

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRIGHT & KUBALE WATER COMPANY, INC.)	
COMPLAINANT)	
)	
VS.)	CASE NO.
)	89-217
HEDGEVILLE WATER ASSOCIATION)	
DEFENDANT)	

O R D E R

On August 1, 1989, Bright and Kubale Water Company, Inc. ("Bright and Kubale") filed a complaint against Hedgeville Water Association ("Hedgeville") to compel Hedgeville to assume ownership of Bright and Kubale's water system. On August 23, 1989, Hedgeville filed its Answer to the Complaint, affirmatively responding by requesting that Bright and Kubale be directed to upgrade its water system to bring it into compliance with the Commission's regulations and to pay the cost of connecting the Bright and Kubale system to Hedgeville before Hedgeville is required to extend service to Bright and Kubale customers. On October 23, 1989, certain named individuals were permitted to intervene as full parties to these proceedings.

FINDINGS OF FACT

Bright and Kubale is a closely held corporation and owns and operates facilities used to distribute and furnish water to the public for compensation. It currently serves 30 customers, 28 of

whom reside in the Lakedale Subdivision in Boyle County. Bright and Kubale does not own or operate a water treatment plant. Instead, it purchases treated water from the city of Danville. Water is delivered to the Bright and Kubale system through a 2-inch galvanized main that runs from a master meter attached to the city of Danville's system on the north side of Herrington Lake to the Lakedale Subdivision on the other side of the lake. To reach the subdivision, the 2-inch main crosses along the bottom of the lake.

The original water line was installed to furnish water to a grade A dairy barn operated by Edwin Kubale, Jr., one of the principal owners of the corporation. The line was later extended to property owned by Bob Bright, another principal shareholder of the corporation, and to the residence of Edwin Kubale, Jr. Later, Edwin Kubale, Jr. and his brother, Rube Kubale, developed the Lakedale Subdivision and lines were extended into the subdivision to serve the residents living there. The subdivision is platted into 54 lots, but only 28 have been developed. While there is some potential for further development in the subdivision, all the desirable locations have been sold, and the likelihood of more development is questionable.

Bright and Kubale does not charge a fee to connect to its system. Instead, new customers are only required to purchase a meter and a meter box from Bright and Kubale. Originally, the meter and meter box cost \$250, but the cost has risen in recent years to the present level of \$350. New customers have the option of installing the meter and meter box in the ground at their own

expense or having them installed by Bright and Kubale for an additional fee. The water meters measure consumption in cubic feet. Bright and Kubale does not have a water meter testing program and many of the residents believe the meters are inaccurate.

Bright and Kubale reports that the water system produces revenues of \$500 to \$660 a month from 30 paying customers. One customer is attached to the system but currently uses no water and refuses to pay the minimum bill. The average bill according to Bright and Kubale should be between \$16 and \$20 per month. However, one of the customers reports that her bill usually averages between \$29 and \$42 a month. This discrepancy is not explained and raises some questions concerning the accuracy and reliability of the meters used in the system. In any event, the system is operated at a loss by Bright and Kubale whose principal shareholders have been required to subsidize the difference between revenues and expenses. This, however, does not seem to be a matter of concern to them since they also receive free water in exchange for their services.

What is a matter of concern to them is their continued ability to operate the system. One of the principals, Edwin Kubale, Jr., is 64 years of age and feels he is no longer able to perform the physical and managerial work necessary to keep the system in operation. For this reason, he and the other principal shareholder of the corporation are willing to give the Bright and Kubale water system to Hedgeville, or to anyone else who may be interested, if they will assume its operation.

Hedgeville is a water association created pursuant to KRS Chapter 273 for the purpose of furnishing water services to the general public and holds a Certificate of Public Convenience and Necessity from this Commission for that purpose. It provides service to an area adjacent to the Bright and Kubale system. Like Bright and Kubale, Hedgeville purchases treated water from the city of Danville. Like the Bright and Kubale customers, Hedgeville customers are charged for the water they use based upon the volume consumed. However, unlike Bright and Kubale whose meters measure consumption in cubic feet, Hedgeville meters measure consumption in gallons.

Hedgeville's water distribution system was constructed with a grant of \$110,000 and a loan of \$359,000 from the Farmers Home Administration ("FmHA"). Originally, Hedgeville intended to construct a system that would include the area now served by Bright and Kubale, and Bright and Kubale customers were included in a survey filed with the FmHA as a part of Hedgeville's application for the grant and loan. However, the funds provided by the FmHA were not adequate to construct a system that would serve all customers included in the survey and some of the customers surveyed were eliminated from the final plans. Among those eliminated were the Bright and Kubale customers. However, it was Hedgeville's intention that the Bright and Kubale customers, as well as all others living within the general area served by Hedgeville, would eventually be brought into the system.

Although Bright and Kubale customers reside adjacent to the Hedgeville system and Bright and Kubale is willing to transfer to

Hedgeville ownership of its system, Hedgeville is reluctant to accept it. The water mains in the Bright and Kubale system are below the minimum sizes required by Commission regulations, and according to a report prepared for Hedgeville by GRW Engineers, Inc., the estimated cost to connect the two systems and bring Bright and Kubale into compliance with Commission regulations would be \$69,120. Hedgeville does not have sufficient funds to pay for the connection and would have to finance the cost with a loan. Assuming such a loan could be obtained from the FmHA at the interest rate of 7 3/4 percent, the annual debt service for such a loan would be \$6,777.24.

Although Hedgeville would gain additional customers for its system by inclusion of the Bright and Kubale water system, those customers would not generate sufficient revenues to offset the debt payments on a loan of that size. It is estimated that the Bright and Kubale customers would generate revenues for Hedgeville of \$6,724 and increase expenses by \$4,707. The balance of \$2,017 would not be sufficient to pay the debt service and the difference would have to be made up by both the Hedgeville customers and the Bright and Kubale customers.

Bright and Kubale maintains that the cost of connecting the two systems would be much lower. It relies upon a report made by Ronald C. McMaine of Howard K. Bell Consulting Engineers, Inc. Mr. McMaine believes that even though the existing mains in the Bright and Kubale system are smaller than required by the Commission's regulations, they provide an adequate flow of water and they meet the pressure requirements of Commission regulations.

Mr. McMaine recommends that the Commission be requested to approve the continued use of the Bright and Kubale system.

Mr. McMaine also believes that Hedgeville can eliminate a pressure reducing valve that GRW recommended be installed between the two systems. By keeping the existing water lines and eliminating the pressure reducing valve, Mr. McMaine estimates that it will cost approximately \$15,000 to connect the two systems. Based upon an interest rate of 7.125 percent, the annual debt service for a loan of that amount would be \$1,370. This debt could be paid from revenues generated by customers presently on the Bright and Kubale system.

CONCLUSIONS OF LAW

Bright and Kubale and Hedgeville are utilities within the meaning of KRS 278.010 and in accordance with KRS 278.012 and krs 278.015. Both utilities are subject to the jurisdiction of this Commission.

By its complaint, Bright and Kubale seeks approval to discontinue service to customers of its water distribution system and to compel Hedgeville to assume ownership and operation of the system. Approval by this Commission to abandon the system is required by KRS 278.020(4) and it is inherent in the Commission's authority "to see that the service of public utilities is adequate." Public Service Commission, the cities of Southgate, etc. 268 S.W.2d 19, 21 (Ky., 1954). Therefore, approval to abandon service cannot be given to Bright and Kubale unless its customers are assured of continued adequate service.

The authority of the Commission to compel a utility to extend

service is found in KRS 278.280(3). That section of the statute provides in part:

Any person or group of persons may come before the Commission and by petition ask that any utility be compelled to make any reasonable extension.

KRS 278.010(2) defines a "person" to include corporations such as Bright and Kubale. Thus, Bright and Kubale is authorized by statute to request that Hedgeville extend its service to Bright and Kubale customers, and the only issue presented is whether the proposed extension is reasonable.

Generally, the criteria for determining if a proposed extension by a utility is reasonable is whether the proposed extension will serve consumers within the territory currently served by the utility, and whether the proposed extension will place an unreasonable burden upon the utility. 64Am.Jur.2d, Public Utilities, §43 and 44. Here the Bright and Kubale customers all reside adjacent to the area now served by Hedgeville. Therefore, the only question is whether the extension of service to Bright and Kubale customers will place an unreasonable burden upon Hedgeville.

The position of the Bright and Kubale customers under the present circumstances is, at best, tenuous. The source of their water is a 2-inch pipe of unknown physical condition which runs beneath Herrington Lake. If the pipe fails, then the whole system fails. In addition, the system relies upon its principal shareholders for its daily operation and maintenance. These individuals, because of their age, may no longer have the ability

to maintain the system and keep it in operation. Under these circumstances Hedgeville should be required to extend services to the Bright and Kubale customers.

To compel Hedgeville to extend service and bear the entire cost of such an extension would impose an unreasonable burden upon Hedgeville's current customers. Therefore, the costs associated with connecting the two systems should be apportioned between the two water companies. Under the circumstances, a reasonable apportionment would require Hedgeville to bear the cost of extending its system to the Bright and Kubale system, and for Bright and Kubale to bear the cost of replacing its meters with new meters that are the same kind used by Hedgeville, and installing such other equipment and hardware necessary for the operation of the new meters. Bright and Kubale should also be responsible for the cost of any repairs or improvements that the Bright and Kubale system will require for a period of one year, up to a total cost of \$15,000, with Hedgeville being responsible for any expenditures in excess of that amount. To ensure payment of such repairs or improvements, Bright and Kubale should execute and deliver to Hedgeville a performance bond secured by a corporate surety, or other sufficient collateral, to guarantee payment. Bright and Kubale should also convey to Hedgeville, by proper instruments, all of its assets, real or personal, tangible or intangible, including, but not limited to, its easements and rights-of-way.

After the systems are connected, Hedgeville should be granted approval, pursuant to 807 KAR 5:066, Section 11(2)(a), to operate

the Bright and Kubale system with the existing distribution lines. Bright and Kubale customers should be charged the same rates for services that Hedgeville charges its other customers and should be subject to the same rules and regulations that are applicable to all other customers of Hedgeville.

IT IS THEREFORE ORDERED that:

1. Bright and Kubale shall, at its own expense, replace its meters with new meters that are of the same kind used by Hedgeville and install any other equipment and hardware necessary for the installation and operation of these meters. Bright and Kubale shall fully comply with this requirement within 60 days of the date of this Order and, upon compliance, shall so notify the Commission in writing.

2. After Bright and Kubale has complied with ordering paragraph 1 herein, but within 90 days of the date of this Order, Bright and Kubale shall convey by proper instruments to Hedgeville, and Hedgeville shall accept, all of Bright and Kubale's assets, real or personal, tangible or intangible, including but not limited to its easements and rights-of-way.

3. Hedgeville shall, at its own expense, extend its system to the Bright and Kubale system. Such extension shall be made within 60 days after Bright and Kubale has complied with ordering paragraphs 1 and 2 herein, and upon compliance with this requirement, Hedgeville shall so notify the Commission in writing.

4. In addition to the improvements mentioned in ordering paragraph 1 herein, Bright and Kubale shall bear the cost of any repairs or improvements that the Bright and Kubale system will

require for a period of up to one year from the date of this Order, not to exceed a total cost of \$15,000. To secure performance of this provision, Bright and Kubale shall, within 90 days of the date of this Order, execute and deliver to Hedgeville a performance bond in the principal amount of \$15,000 secured by a corporate surety or other sufficient collateral to guarantee payment. Bright and Kubale shall provide the Commission with proof of compliance with this requirement by filing a copy of the bond with this Commission upon delivery of the original to Hedgeville.

5. Except for those improvements mentioned in ordering paragraph 1 herein, Hedgeville shall bear the cost of any repairs and improvements that the Bright and Kubale system will require during the first year of its operation by Hedgeville which are in excess of \$15,000.

6. Hedgeville shall be permitted to operate the Bright and Kubale system with the existing lines for as long as they can provide an adequate flow of water and water pressure to consumers receiving service from those lines in accordance with 807 KAR 5:066, Section 6(1) and Section 11(2)(a), and such other regulations of the Commission now in force, or hereafter promulgated, that are applicable.

7. Upon execution of conveyance of the Bright and Kubale system to Hedgeville in compliance with ordering paragraph 2 herein, the former customers of Bright and Kubale shall be charged the same rates as other Hedgeville customers and shall be subject to the same rules and regulations of such other customers.

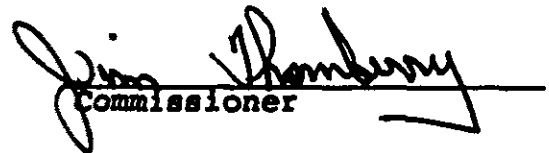
8. Bright and Kubale shall notify, individually, each of its customers of the conveyance to Hedgeville of the water system and shall notify each customer by U.S. mail, postage-paid, of the Hedgeville rates and charges, including the date of conveyance. The notice shall be mailed to the customers no later than the date of the conveyance, with a copy of each notice mailed to the Commission.

Done at Frankfort, Kentucky, this 2nd day of October, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director