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DAMON R. TALLEY

ATTORNEY AT LAW

July 29, 2010

Mr. Jeff Derouen
Executive Director
Public Service Commission
PO Box 615
Frankfort, KY 40602

RECEIVED

AUG 03 2010

PUBLIC SERVICE
COMMISSION

RE: Case No. 2009-00373
Hopkinsville Water Environment Authority

Dear Mr. Derouen:

Enclosed for filing are the original and six (6) copies of Hopkinsville Water Environment Authority's Response to the Petition for an Amended Order or Rehearing filed by Christian County Water District.

Yours truly,

DAMON R. TALLEY, P.S.C.



DAMON R. TALLEY, Counsel For

Hopkinsville Water Environment Authority

DRT:ms

Enclosures

cc: Hon Jack Hughes, Attorney for CCWD
James Owen, General Manager, CCWD
Hopkinsville Water Environment Authority

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE)
WHOLESALE SERVICE RATES OF) CASE NO.
HOPKINSVILLE WATER ENVIRONMENT) 2009-00373
AUTHORITY)

**RESPONSE OF HOPKINSVILLE WATER
ENVIRONMENT AUTHORITY TO PETITION
FOR AMENDED ORDER OR REHEARING**

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Hopkinsville Water Environment Authority (“HWEA”), by Counsel, files this response opposing the Petition for an Amended Order or Rehearing (“Petition”) filed by the Christian County Water District (“CCWD”). HWEA respectfully requests the Commission to deny CCWD’s Petition for the following reasons:

1. HWEA is perplexed by the Petition filed by CCWD. The Petition is **not** a request for a “rehearing” at all. The Petition does **not** “offer additional evidence that could not with reasonable diligence have been offered” during the 10 months that this case was pending before the Commission (See KRS 278.400).

2. CCWD's Petition does **not** request the Commission to change the wholesale rates approved by the Commission in its July 2, 2010 Order.

3. The Petition does **not** challenge the allocation of certain rate case expenses. The Petition does **not** object to the monthly surcharge which enables HWEA to recover a portion of its rate case expenses from CCWD.

4. In its Petition, CCWD does **not** seek to overturn the Commission's Order. It does **not** allege that the Order is erroneous.

5. The Petition does **not** allege that the Commission made a mistake **nor** that the Commission reached an incorrect result. CCWD does **not** request the Commission to change its mind.

6. The words "error," "mistake," "incorrect," "omission," "oversight" or synonyms of these words do **not** appear in CCWD's Petition.

7. What relief is CCWD seeking from the Commission? The answer is buried on page 4 of the Petition where it states:

CCWD asserts that the Commission should issue an amended order containing the legally required findings of fact so that it can **evaluate the determination of the reasonableness** of the rate. (emphasis added)

Apparently, CCWD has **not** yet decided whether the wholesale rates proposed by HWEA and approved by the Commission are "reasonable". It requests the Commission to explain why the rates are reasonable so CCWD

can “evaluate the determination [by the Commission] of the reasonableness of the rate.”

8. Presumably, if the Commission reached the “right” decision, but for the “wrong” reason, then CCWD will have an issue to appeal.

9. A quick overview or summary of the events of this case is instructive:

- a. HWEA filed its application seeking a 37% rate increase. CCWD objected and intervened;
- b. HWEA filed direct testimony from four (4) witnesses. CCWD did **not** file any testimony;
- c. HWEA answered two (2) rounds of discovery requests from the Commission Staff and one (1) round from CCWD;
- d. CCWD did **not** file any testimony. Consequently, CCWD did **not** have to respond to any discovery requests;
- e. HWEA filed a comprehensive Cost of Service Study (COSS);
- f. CCWD did **not** file a COSS **nor** did it file the testimony of any expert questioning the validity of HWEA’s COSS;
- g. HWEA filed proof and sought recovery of rate case expenses. CCWD objected; and
- h. Both parties waived their rights to an evidentiary hearing.

10. Admittedly, HWEA had the burden of proof to demonstrate that its proposed 37% rate increase was reasonable. HWEA met this burden. HWEA’s COSS demonstrated that a 90% rate increase is justified. CCWD

offered no proof to challenge the validity of the COSS. CCWD had the opportunity to cross-examine the rate consultant who prepared the COSS for HWEA. Instead, CCWD chose to waive its right to an evidentiary hearing and its right to cross-examine HWEA's expert.

11. Justice should not permit a party to sit idly on the sidelines until after the record is closed and a decision is rendered, feign surprise at the result, and then seek relief.

12. Parties to a proceeding before the Commission are entitled to finality. The intent of KRS 278.400 is to provide finality. Rehearings are limited to those situations where there is new evidence which was not readily discoverable during the proceeding before the Commission. In the instant case, there is no such evidence and no need for a rehearing.

CERTIFICATE OF SERVICE

This is to certify that a true copy of ~~the~~ attached pleading was served by first class U.S. Mail, postage prepaid, this 29th day of July, 2010, to the following:

Hon. Jack N. Hughes
124 W. Todd St.
Frankfort, KY 40601

Mr. James Owen, Gen. Mgr.
Christian Co. Water District
PO Box 7
Hopkinsville, KY 42241-0007

Mr. Len F. Hale, Gen. Mgr.
HWEA
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BY: 

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