

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALLEGED FAILURE OF THE CITY OF DANVILLE)
TO COMPLY WITH KRS 278.160 AND 278.180) CASE NO. 2008-00176
AND THE COMMISSION'S ORDER OF AUGUST)
10, 1994 IN ADMINISTRATIVE CASE NO. 351)

ORDER

Garrard County Water Association ("Garrard County"), a non-profit corporation organized under the provisions of KRS Chapter 273, owns and operates facilities that are used in the distribution of water to the public for compensation to approximately 5,325 customers in Garrard, Lincoln and Madison counties, Kentucky.¹ It is a utility subject to Commission jurisdiction.²

Parksville Water District ("Parksville District"), a water district organized pursuant to KRS Chapter 74, owns and operates facilities that are used in the distribution of water to the public for compensation to approximately 1,559 customers in Boyle, Casey, and Lincoln counties, Kentucky.³ It is a utility subject to Commission jurisdiction.⁴

¹ Annual Report of Garrard County Water Association, Inc. to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2007, at 5 and 27.

² KRS 278.010(3)(d); KRS 278.012.

³ Annual Report of Parksville Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2007, at 5 and 27.

⁴ KRS 278.010(3)(d); KRS 278.015.

Lake Village Water Association, Inc. (“Lake Village”), a non-profit corporation organized under the provisions of KRS Chapter 273, owns and operates facilities that are used in the distribution of water to the public for compensation to approximately 2,013 customers in Boyle and Mercer counties, Kentucky.⁵ It is a utility subject to Commission jurisdiction.⁶

City of Danville (“Danville”), a city of the third class, is located in Boyle County, Kentucky.⁷ It owns and operates a water treatment and distribution system that provides, *inter alia*, wholesale water service to Garrard County, Parksville District, and Lake Village.

KRS 278.010(3) effectively exempts municipal utilities from Commission regulation by excluding cities from the definition of utility.⁸ In *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994), however, the Kentucky Supreme Court held this exemption did not extend to contracts for utility service between a municipal utility and a public utility. The Court ruled that “where contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the [c]ity relinquishes the exemption and is rendered subject to . . . [Commission] rates and service regulation.”⁹

⁵ Annual Report of Lake Village Water Association, Inc. to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2007, at 5 and 27.

⁶ KRS 278.010(3)(d); KRS 278.012.

⁷ KRS 81.010(3).

⁸ See *McClellan v. Louisville Water Company*, 351 S.W.2d 197 (Ky. 1961).

⁹ 872 S.W.2d at 463.

KRS 278.200 provides:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.

Simpson County Water District effectively subjects all contracts between municipal utilities and public utilities to the Commission's jurisdiction, requires all municipal utility transactions with a public utility to comply with the provisions of KRS Chapter 278, and makes Commission approval a prerequisite to any change in a rate that a municipal utility assesses a public utility for wholesale utility service.

Pursuant to the *Simpson County Water District* decision, the Commission in Administrative Case No. 351 directed that all municipal utilities that provide wholesale utility service to a public utility "file with the Commission a copy of their contracts with the public utility and a schedule of their rates for wholesale service."¹⁰ We further directed that "[a]ny municipal utility wishing to change or revise a contract or rate for wholesale utility service to a public utility shall, no later than 30 days prior to the effective date of the revision, file with the Commission the revised contract and rate

¹⁰ Administrative Case No. 351, Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Service to Public Utilities (Ky. PSC Aug. 10, 1994) at 1 - 2.

schedule.”¹¹ KRS 278.160(1) and (2) and KRS 278.180(1) supported and required this directive.

KRS 278.160 provides:

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

KRS 278.180(1) provides:

[N]o change shall be made by any utility in any rate except upon thirty (30) days’ notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility’s customers in the manner set forth in its regulations.

On March 26, 2008, Garrard County applied to the Commission for adjustment in its rates for water service to reflect increases in the wholesale rates of its suppliers.¹² In

¹¹ *Id.* at 2.

¹² Case No. 2008-00109, Purchased Water Adjustment of Garrard County Water Association (Ky. PSC May 15, 2008).

support of its application, Garrard County stated at an unknown date, but after February 14, 2000, Danville increased its wholesale rate from \$1.38 per 1,000 gallons to \$1.60 per 1,000 gallons.¹³ Commission records fail to reflect that Danville has filed any rate schedule to reflect its current wholesale service rate.¹⁴

The Commission has examined the billing statement for water service that Danville provided Garrard County for the month of January 2008. Based upon the rate schedule presently on file with the Commission and the amount of water billed, Danville should have billed Garrard County \$9,950.76. Danville actually billed Garrard County \$10,585 for water usage and \$168.83 for Kentucky River Authority withdrawal fees.¹⁵

On September 13, 2007, Parksville District filed with the Commission a complaint against Danville in which it alleged that on or after August 2005 Danville began billing at a rate for wholesale water service that deviated from its filed contract rate.¹⁶ In a response to discovery in this proceeding, Danville has admitted that it has adjusted its

¹³ Letter from Paul Reynolds, Manager, Garrard County Water Association, to Stephanie L. Stumbo, Executive Director, Public Service Commission (Mar. 25, 2008). The Commission assumes that Garrard County's reference to a base rate of \$1.38 in its letter refers to the average cost of water per 1,000 gallons

¹⁴ On July 23, 1999, Danville and Garrard County executed a water purchase contract under which Danville agreed to provide wholesale water service to Garrard County. This contract provided for a declining block rate schedule for wholesale water service. On February 14, 2000, the Commission approved the rates set forth in this contract. See Case No. 1999-00353, An Investigation Into the Proposed Wholesale Water Contract Between the City of Danville, Kentucky and Garrard County Water Association (Ky. PSC Feb. 14, 2000).

¹⁵ Danville also assessed a 20 percent surcharge which its contract permits.

¹⁶ Case No. 2007-00405, Parksville Water District v. City of Danville, Kentucky (Ky. PSC complaint filed Sept. 13, 2007).

wholesale rates three times since September 1, 2005.¹⁷ Commission records do not reveal any evidence that Danville provided the required notice to the Commission of these revisions.

Based upon the foregoing and being otherwise sufficiently advised, the Commission finds that prima facie evidence exists that Danville has violated KRS 278.160, KRS 278.180, and the Commission's Order of August 10, 1994 in Administrative Case No. 351 by failing to notify the Commission of its proposed increase in its wholesale water service rate prior to implementing such increase.

The Commission HEREBY ORDERS that:

1. Danville 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 the provisions of KRS Chapter 278 and of the Commission's Order of August 10, 1994 in Administrative Case No. 351; and,

b. why it should not be required to refund all monies collected from its wholesale public utility customers that are in excess of the rate set forth in its water purchase contracts with those customers.

2. In its written response to this Order, Danville shall respond to the allegations in this Order regarding its failure to comply with the provisions of KRS Chapter 278 and of the Commission's Order of August 10, 1994 in Administrative Case No. 351.

¹⁷ Case No. 2007-00405, Response of the City of Danville to Parksville Water District's Data Requests, Item 2 (filed May 6, 2008).

3. Danville shall immediately cease charging its wholesale public utility customers the rates that differ from those set forth in its water purchase contract with those customers.

4. Garrard County, Lake Village, and Parksville District are made parties to this proceeding.

5. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

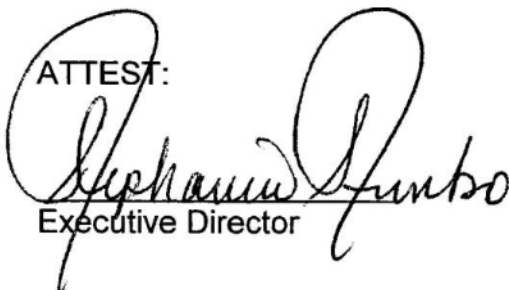
6. All documents that this Order requires to be filed with the Commission shall be served upon all other parties.

7. 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.

8. The records of Cases No. 1999-00353, No. 2007-00405 and No. 2008-00109 are incorporated by reference into the record of this proceeding.

Done at Frankfort, Kentucky, this 22nd day of May, 2008.

By the Commission

ATTEST:

Executive Director