

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A WATER PURCHASE AGREEMENT BETWEEN)
KENTUCKY-AMERICAN WATER COMPANY AND) CASE NO. 2001-230
WINCHESTER MUNICIPAL UTILITIES COMMISSION)

ORDER

Kentucky-American Water Company (“Kentucky-American”) has filed a Water Purchase Agreement with Winchester Municipal Utilities Commission (“WMU”).¹ Having previously addressed the issue of the rates set forth in this agreement,² we address in this Order the lawfulness of the Agreement’s provisions relating to meter testing. Finding that these provisions conflict with Administrative Regulation 807 KAR 5:066, Section 16, we strike these provisions and direct the parties to file a revised Agreement that excludes them.

Paragraph 8 of the Water Purchase Agreement states:

Metering. Water delivered to KAWC [Kentucky-American] by WMU shall be measured by two master meters to be placed at a location agreed upon between the parties. The meters shall be owned and maintained by WMU. The meters shall be examined and tested at least once every five (5) years. KAWC shall have the right to test the meters upon seven (7) days written notice to WMU. A replacement meter(s) shall be provided by WMU during all testing. In the event a test

¹ The Commission notes that WMU had the statutory and regulatory responsibility for submitting the proposed agreement. See KRS 278.200; KRS 278.160; 807 KAR 5:006, Section 5; 807 KAR 5:011, Section 13. See also Submission of Contracts and Rates of Municipal Utilities, Administrative Case No. 351 (Ky.PSC Aug. 10, 1994). We expect that WMU will in the future fulfill its responsibilities.

² Order of September 19, 2001.

shows that the meter(s) is not accurate, it shall be repaired or replaced by WMU so as to render it accurate within a range of 98.5% to 101.5%, and an adjustment shall be made to the charges based upon test results and upon the average monthly charges during the preceding three (3) month period.

Kentucky-American and WMU state that 2-inch meters will be used to measure water usage.³ This provision conflicts with Administrative Regulation 807 KAR 5:066, Section 16, that provides that 2-inch meters shall be tested every 4 years.

Kentucky-American and WMU assert that testing the meters every 5 years is adequate. They note that improvements in meter accuracy and technology have led to an increase in the interval for testing smaller meters and assert the same rationale may be applied to larger meters. They further note that Kentucky-American has the contractual right to test the meters upon 7 days' notice to WMU.⁴

Where a municipal utility contracts with a public utility, the Commission's jurisdiction extends to the rates and service that the municipal utility provides to the public utility. See Simpson County Water Dist. v. City of Franklin, Ky., 872 S.W.2d 460, 463 (1994) ("where contracts have been executed between a utility and a city, such as between the City of Franklin and Simpson County Water District, KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation"). To the extent that a municipal utility is subject to our jurisdiction, it must comply with our regulations.

³ Joint Answers of Kentucky-American Water Company and Winchester Municipal Utilities Commission to Commission Staff's First Data Request, Item 1.

⁴ Id. at Item 3.

In the current proceeding, WMU is providing water through 2-inch meters. Administrative Regulation 807 KAR 5:066, Section 16, requires that those meters be tested every 4 years. While WMU may seek a deviation from that regulation,⁵ it did not do so. Assuming arguendo that it had sought such relief, WMU has not demonstrated good cause to grant a deviation. As WMU has provided no sample testing evidence to support its claim for a 5-year testing interval, KRS 278.210(4) does not support the Agreement's provision.

IT IS THEREFORE ORDERED that:

1. The proposed Water Purchase Agreement, with the exception of Paragraph 8, is approved as of the date of this Order.⁶
2. Paragraph 8 is rejected.
3. Within 30 days of the date of this Order, Kentucky-American and WMU shall file a revised water purchase agreement that excludes those provisions found in conflict with Administrative Regulation 807 KAR 5:066, Section 16.

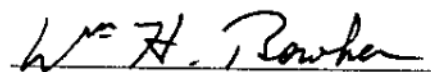
⁵ Administrative Regulation 807 KAR 5:066, Section 18.

⁶ The Commission notes that the Attorney General has filed objections to Paragraph 3 of the Water Purchase Agreement that purportedly defines Kentucky-American's service area in Clark County, Kentucky. We have previously declared that public water utilities do not have defined service territories, Auxier Water Company v. City of Prestonsburg, Case No. 96-362 (Ky.PSC April 2, 1997), and that the Commission lacks any authority to resolve territory disputes that arise between municipal water utilities and public water utilities, City of Lawrenceburg, Kentucky v. South Anderson Water District, Case No. 96-256 (Ky.PSC June 11, 1998). To the extent that we lack authority over the issue, we make no ruling upon the Attorney General's objections nor do we make any representation that the provisions in question are legally enforceable or in anyway binding upon this Commission.

Done at Frankfort, Kentucky, this 19th day of October, 2001.

By the Commission

ATTEST:


Deputy Executive Director