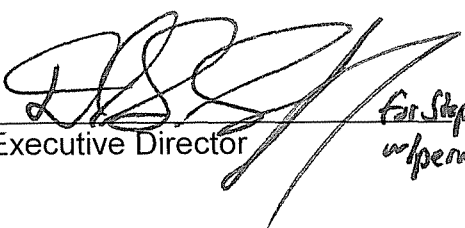
c. Any party shall make timely amendment to any prior responses if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any requests to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Done at Frankfort, Kentucky, this 17th day of October, 2008.

By the Commission

ATTEST:


Executive Director *for Stephanie Stumbo*
w/permission

Case No. 2008-00443

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2008-00443 DATED OCTOBER 17, 2008

DATA REQUEST TO MAGOFFIN DISTRICT

1. State whether Magoffin District believes that it possesses an adequate source of supply of water. Provide all information supporting its belief.
2. Identify all existing sources of water supply to Magoffin District, including the following information:
 - a. Supplier.
 - b. Maximum, minimum, and average gallons per day ("gpd").
 - c. Date service was first provided.
3. Identify the maximum, minimum, and average daily consumption of water for Magoffin District for 2008.
4. State approximately how much demand for water (in gpd) in the Magoffin District system is reduced through:
 - a. Voluntary conservation measures.
 - b. Mandatory conservation measures.
5. Identify all voluntary and mandatory water conservation efforts that have been initiated in the past 6 months and state the date of each effort.
6. State whether you have considered increasing the water supply to Magoffin District. If yes, what alternatives have you considered?

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2008-00443 DATED OCTOBER 17, 2008

DATA REQUEST TO SALYERSVILLE

1. State whether Salyersville believes that it possesses an adequate source of supply of water to serve Magoffin District. Provide all information supporting this belief.
2. State approximately how much demand for water (in gpd) in the Salyersville system is reduced through:
 - a. Voluntary conservation measures.
 - b. Mandatory conservation measures.
3. Identify all voluntary and mandatory water conservation efforts that Salyersville has initiated in the past 6 months and state the date of each effort.
4. State whether Salyersville has considered increasing the water supply to Magoffin District. If yes, what alternatives has Salyersville considered?
5. State whether Salyersville is required to file a water shortage response plan with DOW. If yes, provide a copy of the plan most recently filed with DOW.

APPENDIX C

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2008-00443 DATED OCTOBER 17, 2008

DATA REQUEST TO DOW

1. Provide any and all information that indicates whether Magoffin District has an adequate source of supply of water.
2. State whether the water supply to Magoffin District satisfies applicable state and federal quality standards. If not, provide information to support this response.