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Mark David Goss
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May 25, 2007

Mr. James Owen
Christian County Water District
P.O. Box 7
Hopkinsville, KY 42241-0007

Re: Municipal Water Meter Testing

Dear Mr. Owen:

Commission Staff acknowledges receipt of your letter dated April 26, 2007, in which you request an opinion regarding requirements of a municipality to test its water meters that service a public utility.

Commission Staff understands that Christian County Water District ("CCWD"), a water district organized pursuant to KRS Chapter 74, has received wholesale water service from Hopkinsville Water Environment Authority ("HWEA") since the parties entered into a Water Purchase Contract on June 29, 1973. There have been multiple amendments, extensions, and addendums to the contract during the past thirty years.

Your letter suggests that in recent years CCWD has been concerned with the accuracy of HWEA's water meters. You state that after reviewing certain water meter test results, you noticed what you "felt were some irregularities and some possible skewed reporting. Other reported results did not appear to be tested using the correct volume measurements for that size or type of meter." In addition, you inform that

Many of these meters have been in service for years and some have been spot tested by the Water District, but to the best of our knowledge the city has refused to test and or report these meters as requested and required by our wholesale contract. We realize that we as a regulated utility must test our meters in accordance with the regulations which govern these procedures. We assume that a city does not have this same responsibility. However, we also assume that if, by choice they fail to test in accordance with the minimum testing requirements as established by state regulations for governing weight and measurements, they forfeit their right to compensation for failure to comply.

Attached to your letter, you offered the results of ten meter tests requested by HWEA and performed by Neptune Equipment Company ("Neptune"). The tests were conducted on the various meters between November 1, 2006 and March 1, 2007. In addition, you submitted the results of two meter tests that CCWD requested from D&K Meter and Hydrant Repair, which were conducted on August 2, 2006. These two tests were on two of the meters tested by Neptune on March 1, 2007. You also attached two letters from Len Hale, General Manager of HWEA, to CCWD dated May 18, 2005 and April 27, 2007.

Your letter makes a general request to "share [Commission Staff's] thoughts and concerns" with you. Although Commission Staff is hesitant to accept such a broad request, we are willing to offer our interpretation on the core legal question you present. We start by noting that the Supreme Court of Kentucky has determined that where a contract has been executed between a city and utility, the city waives its exemption to regulation under KRS 278.010(3) and is therefore subject to Commission regulation of rates and service. Simpson County Water Dist. v. City of Franklin, 872 S.W.2d 460, 463 (Ky. 1994).

The Commission has elaborated on that case and stated, "To the extent that a municipal utility is subject to our jurisdiction, it must comply with our regulations." In re Water Purchase Agreement Between Kentucky-American Water Company and Winchester Municipal Utilities, Case No. 2001-00230 (Ky. PSC Oct. 19, 2001) at 2. This would suggest that a municipal utility that has entered into a contract to provide wholesale service to a utility is required to comply with Commission regulations related to testing of meters.

Commission Staff declines to comment on the various test results that you attached to your letter. The facts that are presented in those reports speak for themselves. To the extent CCWD is worried that the results reveal that it was over-charged for its water needs, this appears to be a moot point. The April 23, 2007 letter from Len Hale to Ashbel Brunson indicates HWEA's agreement to pay CCWD for over-charged amounts.

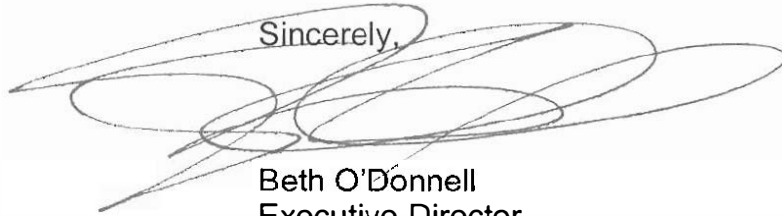
HWEA's failure to comply with Commission metering regulations would not release CCWD from its obligation to pay for water service. KRS 278.160 requires a utility customer to pay the rate set forth in its filed rate schedules. In Boone County Sand & Gravel Co. v. Owen County Rural Elec. Coop. Corp., 779 S.W.2d 224, 225-26 (Ky. Ct. App. 1989), the Kentucky Court of Appeals held that under KRS 278.160, a public utility could not be estopped from collecting undercharges even where the customer was negligently under-billed. It said that to hold otherwise would result in the under-billed customer receiving rate preference in contravention of the statutory scheme. Id. Therefore, under the filed rate doctrine, a customer would still be required

to compensate a utility for water, regardless of whether the utility complied with testing regulations.

If CCWD cannot resolve its dispute with HWEA on this issue, KRS 278.260 provides a possible remedy. This statute allows a person to bring a complaint regarding the reasonableness of any practice, method, or facilities used to provide service. Should the Commission determine that the existing method or practice is unreasonable, it may determine the appropriate method or practice that should be used.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Todd Osterloh, Staff Attorney, at (502) 564-3940, Extension 439.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the typed name.

Beth O'Donnell
Executive Director