

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)
SOUTHERN WATER AND SEWER)
DISTRICT FOR AN ALTERNATIVE) CASE NO. 2018-00230
RATE ADJUSTMENT)

SOUTHERN WATER AND SEWER DISTRICT’S POST-HEARING REPLY BRIEF

Comes the Southern Water and Sewer District (“Southern”), by and through counsel, and for its Post-Hearing Reply Brief, submits as follows.

ARGUMENT

In its Post-Hearing Response, the Attorney General asserts Southern should not be entitled to a full rate increase citing alleged deficiencies by Southern in the Asset Purchase Agreement between Southern and the City of Prestonsburg/PCUC; Case No. 2017-000444, in its appraisal of lost revenue by Mr. Terry Fyffe, CPA, ABV, and in its alleged mismanagement of water loss. While Southern does not agree with many of these allegations, Southern recognizes that there are areas in which it can improve and is taking substantial steps in implementing the appropriate measures to address the concerns of both the Commission Staff and the Attorney General. With respect to the rate adjustment application which is currently before the Commission, Southern has demonstrated the need for a rate increase in order to prevent insolvency, and respectfully requests that the Commission approve the requested increase so that it may continue to provide service to its ratepayers and deal with critical infrastructure improvements and stabilizations.

- I. THE ASSET TRANSFER BETWEEN SOUTHERN AND THE CITY OF PRESTONSBURG/PCUC; CASE NO. 2017-00044 IS SEPARATE AND DISTINCT FROM THIS APPLICATION FOR RATE INCREASE.**

Much of the Attorney General's Response focuses on the approved transfer of assets in Case No. 2017-00044, where Southern entered an agreement with the PCUC to transfer its wastewater treatment assets to the PCUC, which was better situated to operate and maintain those facilities. The Attorney General asserts both Southern and Prestonsburg made representations that due diligence of the asset purchase was performed and that Southern now is pleading mistake based on a failure to conduct a cost-benefit analysis.¹ That is not the case. Southern made the best decision it could at that time and under those specific circumstances. Southern weighed the benefits of conveying its sewer system and sewer customers to the PCUC with the costs associated with also conveying certain portions of its water system. With the assurances of the PCUC and others, Southern moved forward with the agreement. Regardless, Southern would have needed to request a substantial rate increase either to cover the additional necessary costs of repair and maintaining its sewer infrastructure, or for the transfer of water customers to the PCUC. Permeating throughout this entire process was the expectation that Southern would be further compensated with the additional \$1.8 million to \$2 million currently being held by the PCUC and subject to further negotiations between the PCUC, Southern, and USDA RD. Southern still has not received those expected funds.

The 2017 case has been completely adjudicated as the transfer of assets was approved by the Commission, and as previously noted in Southern's Post-Hearing Brief, no person or entity, including the Attorney General, intervened in that matter. While the PSC appears to have ongoing questions regarding the circumstances of that agreement, Southern is taking the necessary steps – now – to address its current financial issues, and is taking steps to run a more efficient water utility.

¹ The Attorney General's Post-Hearing Response, Case No. 2018-00230, at 3 (Ky. Commission January 23, 2019).

II. MR. FYFFE’S APPRAISAL WAS NOT A REQUIREMENT OF THIS RATE CASE.

While an appraisal of the transferred assets could have been completed prior to the execution of the 2017 Asset Purchase Agreement, the PSC did not require such an appraisal in the 2017 case, and Mr. Fyffe’s post-transfer analysis should have no impact on Southern’s pending rate application. Mr. Fyffe’s appraisal was requested by the USDA RD as part of the ongoing negotiations between the USDA RD, Southern, and the PCUC to release USDA RD liens on the water assets transferred to PCUC. Although Mr. Campbell, Mr. Hall, and Mr. Fyffe have all testified and agree that Southern is entitled to a total amount equal to Mr. Fyffe’s Fair Market Value of \$4,020,000 for the transferred assets, it is unknown when those negotiations between the USDA RD, Southern and the PCUC will be complete. Still, in the meantime, Southern is in great need of a rate increase to continue providing essential water services to its customers and has satisfied its burden to recover fair, just and reasonable rates.

III. SOUTHERN IS TAKING THE NECESSARY STEPS TO ADDRESS WATER LOSS.

The Attorney General claims Southern “seemed unaware of the sheer amount of lost revenue the District is unable to recoup due to its current water loss levels.”² Southern is well aware of its water loss issues and is taking proactive measures to address it. Southern has implemented and approved a Leak Detection Operating Procedures, which will produce substantial improvements, as testified by Danny Stinson of the KRWA. In addition, and as noted in our Post-Hearing Brief, if the rate increase is approved, Southern can again request the necessary infrastructure loans from the KIA to fund much needed improvements to decrease its water loss.

The Attorney General claims Southern had no explanation for flushing totals regarding fire department use of water.³ This is inaccurate. The formula used to represent estimated

² The Attorney General’s Post-Hearing Response at 6.

³ The Attorney General’s Post-Hearing Response at 7.

flushing aggregate totals was explained by Mr. Hall in his January 8, 2019, testimony, and again in Southern's Post-Hearing Brief. Mr. Hall uses an industry accepted formula and methodology to calculate both fire department usage and flushing. This formula is used by the Kentucky Rural Water Association and set out in the Kentucky Administrative Regulations. The Attorney General also criticized Southern for having incomplete mapping systems, although he noted Southern is working with the KRWA to remedy this.⁴ Mr. Hall testified to the difficulty of assembling full system maps for Southern due to prior consolidations of water districts into Southern, office fires, and changing personnel following consolidations. These issues existed well before Mr. Hall became General Manager. That being said, Southern is working in good faith with the KRWA to recreate and effectively map its entire water and infrastructure system.

The Attorney General notes that Southern has not yet implemented a capital improvement plan and "must develop a more comprehensive water loss management plan to complement the leak detection procedure and expand upon those recommendations."⁵ While Mr. Hall testified that Southern does not have a formal capital improvement plan, he consults with the KRWA, Kentucky Engineering, and others to assess and plan for Southern's future maintenance, infrastructure, and improvement needs. Southern is currently working to prepare and adopt a formal capital improvement plan. Southern is ready and willing to provide to the PSC and the Attorney General progress reports on its efforts to complete a capital improvement plan, system map, and updated water loss plan at reasonable time intervals.

Regarding the Attorney General's concerns of people receiving free water service without bills and meters, Mr. Hall emphatically denied that Southern provides free water to anyone. While Mr. Hall testified that there were likely individuals who illegally tap into water lines to steal water, Southern generally takes action to prevent those individuals from continuing

⁴ The Attorney General's Post-Hearing Response at 7.

⁵ The Attorney General's Post-Hearing Response at 7.

to steal water once they are found by completely excavating the lines to prevent “jumping.” Mr. Hall also explained why he chooses this method rather than only prosecuting individuals who steal water – it is more efficient and cost effective to excavate the lines to stop the water theft than to dedicate much needed resources and time to prosecute offenders. That being said, Southern is ready and willing to implement a new water theft detection prosecution program, in consultation with the PSC, Attorney General, KRWA, and the Floyd County Attorney.

With respect to meter testing and upgrades, Southern has considered upgrading its meters and increasing the frequency of meter testing on multiple occasions, but determined that it did not have the funding to do so. Southern is prioritizing the testing of meters and meter upgrades in the coming months, and will be more able to do so if its requested rate increase is approved.

IV. COMMISSION’S CALCULATED RATE BASE IS REASONABLE AND SOUTHERN WILL CONTINUE WORKING ON IMPLEMENTING APPROPRIATE MEASURES TO DETECT WATER LOSS, UPDATE NECESSARY INFRASTRUCTURE TO MEET THE NEEDS OF ITS CUSTOMERS.

As noted in the Commission's Staff Report on October 24, 2018, Southern’s Overall Revenue Requirement is \$4,201,262; therefore, a \$1,110,415 revenue increase, or 37.87%, to pro forma rate revenues is necessary to generate the Overall Revenue Requirement.⁶ Commission Staff found Southern’s rates should apply evenly across the board. Commission Staff also proposed an increase in Southern’s wholesale customers' rates in the same manner that the retail water service rates were proposed to be increased.

The rate adjustment proposed is critically important to Southern, as it will enable and incentivize Southern to increase the replacement rate of failing water lines and other infrastructure and will continue to allow Southern to take proactive action towards leak detection. Southern will not survive incurring its current monthly losses and desperately needs

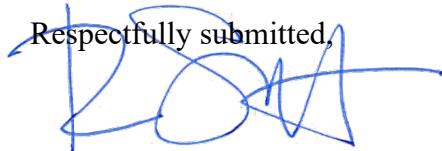
⁶ Staff Report, Case No. 2018-00230 (Ky. PSC October 24, 2018).

rate adjustment assistance from this Commission. Southern respectfully requests that the Commission approve the requested increase in rates to ensure that Southern is afforded fair, just and reasonable rates. Southern is taking the requisite steps to hire consultants to address the issues presented by the Attorney General and the Commission Staff and have already experiencing substantial improvement in water loss detection and management.

Again, Southern is ready and willing to provide to the PSC and the Attorney General progress reports on its efforts to complete a capital improvement plan, system map, and updated water loss plan at reasonable time intervals. Southern is also willing to implement a new water theft detection prosecution program, in consultation with the PSC, Attorney General, KRWA, and the Floyd County Attorney.

CONCLUSION

Southern has met its burden of proof and has demonstrated that its operation and maintenance expenses are prudent and reasonable. Therefore, Southern respectfully requests that its rate adjustment application be approved.

Respectfully submitted,


Randal A. Strobo
Clay A. Barkley
STROBO BARKLEY PLLC
239 South Fifth Street, Suite 917
Louisville, Kentucky 40202
(502) 290-9751
rstrobo@strobobarkley.com
cbarkley@strobobarkley.com
Co-Counsel for Applicant

Ned Pillersdorf
Pillersdorf, DeRossett, and Lane
1214 West Court Street
Prestonsburg, Kentucky 41653
Co-Counsel for Applicant

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Applicant's electronic filing of this Reply is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on January 25, 2019; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that an original paper medium will be delivered to the Public Service Commission on or before January 25, 2019.



Randal A. Strobo
STROBO BARKLEY PLLC