

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED WATER PURCHASE AGREEMENT)
BETWEEN THE CITY OF WILMORE AND) CASE NO. 2006-00409
JESSAMINE-SOUTH ELKHORN WATER)
DISTRICT)

ORDER

Jessamine-South Elkhorn Water District (“Jessamine District”) has filed with the Commission a proposed water purchase agreement with the city of Wilmore, Kentucky (“Wilmore”) under which Wilmore will provide wholesale water service to the water district.¹ This contract provides, *inter alia*, that Jessamine District will pay a charge of \$1,000 to Wilmore for each customer who connects to that portion of the water district’s system to which Wilmore furnishes water.² Jessamine District has advised the Commission that this charge is to “fund a restricted account held by Wilmore solely for the purpose of capital improvements to its water system infrastructure.”³

¹ The Commission notes that Wilmore had the statutory and regulatory responsibility for submitting the proposed water purchase 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); Kentucky-American Water Company, Case No. 2001-230 (Ky.PSC Oct. 19, 2001) at fn. 1.

² Water Purchase Agreement at 2.

³ Letter from Bruce E. Smith, counsel for Jessamine-South Elkhorn Water District, to Beth O’Donnell, Executive Director, Public Service Commission (Aug. 18, 2006) at 1.

The proposed fee appears to be a “system development charge.” Administrative Regulation 807 KAR 5:090, Section 1(3), defines a system development charge as a “one (1) time charge assessed by a water utility on a real estate developer, on a new customer, or on an existing customer who significantly increases its demand for water service to finance construction of a system improvement necessary to serve that customer or a proposed real estate development.”

No municipal utility may assess a system development charge upon a public water utility without first obtaining Commission approval.⁴ To obtain such approval, a municipal utility must file a formal application with the Commission.⁵

As of the date of this Order, Wilmore has not filed any application requesting Commission approval to assess a system development charge to Jessamine District. Without such application and Commission approval, the Commission finds that the present wholesale contract before us cannot be approved.

The Commission, on its own motion, HEREBY ORDERS that:

1. Wilmore and Jessamine District shall show cause in writing within 20 days of the date of this Order:

⁴ Administrative Regulation 807 KAR 5:090, Section 2. A municipal utility is “any city that provides the services enumerated in KRS 278.010(3)(d) to a public water utility.” Administrative Regulation 807 KAR 5:090, Section 1(1). A public utility is “any person including a water district or water association, except a city, who owns, controls, operates or manages facilities that are used or to be used to provide the services enumerated in KRS 278.010(3)(d).” Administrative Regulation 807 KAR 5:090, Section 1(2).

⁵ Administrative Regulation 807 KAR 5:090, Section 4.

a. Why the proposed charge of \$1,000 per Jessamine District customer who connects to that portion of the water district's system to which Wilmore furnishes water should not be considered a "system development charge"; and,

b. Why the proposed Water Purchase Agreement between Wilmore and Jessamine District should not be rejected for containing a system development charge that the Commission has not approved and for which no application for its approval has been filed with the Commission.

2. Any motion requesting any informal conference with Commission Staff to consider any matter that may aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

Done at Frankfort, Kentucky, this 22nd day of September, 2006.

By the Commission

ATTEST:



Executive Director