

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE CONTRACT FILING OF HARRISON COUNTY)	
WATER ASSOCIATION, INC. OF A WATER)	CASE NO. 2001-173
PURCHASE AGREEMENT WITH KENTUCKY-)	
AMERICAN WATER COMPANY)	

O R D E R

Kentucky-American Water Company ("KAWC") petitions for rehearing of the Commission's Order of September 28, 2001. It contends that the Commission lacks jurisdiction over Paragraphs 5 and 10 of a proposed water purchase agreement and that we applied the wrong standard in our decision to strike these paragraphs. We deny the petition.

On September 28, 2001, the Commission approved a proposed water purchase agreement between KAWC and Harrison County Water Association ("HCWA") with the exception of Paragraphs 5 and 10 of that agreement. Paragraph 5 prohibits HCWA from reselling water outside its service territory as of September 20, 2000. Paragraph 10 grants to KAWC the right of first refusal to purchase all of HCWA's assets that are devoted to providing water service. Finding that KAWC had failed to demonstrate that these provisions were reasonable conditions of service, we struck them from the proposed water purchase agreement.

Contending that we exceeded our statutory authority, KAWC now petitions for rehearing on our action. It first argues that the stricken provisions involve neither rates

nor service and, therefore, are not within our jurisdiction. These provisions “simply set forth additional terms mutually agreed to by contracting parties.”¹

We find no merit to KAWC’s claim that the stricken provisions are not conditions of service. KAWC clearly conditioned its provision of water service to HCWA upon its acceptance of these provisions. These provisions are in a contract for water service.² KAWC requested their inclusion in the water purchase agreement and gave no consideration to HCWA for such inclusion other than the provision of water service.³ KAWC’s actions are in keeping with the company’s practice of requiring such provisions in water purchase agreements with other water utilities.⁴

KAWC next argues that, even if we possess jurisdiction over the agreement’s provisions, we may not reject a contract provision solely because those provisions are “unnecessary.” It asserts that the Commission rejected Paragraphs 5 and 10 based

¹ Petition of Kentucky-American Water Company for a Rehearing at 2.

² KAWC’s contentions, moreover, are at odds with its previous acknowledgement that the provisions in question are rate and service related. In response to interrogatories, KAWC stated that the purpose of Paragraph 5 “is simply to guarantee that Kentucky-American is made aware of significant changes in service in the future that may impact its current service area.” KAWC’s Response to Commission Staff’s First Set of Interrogatories and Requests for Production of Documents at Item 7(b). It portrayed Paragraph 10 as “an attempt to protect its current investment for the length of the contract should the situation unexpectedly change.” Id. at Item 11(c).

³ KAWC’s Response to Commission Staff’s First Set of Interrogatories and Requests for Production of Documents, Items 7 and 11.

⁴ Id. at Item 7(b). See also Agreement between Kentucky-American Water Company and City of Midway, Kentucky at ¶ 5 (entered May 13, 1985); Agreement between Kentucky-American Water Company and Lexington-South Elkhorn Water District at ¶ 10 (entered Feb. 25, 1986); Agreement between City of North Middleton, Kentucky and Kentucky-American Water Company at ¶ 9 (entered May 8, 1991).

upon a finding that they were unnecessary.⁵ The Legislature, KAWC argues, has not imposed a requirement upon utilities that all its contract provisions be deemed “necessary,” only that they be reasonable. In this case, KAWC further argues, the Commission failed to focus upon whether the “provisions would in any fashion harmfully affect the ratepayers or deprive the utility of a ‘fair, just and reasonable rate.’”⁶

We find no merit to KAWC’s contention that we applied the wrong standard in reviewing the proposed water purchase agreement. KRS 278.030(2) permits KAWC to “establish **reasonable rules** governing the conduct of its business and the conditions under which it shall be required to render service.” (Emphasis added.) The burden of demonstrating the reasonableness of a proposed rule or condition of service is upon the utility. See Energy Regulatory Commission v. Kentucky Power Co., Ky.App., 605 S.W.2d 46 (1980); see also KRS 278.190(3). “Reasonable,” though not defined in KRS Chapter 278, is generally held to mean “[f]air, proper, just, moderate, suitable under the circumstances . . . [or] [f]it and appropriate to the end in view.” Black’s Law Dictionary 1138 (5th ed. 1979).

Contrary to KAWC’s assertion that we rejected the stricken provisions because they were unnecessary, this Commission rejected those provisions because KAWC could not show they were reasonable under the circumstances. While the stricken provisions advanced KAWC’s interests in expanding its service area and acquiring the assets of HCWA, they offered KAWC no protection from financial loss from its direct sales to HCWA. KAWC offered no evidence as to how restricting HCWA’s rights to

⁵ Petition of Kentucky-American Water Company for a Rehearing at 4.

⁶ Id. at 5.

sell its operations or provide water service in central Kentucky will promote KAWC's provision of adequate, efficient and reasonable service.⁷ It also failed to demonstrate how HCWA's present and future ratepayers or KAWC's ratepayers benefit from KAWC's proposed conditions. KAWC has offered nothing in its petition for rehearing to disturb our finding.

For these reasons, the Commission HEREBY ORDERS that KAWC's petition for a rehearing is denied.

Done at Frankfort, Kentucky, this 1st day of November, 2001.

By the Commission

ATTEST:


Executive Director

⁷ In its petition, KAWC states that the parties deemed the provisions "to be necessary." Given that KAWC requested the inclusion of the stricken provisions, possessed significant bargaining strength as a regional water supplier, and benefited significantly from the provisions and that HCWA received no benefit from the provisions other than water service, we do not share this interpretation.