

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF AUXIER WATER)
COMPANY, INC. FOR AUTHORIZATION)
OF ITS PROPOSED SALE AND)
CONVEYANCE OF ALL OF ITS) CASE NO. 2007-00488
WATER DISTRIBUTION SYSTEM AND)
CUSTOMER DEPOSITS TO THE CITY)
OF PRESTONSBURG, KENTUCKY)

O R D E R

On November 21, 2007, Auxier Water Company, Inc. (“Auxier”) and the city of Prestonsburg (“Prestonsburg”) (collectively “Joint Applicants”) jointly applied for Commission approval for the transfer of Auxier’s water distribution system and customer deposits to Prestonsburg. Having considered the application and the evidence of record, the Commission finds that:

1. Prestonsburg is a city of the fourth class and is located in Floyd County, Kentucky.¹
2. Prestonsburg owns plants, works, and facilities through which it provides water service, sewer service, and natural gas service to customers both within and outside the city boundaries.²

¹ KRS 81.010(4).

² Joint Application, Exhibit D, Prestonsburg City Utilities Commission Report on Audit of Financial Statements for the Years Ended June 30, 2006 and 2005 at 13.

3. The operation, control, and management of the city's water, sewer, and gas services are vested in the Prestonsburg Utilities Commission ("Utilities Commission"), whose members are appointed by Prestonsburg's mayor.³

4. As of December 31, 2006, the Utilities Commission served 6,885 residential, commercial, industrial, and other accounts through 250.7 miles of main.⁴

5. For the fiscal year ended June 30, 2007 ("2007 Fiscal Year"), the Utilities Commission reported total assets of \$26,208,409; liabilities of \$5,882,311; and investment in assets of \$20,326,098.⁵ For the same period, total operating revenues were reported at \$5,701,794; total operating expenses at \$6,863,636; and depreciation expense at \$1,596,077.⁶ The net operating loss for the 2007 Fiscal Year was \$1,161,842⁷ and the cash flow was \$434,235.⁸

6. The Utilities Commission operates its water treatment facilities with four Class IVA certified operators and five Class III certified operators. In addition, the distribution system is operated by persons certified as operators of a Class IIID water distribution system.⁹

³ Id.

⁴ Id., Joint Application, Exhibit C, Statement of the Utilities Commission, at 1.

⁵ Prestonsburg's Response to Commission Staff's First Data Request, Report on Audit of Financial Statements for the Years Ended June 30, 2007, at 7 and 8.

⁶ Id. at 9.

⁷ \$5,701,794 (Operating Revenues) - \$6,863,636 (Operating Expenses) = (\$1,161,842) (Net Operating Loss).

⁸ (\$1,161,842) (Net Operating Loss) + \$1,596,077 (Depreciation Expense) = \$434,235 (Net Cash Flow).

⁹ Application, Exhibit C, Statement of the Utilities Commission in Support of the Application of Auxier at 2.

7. Auxier, a Kentucky corporation organized under and operating pursuant to KRS Chapter 271B, owns and operates facilities that distribute water to approximately 1,100 customers in Floyd and Johnson counties, Kentucky.¹⁰

8. As of December 31, 2007, Auxier reported utility plant in service of \$1,124,430 and accumulated depreciation of \$628,059, resulting in net utility plant of \$496,371.¹¹

9. By reducing net utility plant of \$496,371 by the net contributions in aid of construction of \$184,973,¹² Auxier has a net unrecovered value of utility plant of \$311,398.

10. As of December 31, 2007, Auxier reported total liabilities of \$277,838.

11. For the calendar year ending December 31, 2007, Auxier had a utility operating income of \$530,938 and utility operating expenses of \$479,119, which results in a total utility operating income of \$51,819.¹³

12. For the calendar year ending December 31, 2007, Auxier had a net income of \$42,725.¹⁴

13. Auxier produces no water, but purchases all of its treated water for distribution from Prestonsburg.¹⁵

¹⁰ Joint Application at 1.

¹¹ Auxier's Response to Commission Staff's First Data Request, Auxier's Balance Statement for the Year Ended December 31, 2007 at 1.

¹² Id.

¹³ Id. at 5.

¹⁴ Id. at 6.

¹⁵ See Annual Report of Auxier Water Company to the Kentucky Public Service Commission for the Year Ending December 31, 2006 at 60.

14. On September 24, 2007, the Joint Applicants executed an “Acquisition Contract” which provides, inter alia, the following:

a. Prestonsburg and the Utilities Commission shall acquire ownership of all of Auxier’s water distribution system, appurtenances, and customer deposits for \$2,650,000.

b. Upon transfer of the assets, the Utilities Commission will render water service directly to the Auxier customers at the higher rate of either (i) Auxier’s rates or (ii) Prestonsburg’s Outside City Rates until the retirement of the \$2,650,000 loan from the Kentucky Infrastructure Authority (“Acquisition Debt”). After the debt is retired, Prestonsburg will provide water service to the former Auxier customers on parity with other Prestonsburg customers.

c. Prestonsburg will hold the Auxier customer deposits, without interest, according to the conditions under which such deposits were exacted by Auxier from water customers.

15. To fund its acquisition of Auxier, Prestonsburg will obtain a \$2,650,000 loan from the Kentucky Infrastructure Authority that will have a 20-year term and an interest rate of 0.7 percent per annum.¹⁶

16. Prestonsburg has offered an alternative proposal for rates to Auxier customers transferred to Prestonsburg service. The alternative requires the incoming Auxier customers to pay the Outside City Rates. Prestonsburg has noted its preference for this alternative.¹⁷

¹⁶ Prestonsburg’s Response to Item 2 of the Commission Staff’s First Data Request.

¹⁷ Prestonsburg’s Comments to Commission Staff’s Second Informal Conference Memorandum (Feb. 27, 2008).

17. An average residential customer using 5,000 gallons of water per month will have a lower water bill under Prestonsburg's rates to be effective April 1, 2008 as compared to Auxier's rates.

18. Prestonsburg lacks a written deposit policy, but requires a deposit from water customers that rent either residential or commercial properties. For water customers who are renters and do not have city sewer service, Prestonsburg requires a \$100 deposit.¹⁸

19. Auxier requires a \$60 deposit from its water customers. Its tariff provides that deposits may be waived for customers under certain circumstances and that deposits may be refunded prior to discontinuance of water service under certain circumstances.¹⁹

20. The area in which Auxier presently provides water service and in which its distribution facilities are located is contiguous to Prestonsburg and the area that the Utilities Commission serves.

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Commission makes the following conclusions of law:

1. Auxier is a utility subject to Commission jurisdiction.²⁰
2. Prestonsburg is a municipal corporation.

¹⁸ Prestonsburg's Supplemental Response to Commission Staff's First Data Request at 2 (Feb. 21, 2008).

¹⁹ Auxier Water Company Tariff 1st Revised Sheet No. 2 (effective Nov. 1, 1993).

²⁰ KRS 278.010(3)(d).

3. Prestonsburg is a “corporation” and a “person” for purposes of KRS Chapter 278.²¹

4. KRS 278.020(5) provides:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

5. KRS 278.020(6) provides that “[t]he commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.”

6. In light of its financial assets and its status as a municipal corporation, Prestonsburg has sufficient financial integrity to ensure the continuity of utility service.

7. Prestonsburg has the financial, technical, and managerial abilities to provide reasonable service to the customers of Auxier.

8. KRS 96.150(1) permits a municipal utility to extend its water supply system into any territory contiguous to the city. As the area in which Auxier presently serves and in which its distribution facilities are located is contiguous to Prestonsburg and to the area that the Utilities Commission serves, the Utilities Commission has legal authority to provide water service to that area after the proposed transfer occurs.

9. The proposed transfer is in accordance with law and for a proper purpose.

10. Deposits to a municipally owned utility must be refunded with interest under the principles cited in Commonwealth v. Kentucky Power & Light Co.,

²¹ KRS 278.010(1) and (2).

77 S.W.2d 395 (Ky. 1934) and Union Light, Heat, & Power Co. v. Mulligan, 197 S.W. 1081 (Ky. 1917).²²

11. Prestonsburg's holding of deposits without paying interest on those deposits is not consistent with the public interest.²³

12. Prestonsburg's alternative plan to provide water service to incoming Auxier customers at the same rate as its Outside City Rate is consistent with the public interest.

13. The proposed transfer is not consistent with the public interest unless the following conditions are imposed:

a. Prestonsburg provides water service to all Auxier customers at the Outside City Rate that it assesses to its current out-of-city customers.

b. Auxier refunds with accrued interest all deposits to customers at the time of the transfer as a credit on their last water bill from Auxier or by check.

14. Upon completion of the proposed transfer and except to the extent that they are used to provide water service to a public utility, Auxier's facilities will no longer be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. Subject to the conditions set forth in Ordering Paragraphs 2 and 3 of this Order, Prestonsburg's proposed acquisition of the assets of Auxier is approved.

2. Prestonsburg shall charge incoming Auxier customers the Outside City Rates.

²² Ky. OAG 79-418 (1979).

²³ The Commission also has concerns with the lack of a written deposit policy by Prestonsburg.

3. Auxier shall refund all deposits with accrued interest to customers at the time of the transfer either as a credit on their last water bill from Auxier or by check.

4. Auxier shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for calendar year 2007 and for that period in 2008 in which it owns and operates a water distribution system.

5. Auxier and Prestonsburg shall notify the Commission in writing of the transfer of assets within 10 days of the transfer.

6. Auxier shall notify the Commission in writing when all its customer deposits have been refunded and its customer deposit account balance is zero, within 10 days of this occurrence.

Done at Frankfort, Kentucky, this 14th day of March, 2008.

By the Commission

ATTEST:


for the Executive Director