

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION AND NOTICE OF KENTON COUNTY )  
WATER DISTRICT NO. 1: (A) TO ISSUE )  
REVENUE BONDS IN THE APPROXIMATE PRINCIPAL )  
AMOUNT OF \$16,160,000 (A PORTION FOR )  
REFUNDING OF BOND ANTICIPATION NOTES); )  
(B) TO CONSTRUCT ADDITIONAL PLANT ) CASE NO. 91-046  
FACILITIES OF APPROXIMATELY \$8,317,000; )  
(C) NOTICE OF ADJUSTMENT OF RATES )  
EFFECTIVE MAY 1, 1991; AND, (D) APPROVAL, )  
IF NECESSARY, OF CONTINUING MISCELLANEOUS )  
LONG-TERM INDEBTEDNESS )

O R D E R

Taylor Mill Utilities Commission ("Taylor Mill") and the city of Newport ("Newport") have applied for rehearing on the Commission's Order of November 8, 1991. Taylor Mill contends that the rate established for it by that Order is unsupported by the evidence of record and is contrary to the terms of an agreement between it and Kenton County Water District No. 1 ("Kenton District"). Newport requests that the Order be amended to prevent any wholesale customer of Kenton District from receiving a rate reduction at this time. The Commission denies both applications.

The Commission first addresses Taylor Mill's application. In its Order, the Commission rejected Taylor Mill's contention that debt service and depreciation expense associated with the Hands Road Pump Station and the new five million gallon storage tank should not be included in determining Kenton District's rate to Taylor Mill. This action, Taylor Mill argues, essentially

abrogates its July 9, 1981 Agreement with Kenton District in which the water district agreed to build the pump station and provide additional water storage in return for the construction and use of a 12-inch water line and the right to serve the city of Independence.

The Agreement, however, is silent on which utility should bear the cost of these two facilities. In contrast, it expressly provides that Kenton District shall bear the operating and maintenance expense associated with the Grand Avenue Pump Station. Furthermore, nothing in the testimony of Taylor Mill's witnesses supports the contention that Kenton District agreed to bear the total cost of other facilities. In the absence of a specific provision on this point, the Order does not conflict with the July 9, 1981 Agreement. Assuming arguendo that it did conflict with the Agreement, the Agreement has no binding force. Bd. of Education v. William Dohrman, Inc., Ky. App., 620 S.W.2d 328, 329 (1981) (the Commission has "the right and duty to regulate rates and service, no matter what a contract provided"). As the record clearly shows that the Hands Pump Station and the new five million gallon tank are used to provide service to Taylor Mill, some of the expenses associated with the operation of these facilities

should be included in the rate charged to Taylor Mill. Therefore, Taylor Mill's application for rehearing should be denied.<sup>1</sup>

The Commission now turns to Newport's application. Newport contends that the Commission erred in using Kenton District's cost-of-service study to establish rates. It requests that no rate reduction should be granted to any wholesale customer without a comprehensive cost-of-service study. Although Newport advances several arguments in support of its application, the Commission has previously considered and rejected most of them in the Order of November 8, 1991. We address only the new arguments.

First, Newport contends that the Order is premised upon Campbell County Kentucky Water District ("Campbell District") purchasing 92 percent of its total water requirements from Newport. Upon entry of the November 8, 1991 Order, Campbell District began purchasing its total water requirements from Kenton District. As a major premise of the November 8, 1991 Order is no longer valid, Newport argues, the Order must be set aside.

Possible changes in Campbell District's water purchasing patterns do not render the Order invalid. "Rate-making, by its very nature, is prospective and in order to neutralize the negative effects of speculation and guess work about future economic conditions, it is accepted practice to base future rates

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<sup>1</sup> This Commission expresses no opinion on Taylor Mill's contention that its Order of November 8, 1991 nullifies the July 9, 1981 Agreement and, as a result, permits Taylor Mill to charge Kenton District for the use of Taylor Mill's water mains.

upon known past . . . conditions through the use of data gathered through a specified test period." Narrangansett Elec. Co. v. Harsch, 368 A.2d 1194, 1206 (R.I. 1977). The Order is properly based upon Campbell District's historic water purchasing patterns during the previous five years.

The Commission recognizes that the new rates may result in changes in Campbell District's water purchasing patterns. For that reason, Kenton District was ordered to file quarterly reports on the level of its sales. These reports will allow the Commission to monitor Kenton District's sales. If changes in Kenton District's rates are needed to reflect new purchasing and sales patterns, the Commission will act accordingly.

Newport also argues that the newly established rates will create a perception of unfairness and inequality and will not be acceptable to retail customers. This argument is without merit. The Order of November 8, 1991 establishes rates based upon the cost of service. Disparities in wholesale customer rates exist because the cost of serving each wholesale customer varies. Rates which are not based on cost are more likely to create a perception of unfairness than cost-based rates. No customer likes to subsidize another customer's service. As to retail customer acceptance of the new rates, the record reveals no protest against the new rates by retail customers.

Finally, Newport contends that the new rates will adversely affect economic conditions in the northern Kentucky region, i.e. the new rates will permit Campbell District to take all its water requirements from Kenton District and discontinue service from

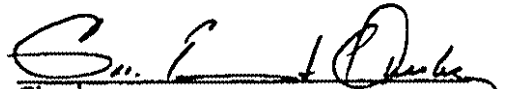
Newport, thus leaving Newport with excessive and unused capacity. According to Newport, they will also undermine the Commission's efforts in other proceedings.

The Commission, as previously noted, recognizes the potential impact of its Order. It cannot, however, use its rate-making powers for the purpose of protecting existing water suppliers nor does it possess, pursuant to KRS chapter 278, the authority to consider the effect of the new rates on Newport in reaching its decision. Accordingly, the Commission finds that Newport's application for rehearing should be denied.

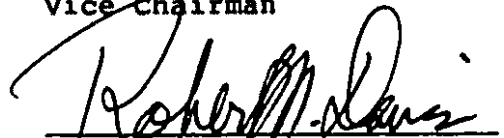
IT IS THEREFORE ORDERED that the applications of Taylor Mill and Newport for rehearing are denied.

Done at Frankfort, Kentucky, this 17th day of December, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director