

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                  |   |                     |
|----------------------------------|---|---------------------|
| WATER SERVICE CORPORATION OF     | ) |                     |
| KENTUCKY                         | ) |                     |
| _____                            | ) | CASE NO. 2007-00092 |
|                                  | ) |                     |
| ALLEGED VIOLATION OF KRS 278.160 | ) |                     |

O R D E R

The Commission has “exclusive jurisdiction over the regulation of rates and service of utilities”<sup>1</sup> and has the statutory duty to enforce the provisions of KRS Chapter 278.<sup>2</sup>

KRS 278.160, which codifies the doctrine commonly referred to as the “filed rate doctrine,”<sup>3</sup> provides in pertinent part:

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any

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<sup>1</sup> KRS 278.040(2).

<sup>2</sup> KRS 278.040(1).

<sup>3</sup> See, e.g., Boone County Sand and Gravel Co., Inc. v. Owen County Rural Electric Co., 779 S.W.2d 224 (Ky. App. 1989).

utility for a compensation greater or less than that prescribed in such schedules.

Water Service Corporation of Kentucky (“Water Service”) is a Kentucky corporation that owns and operates facilities that treat and distribute water to the public for compensation in the Commonwealth of Kentucky. It is a utility subject to Commission jurisdiction.<sup>4</sup>

In Case No. 2005-00325,<sup>5</sup> Water Service applied for a general rate adjustment. It proposed, inter alia, to consolidate its 16 separate classifications for fire hydrant and sprinkler service into 3 classes. On February 28, 2007, the Commission established revised rates for Water Service and prospectively approved Water Service’s fire hydrant and sprinkler rates.

During the course of that proceeding, the Commission discovered that Water Service was collecting fees for hydrant and sprinkler charges that were not included in its tariff. At an informal conference on August 22, 2006, Water Service representatives acknowledged that several of the proposed charges were neither contained in the utility’s current tariff nor contained in its application for a rate adjustment.<sup>6</sup> In a subsequent letter, Water Service stated that these fees were for fire protection and

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<sup>4</sup> KRS 278.010(3)(d).

<sup>5</sup> Case No. 2005-00325, Application of Water Service Corporation of Kentucky for an Adjustment of Rates.

<sup>6</sup> Memorandum from Commission Staff to Main Case File No. 2005-00325 (Aug. 28, 2006).

sprinkler systems.<sup>7</sup> Water Service stated that it first noticed that the fire hydrant and sprinkler charges were not listed in its tariff during its preparation of its rate application.<sup>8</sup>

In reviewing the tariffs of Water Service and its predecessors, the Commission discovered that a tariff of Aqua/KWS, a predecessor of Water Service, set forth fire hydrant and sprinkler charges, but that this tariff was canceled in August 1992. Since August 1992, the utility has been transferred 3 times.<sup>9</sup> While each successor has adopted the then-existing tariff of its predecessor, none has apparently taken any action to conform its tariff to its current pricing and fee-collection practices.

On February 28, 2007, the Commission notified Water Service that it would investigate whether or not KRS 278.160 required Water Service to refund the amounts that it had previously collected for hydrant and sprinkler charges.<sup>10</sup>

Based upon the foregoing and being otherwise sufficiently advised, the Commission finds that prima facie evidence exists that Water Service has violated

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<sup>7</sup> Letter from John N. Hughes, counsel for Water Service of Kentucky, to Executive Director, Public Service Commission of Kentucky (Oct. 5, 2006) at 2.

<sup>8</sup> Id.

<sup>9</sup> Case No. 2002-00142, Joint Application of Aqua/KWS, Inc., Utilities of Kentucky, Inc., and Water Service Corporation of Kentucky for Approval of the Transfer of the Ownership of the Assets of Aqua/KWS, Inc. and Utilities of Kentucky, Inc. to Water Service Corporation of Kentucky Pursuant to the Provisions of KRS 278.020(4) and (5) and 807 KAR 5:001, Section 8, (Ky. PSC June 14, 2002). Case No. 1998-00291, Application of Aqua/KWS, Inc. for Approval of Transfer of Stock to Utilities of Kentucky, Inc. (Ky. PSC July 27, 1998). Case No. 2005-00433, The Joint Application of Nuon Global Solutions USA, BV, Nuon Global Solutions USA, Inc., AIG Highstar Capital II, LP, Hydro Star, LLC, Utilities, Inc. and Water Service Corporation of Kentucky for Approval of an Indirect Change in Control of a Certain Kentucky Utility Pursuant to the Provisions of KRS 278.020(5) and (6) and 807 KAR 5:001, Section 8 (Ky. PSC March 8, 2006).

<sup>10</sup> Case No. 2005-00325, Order of February 28, 2007 at 7.

KRS 278.160 by assessing fees for fire hydrant and sprinkler services prior to February 28, 2007 that were not set forth in its filed rate schedules.

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

1. Water Service shall show cause in writing within 20 days of the date of this Order:

a. why it should not be subject to the penalties prescribed in KRS 278.990(1) for its alleged failure to comply with KRS 278.160; and,

b. why it should not be required to refund with interest all fees and charges collected from its customers that were not set forth in its filed rate schedules.

2. A formal hearing shall be held on May 22, 2007 at 9:30 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

3. The Commission does not favor motions for continuance and will grant them only when such a motion is made in writing and states compelling reasons for granting the motion.

4. Corporate entities are advised that under Kentucky law a corporation, its employees, and any representatives, who are not licensed to practice law in Kentucky, are not permitted to make objections, examine, or cross-examine witnesses in administrative hearings.<sup>11</sup>

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<sup>11</sup> Turner v. Kentucky Bar Ass'n., 980 S.W.2d 560 (Ky. 1998), and Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky, Admin. Case No. 249, Order dated June 15, 1981.

5. The records in Case Nos. 1998-00291, 2002-00142, 2005-00325, and 2005-00433 are incorporated by reference and made part of the record of this proceeding.

6. Any motion requesting an informal conference with Commission Staff to consider any matter that would 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.

7. Pursuant to KRS 278.360, the record of the formal hearing shall be kept by videotape. A stenographic transcript shall not be made unless requested by a party to this action.

Done at Frankfort, Kentucky, this 20<sup>th</sup> day of March, 2007.

By the Commission

ATTEST:



Executive Director