

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WATER PURCHASE AGREEMENT BETWEEN)	
NORTHERN KENTUCKY WATER SERVICE)	CASE NO. 2000-237
DISTRICT AND BULLOCK PEN WATER DISTRICT)	

O R D E R

Northern Kentucky Water District (“NKWD”)¹ and Bullock Pen Water District (“Bullock Pen”) have petitioned for rehearing of the Commission’s Order of July 6, 2000. Their petition poses these two issues: (1) Does NKWD’s agreement with Rural Development for the financing of its Subdistrict C main extension prohibit NKWD from assessing Bullock Pen more than one monthly surcharge for water furnished through that main extension? (2) If that agreement does not prohibit the assessment of more than one monthly surcharge, is NKWD’s assessment of 10 surcharges per month for Bullock Pen’s use of the water main extension unreasonable?² Finding in the negative on both issues, the Commission approves the parties’ Water Purchase Agreement (“the Agreement”) without modification.

¹ While this proceeding was pending, NKWD amended its name from Northern Kentucky Water Service District to Northern Kentucky Water District.

² On July 26, 2000, NKWD and Bullock Pen petitioned for rehearing. The Commission granted their petitions on August 15, 2000 and directed that a hearing be held in this matter. At NKWD’s request, a conference between the parties and Commission was held on September 15, 2000. On October 12, 2000, the parties filed the Stipulations that they had negotiated with Commission Staff. They further waived their right to an evidentiary hearing and requested an immediate decision based upon the existing record.

NKWD is a water district that is organized pursuant to KRS Chapter 74. It owns and operates facilities used to distribute and furnish water to approximately 60,051 retail customers in Boone, Campbell, Kenton, and Pendleton counties, Kentucky.³ It also provides wholesale water service to Boone District, Pendleton County Water District, and the cities of Florence, Bromley, Ludlow, Taylor Mill, and Walton. It is a utility subject to Commission jurisdiction. KRS 278.015.

Bullock Pen is a water district organized under KRS Chapter 74. It provides retail water service to 4,962 customers in Boone and Grant counties, Kentucky.⁴ Bullock Pen receives most of its treated water from its water treatment facility, but the production capacity of this facility is very limited. In addition, it currently purchases a significant portion of its total water requirements from the cities of Williamstown and Walton, Kentucky. Bullock Pen is a utility subject to Commission jurisdiction. KRS 278.015.

On April 16, 2000, NKWD executed the Agreement with Bullock Pen for the sale of water. Under the Agreement, NKWD agreed to supply Bullock Pen a minimum volume of 150,000 gallons of water per day, averaged on a monthly basis, at a rate of \$1.44 per 1,000 gallons of water. NKWD further agreed to supply this water through a 12-inch water distribution main that runs from US Route 25 to the intersection of US Route 25 and Kentucky Route 14 and to deliver this water at a point at or near the intersection of US Route 25 and Kentucky Route 14.

³ Annual Report of Northern Kentucky Water Service District for the Year Ended December 31, 1999 at 29.

⁴ Annual Report of Bullock Pen Water District for the Year Ended December 31, 1999 at 29.

For its part, Bullock Pen agreed to purchase a minimum volume of 150,000 gallons of water per day, averaged on a monthly basis, at the agreed rate. It further agreed to construct and install, at its own cost, a master meter and a meter pit and a water main to receive water from NKWD. It also agreed that, upon completion of the construction and installation of the master meter and the meter pit, it would transfer ownership of the master meter and meter pit to NKWD. A 6-inch water meter would be used to serve Bullock Pen.

In addition to the rate for water service, Bullock Pen also agreed to pay to NKWD monthly an amount equal to 10 surcharges assessed to NKWD's Subdistrict C customers. To pay the cost of financing the construction of the 12-inch water distribution main that serves Subdistrict C, NKWD currently assesses a monthly surcharge of \$30 on each Subdistrict C retail customer.⁵ During their negotiations NKWD and Bullock Pen recognized that Bullock Pen should contribute to the cost of the 12-inch water distribution main and agreed upon a payment of 10 monthly surcharges for this contribution.⁶

NKWD and Bullock Pen submitted the Agreement to the Commission for approval. On July 6, 2000, we approved the Agreement with one modification. We found that the assessment of 10 surcharges on Bullock Pen conflicted with the terms of

⁵ Case No. 99-150, The Application and Motion of Northern Kentucky Water Service District to Construct an Extension, and to Institute a Surcharge Under KRS 278.023 with No Change in Northern's General Water Rates; Estimated Funding of \$5,200,000, in Large Measure by USDA, Plus Community Efforts (May 17, 1999).

⁶ The parties stipulated that this provision was the product of negotiation and was not derived through the use of any engineering standard, formula, model, or publication.

an agreement between Rural Development (“RD”) and NKWD (“RD Agreement”) by which the Subdistrict C water distribution main was financed. The RD Agreement permitted the assessment of only one surcharge to each Subdistrict C customer.⁷ Our

⁷ The original version of the RD Agreement is based upon a Letter of Conditions that RD issued on October 27, 1998. See Letter from Thomas G. Fern, Rural Development State Director, to Dr. Patricia Sommerkamp, Chairman, Northern Kentucky Water Service District (Oct. 27, 1998). This letter provided: “A surcharge in the amount of \$30.00/month will be assessed users served by the RUS 1999 Bond issue of \$2,287,000.” Id. at 8.

On May 31, 2000, RD amended this letter to make the following revisions to NKWD’s assessment of monthly surcharges:

A surcharge in the amount of \$24.00/month will be assessed users served by the RUS 1995 bond issue of \$1,621,000.

A surcharge in the amount of \$30.00/month will be assessed users served by the RUS 1999 bond issue of \$2,287,000.

With respect to both of the above mentioned surcharges, the following users shall be considered served by a bond issue and therefore subject to the applicable surcharge; provided, however, that no user will be subject to more than one surcharge for water service:

- A. All users who receive water service from a connection made directly to a water main installed as part of the project funded by the bond issue; and
- B. All users who receive water service from a connection made to a lateral main or a main extension that is served by or through a water main installed as part of the project funded by the bond issue.

Each of the above-mentioned surcharges will be in effect for the period of the relevant loan and may be adjusted annually to account for the number of users paying the surcharge.

See Letter from Thomas G. Fern, Rural Development State Director, to Norman Veatch, Chairman, Northern Kentucky Water Service District (May 31, 2000) at 2-3.

approval of the Agreement's provisions related to the assessment of surcharges, therefore, would require us to modify a provision of the RD Agreement and would violate KRS 278.023. Accordingly, we modified the Agreement to permit the assessment of only one monthly surcharge.

In our Order of July 6, 2000, we also took issue with the number of surcharges assessed to Bullock Pen notwithstanding the RD Agreement. Finding that customers who are served through larger meter connections derive a greater benefit from the Subdistrict C water distribution main and should pay a larger surcharge to reflect these additional benefits, we recommended to RD that any future surcharges be based upon the size and type of meter.

Arguing that the provisions of the RD Agreement did not apply to NKWD's wholesale transactions, NKWD and Bullock Pen petitioned for rehearing. We granted these petitions for the limited purposes of determining whether the RD Agreement permitted NKWD to assess Bullock Pen more than one monthly surcharge and, if so, the appropriate number of surcharges for NKWD to assess.

While the parties' petition for rehearing was pending, RD, at the request of Commission Staff,⁸ advised the Commission as to its interpretation of the RD Agreement.⁹ RD stated that, when the RD Agreement was executed, neither RD nor

⁸ Letter from Thomas M. Dorman, Executive Director, Public Service Commission, to Thomas G. Fern, Rural Development State Director (Sep. 21, 2000).

⁹ Letter from Thomas G. Fern, Rural Development State Director, to Thomas M. Dorman, Executive Director, Public Service Commission (Sep. 22, 2000).

NKWD contemplated its application to NKWD's wholesale operations.¹⁰ These restrictions, therefore, apparently do not apply to NKWD's proposed transaction with Bullock Pen, and KRS 278.023 does not prohibit the Commission from permitting NKWD's assessment of more than one monthly surcharge.

While NKWD may assess more than 10 surcharges, it and Bullock Pen argue that the Commission should limit the number of surcharges to 10. They assert that the Commission has previously accepted this number when accepting an agreement with similar terms between NKWD and Pendleton County Water District, and contend that requiring a greater payment of Bullock Pen than of Pendleton County Water District is unfair and unreasonably discriminatory. NKWD further notes that some retail customers within its Subdistrict C are currently served through larger meters and would also escape the treatment that the Commission proposes for Bullock Pen.

Nothing presented by the parties has caused us to revise our position that surcharges for water main extensions should be based in part upon the type and size of customer meter. If that policy were followed in the case at bar, NKWD would be required to assess 25 monthly surcharges based upon the size of meter through which Bullock Pen will receive water service.¹¹ Given our previous treatment of the NKWD-Pendleton County Water District Agreement and our present inability to require NKWD's retail sales to conform to this principle, we believe that the issue should be addressed at

¹⁰ "At the time Rural Development reviewed the project and issued the Letter of Conditions dated October 27, 1998, this agency did not consider wholesale water sales as it relates to a surcharge. Wholesale water sales to Bullock Pen Water District was [sic] identified as revenue to repay the Rural Development bond indebtedness."

¹¹ See Order of July 6, 2000 at ¶ 21.

NKWD's next general rate adjustment proceeding rather than in this Order. At that time, NKWD and its customers will have full opportunity to present evidence and argument on the proper basis for setting a surcharge for water main extensions. We place NKWD on notice that it should be expected to address this issue in its next application for general rate adjustment.

We reaffirm the recommendations contained in our Order of July 6, 2000 to RD. Unless and until RD modifies the conditions contained in its financing agreement with NKWD,¹² fair and equitable rates for customers located in NKWD's subdistricts cannot be established. We encourage RD to consider and act upon these recommendations.

IT IS THEREFORE ORDERED that:

1. The proposed Water Purchase Agreement is approved.
2. In its next application for general rate adjustment, NKWD shall demonstrate why the amounts of surcharges assessed to all customers located within its subdistricts should not be based upon the size and type of customer meter.
3. A copy of this Order shall be served upon the state director of RD.

¹² RD should also consider these recommendations for any financing agreement into which it enters with a utility subject to the Commission's jurisdiction.

Done at Frankfort, Kentucky, this 30th day of October, 2000.

By the Commission

ATTEST:

Deputy W^m H. Fowler
Executive Director