

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE TARIFF FILING OF KENTON COUNTY)	
WATER DISTRICT NO. 1 TO PROVIDE FREE)	CASE NO. 96-020
WATER FOR FIRE PREVENTION)	

O R D E R

Kenton County Water District No. 1 ("Kenton District") proposes to provide free water service to fire departments for "emergencies and their prevention." At issue is whether a public utility may provide free water service to municipal fire departments for fire protection purposes. As KRS 278.035 and KRS 278.170(2) currently prohibit such service, the Commission denies the proposed rate revision.

On December 27, 1995, Kenton District proposed a revision to its existing rates to provide for free water service to fire departments within its service territory for "emergencies and their prevention." The utility defines "emergencies" as "fire, flood, environmental and natural disasters"¹ and prevention as "[t]raining/drills and hydrant testing."² It states that the proposed rate is "neither a new rate nor a revised rate,"³ but reflects the utility's historical customer. In calendar year 1995, Kenton District provided approximately 9,094,532 gallons of water at no charge to local fire departments.

¹ Kenton District's Response to the Commission's Order of March 8, 1996, Item 2(a).

² Id. at Item 2(b).

³ Letter of Dennis L. Willaman (General Manager, Kenton County Water District No. 1) to Don Mills (Executive Director, Public Service Commission of Kentucky) (Dec. 22, 1995)

The proposed rate revision conflicts with KRS 278.035 which provides:

Any entity receiving public funds from the Commonwealth of Kentucky, or any political subdivision thereof, for the purpose of offsetting at least fifty percent (50%) of its operational expenses shall not be entitled to preferential retail rates for services provided by utilities subject to the provisions of KRS Chapter 278.

With the exception of two fire departments, all of the fire departments which will receive free water service under the proposed rate are municipal fire departments and are financed through municipal funds. Municipalities are political subdivisions of the Commonwealth. See City of Pineville v. Meeks, 254 Ky. 167, 71 S.W.2d 33 (1934). See also Kentucky Center for the Arts Corporation v. Berns, Ky., 801 S.W.2d 327 (1991); Norvell v. City of Danville, Ky., 355 S.W.2d. 689 (1962); City of Lexington v. Hager, Ky., 337 S.W.2d 27 (1960). As free water service constitutes a preferential rate and as a political subdivision of the Commonwealth finances the operational expenses of the recipients of this free service, KRS 278.035 prohibits the proposed rate.⁴

Assuming arguendo that KRS 278.035 is not applicable, the proposed rate runs afoul of KRS 278.170(1) which provides:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

⁴ The Point Pleasant Fire Department and Southern Hills Fire Department are not municipal fire departments. KRS 278.035, however, would also prohibit free water service to these fire departments if they received state funds equal to at least fifty percent (50%) of their operational expenses.

Clearly, the proposed rate gives a preference to fire departments over other users.⁵ Kenton District has not explained why, given that most of the recipients of this preference have the authority to levy taxes or are eligible for state funding, the proposed preferential rate is reasonable.

Noting that KRS 278.170(2)⁶ permits free service "for the purpose of providing relief" in cases of "calamity," Kenton District contends that its proposed rate is expressly authorized. While Kenton District contends that the fire service will cover a wide variety of events, it is readily apparent that the principal use of this service will be for fire protection. A fire department's principal function is fire prevention and protection. Considering the context in which the term appears in KRS 278.170(2), the Commission

⁵ It also prefers fire departments over private citizens who maintain their own fire protection systems. Currently such customers must pay for any water drawn from private fire hydrants. See Kenton County Water District No. 1's 1st Revision Sheet No. 6, Section IX.

⁶ KRS 278.170(2) provides:

Any utility may grant free or reduced rate service to its officers, agents or employees, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents and employees of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence or other calamity. The terms "officers" and "employees," as used in this subsection, include furloughed, pensioned and superannuated officers and employees, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.

concludes that fires, absent unusual circumstances, would not constitute a "calamity."

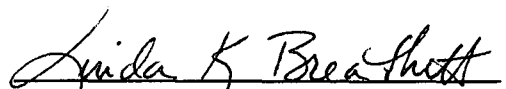
KRS 278.170(2) refers to "calamity" in the same context as a "flood," an "epidemic," or "pestilence." These events involve disasters on a much larger scale than most fires.


Based upon the above, the Commission finds that Kenton District's proposed rate revision must be denied. It is, however, sympathetic to Kenton District's efforts. While the present statute makes no provision for free or reduced rate service, the Commission urges Kenton District to resubmit its proposed rate revision on or after July 15, 1996, when House Bill 349 becomes effective. This legislation permits a utility to provide free or reduced rate service for the purpose of fighting fires or training firefighters and exempts the provision of such service from the prohibition against preferential rates. It requires, however, that those receiving free service "maintain estimates of the amount of water used for fire protection and training, and to report this water usage to the utility on a regular basis." The Commission, therefore, advises Kenton District that any future proposal should establish reporting requirements for the recipients of free water service.

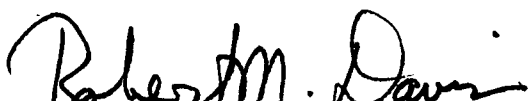
IT IS THEREFORE ORDERED that: Kenton District's proposed rate revision is denied.

Done at Frankfort, Kentucky, this 24th day of June, 1996.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director