

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE	)	
WATER SERVICE RATES OF THE CITY OF	)	CASE NO. 2000-540
PIKEVILLE, KENTUCKY	)	

ORDER

The city of Pikeville, Kentucky ("Pikeville") proposes to adjust the rate of wholesale water service to Mountain Water District ("Mountain District") from \$1.31 per 1,000 gallons to \$1.90 per 1,000 gallons, or 31.6 percent. Based upon its water sales to Mountain District during the test period, this proposed adjustment would generate additional annual revenue of \$288,593. Finding that Pikeville's legislative body failed to authorize the proposed rate and that absent such authorization Pikeville's filing is not properly before the Commission, we reject the filing and dismiss this proceeding

Pikeville is a city of the third class<sup>1</sup> that owns facilities providing water and sanitary sewer service. Pikeville provides retail water service to 2,766 customers and wholesale water service to Sandy Valley Water District, Southern Water and Sewer District, and Mountain District.<sup>2</sup> On January 12, 1987, Pikeville and Mountain District executed a water purchase contract that requires Pikeville to provide Mountain District

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<sup>1</sup> KRS 81.010(3).

<sup>2</sup> The Prime Group, LLC, Cost of Service Study for the Test Year Ended June 30, 1997 Prepared for City of Pikeville Municipal Water Utility (Dec. 1998) ("Cost of Service Study") at Exhibit 8.

with a daily maximum of 1.5 million gallons of water at a rate of \$1.31 per 1,000 gallons. The water purchase contract has a term of 40 years.

On November 20, 2000, Pikeville filed a proposed revision to its existing rate for wholesale water service to its wholesale customers. Upon Mountain District's objection to the proposed rate and after finding that further proceedings were necessary to determine the reasonableness of the proposed rate, the Commission suspended the proposed rate until May 20, 2001 and established a procedural schedule. The Commission further granted Mountain District leave to intervene in this proceeding.

Following discovery in this proceeding, the Commission held a public hearing on the proposed rate on May 3, 2001. Testifying at this hearing were: Kenny Blackburn, Pikeville City Manager; Sue Varney, Pikeville Finance Director; Randall J. Walker, principal, The Prime Group, LLC; and, Carlos Miller, professional engineer, Kenvirons, Inc. This case stood submitted for decision on June 15, 2001, when both parties submitted written briefs.

At the hearing in this matter and in its written brief, Mountain District brought to our attention Pikeville's failure to obtain the necessary authorization from the Pikeville City Commission to assess the proposed rate. Mountain District asserts that this failure requires dismissal of this proceeding.<sup>3</sup> It contends that KRS 96.170 requires action on the part of Pikeville's legislative body before any rate adjustment may occur. Citing our holding in Case No. 96-616,<sup>4</sup> Mountain further asserts that this Commission has

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<sup>3</sup> Brief of Mountain Water District at 2 – 3.

<sup>4</sup> Case No. 96-616, The Application of Winchester Municipal Utilities for Approval of the Collection of System Development Charges (Ky. PSC Oct. 3, 1997).

recognized that a municipal utility's failure to obtain the appropriate legislative authorization for a proposed rate requires dismissal of the rate proceeding.

Before any Pikeville charge may be assessed, the Pikeville City Commission must approve it. KRS 96.170 provides:

The legislative body of any city of the third class may, by ordinance, provide the city and its inhabitants with water, light, power, heat and telephone service, by contract or by works of its own, located either within or beyond the boundaries of the city; make regulations for the management thereof, and fix and regulate the prices to private consumers and customers.

See also 64 Am. Jur. 2d Public Utilities §§81, 89 (1972).

We have previously recognized that legislative authorization is critical to a municipal utility's efforts to adjust its rates for wholesale service to a public utility:

The Commission finds that any application for the adjustment of existing rates or the establishment of new rates which lacks the requisite authorization from its governing body is premature and must be dismissed. To hold otherwise would needlessly inject this Commission into local disputes. Only when a utility's governing body has expressly authorized the rates for which Commission approval is sought will this Commission review the merits of the proposed rates. As such authorization is lacking in this case, . . . [the municipal utility's] application should be dismissed.<sup>5</sup>

Without such authorization, the municipality utility's filing must be considered void. Such a filing has no legal standing and cannot be considered as an official action of the city.

Based upon the foregoing, the Commission reluctantly concludes that Pikeville's proposed rate adjustment is void and that this proceeding must be dismissed. There

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<sup>5</sup> Id., Order of Oct. 3, 1997 at 6.

has been no evidence presented to demonstrate that Pikeville's legislative body has enacted any ordinance approving the proposed rate. Pikeville's City Manager testified that no such ordinance currently exists.<sup>6</sup> The lack of such ordinance means that no proposed rate is properly before us.

The Commission recognizes that this issue arose late in this proceeding. We note, however, that three months have elapsed since Mountain District raised this issue. Pikeville had adequate time to enact an appropriate ordinance or to bring the existence of such ordinance to the Commission's attention and thus render Mountain District's arguments moot. We may no longer reasonably wait for Pikeville to comply with KRS 96.170.

We further recognize that an extensive record has been developed in this proceeding. Therefore, should Pikeville within 60 days of this Order make with the Commission a rate filing that has been properly authorized by the Pikeville City Commission, the record of this proceeding should in the absence of any meritorious objections be incorporated by reference into the record of any new proceeding. The Commission believes that action will allow for an expeditious review of the authorized rate filing.

IT IS THEREFORE ORDERED that:

1. Pikeville's proposed rate adjustment filing is deemed void.
2. This matter is dismissed and is hereby removed from the Commission's docket.

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<sup>6</sup> Transcript of 5/3/2001 Hearing at 12 and 46.

Done at Frankfort, Kentucky, this 8<sup>th</sup> day of October, 2001.

By the Commission

ATTEST:

  
Executive Director