



Ernie Fletcher
Governor

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Secretary

Commonwealth of Kentucky
Environmental and Public Protection Cabinet
Public Service Commission
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March 3, 2004

Hon. Lindsey Ingram, Jr.
Stoll Keenon & Park LLP
300 W. Vine St., Ste. 2100
Lexington, KY 40507-1801

Re: Kentucky-American Water Company

Dear Mr. Ingram,

You have requested an opinion from Commission Staff regarding two issues: whether a regulated utility must receive Commission approval for purchase of the assets of a municipal water utility, and whether a regulated utility, after acquiring the assets mentioned above, can change the rates filed by the municipal utility by filing an initial tariff sheet with cost-of-service justification without a formal application to change rates.

A regulated utility is not required to receive Commission approval for the purchase of the assets of a municipal utility. KRS 278.020(4) & (5), which govern the transfer of assets of regulated utilities, require the acquirer of the assets to receive Commission approval before acquiring the assets of the regulated utility. KRS 278.010(3) exempts municipal utilities from Commission jurisdiction. Therefore, KRS 278.020(4) & (5) do not apply to the acquisition of a municipal utility.

Municipal utilities are only required to have on file the tariff rates for wholesale water sales to regulated utilities. Municipal utilities have no tariff on file to address other rates and, thus, have no tariffed rates to change. Therefore, in order to charge for water service of the newly-acquired municipal assets, the acquiring jurisdictional utility may take one of three actions: (1) adopt the rates currently being charged by the municipal utility; (2) charge the rates it is currently charging its own customers; or (3) file an initial tariff sheet with supporting documentation regarding projected cost-of-service.

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This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. If you have any question, please contact J.E.B. Pinney at (502) 564-3940, extension 427.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman", with a long, sweeping flourish extending to the right.

Thomas M. Dorman
Executive Director