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Commonwealth of Kentucky  
**Public Service Commission**  
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**John W. Clay**  
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**Timothy J. LeDonne**  
Commissioner  
Department of Public Protection

February 16, 2007

Mr. Kevin Shaw  
Grayson County Water District  
P.O. Box 217  
Leitchfield, Kentucky 42755

Dear Mr. Shaw:

Commission Staff acknowledges receipt of your letter of January 31, 2007 in which Grayson County Water District requests clarification of the procedures that a municipal utility must follow to adjust its wholesale water service rate to a public utility.

In your letter, you present the following facts:

Grayson County Water District ("Grayson District"), a water district organized pursuant to KRS Chapter 74, currently purchases its water requirements from the city of Leitchfield, Kentucky ("Leitchfield"). On January 12, 2007, consultants for Grayson District and Leitchfield agreed upon a new wholesale water service rate. On January 22, 2007, Grayson District's Board of Commissioners accepted the agreed rate. Three days later Grayson District notified Leitchfield of its Board of Commissioners' action and requested that it be notified upon Leitchfield's filing of notice of the proposed rate adjustment with the Public Service Commission. On January 31, 2007, Leitchfield's legal counsel advised Grayson District that the Public Service Commission would be notified of the proposed rate adjustment by letter for "courtesy purposes." Leitchfield's City Clerk subsequently advised Grayson District that it would bill at the proposed rate for service provided on and after January 12, 2007.

You present the following question: What procedures must Leitchfield follow to place its proposed wholesale water service rate into effect?

In Simpson County Water District v. City of Franklin, 872 S.W.2d 460 (Ky.1994), the Kentucky Supreme Court held that the Public Service Commission has jurisdiction over contracts between municipal utilities and public utilities and that changes in any rate that a municipal utility assesses a public utility for wholesale utility service must be approved by the Public Service Commission. Pursuant to the Simpson County decision, the Public Service Commission in Administrative Case No. 351 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 schedule.” A copy of the Simpson County decision and the Public Service Commission’s Order is enclosed.

A municipal utility has two methods for changing its rates for utility service to a public utility:

- Filing A New Rate Schedule. This method, which is governed by KRS 278.180 and Public Service Commission Regulations 807 KAR 5:001 and 807 KAR 5:011, is the easier and faster method for adjusting a rate. A municipal utility files a rate schedule which contains the new rate. (If the new rate is part of a new contract with a public utility, then the contract is filed.) The rate schedule must be filed with the Public Service Commission not less than 30 days before the proposed rate is scheduled to take effect. A copy of the form on which the proposed rate schedule should be filed is enclosed. **Any filing that does not use this form will be rejected.** When filing its rate schedule, a municipal utility must notify its public utility customers of the proposed rate change. This notice should be in writing and should generally conform to the requirements of Commission Regulation 807 KAR 5:001, Section 10(3). Proof of notice to the public utility should be submitted when the rate schedule is filed.

- Formal Application For Public Service Commission Approval. Public Service Commission Regulation 807 KAR 5:001 governs this filing. Under this method, the municipal utility makes a formal application to the Public Service Commission for approval of its proposed rates. The application must be filed with the Public Service Commission not less than 30 days before the proposed rates are to become effective. The application must include information about the municipal utility’s past operations. Commission Regulation 807 KAR 5:001, Section 10, a copy of which is enclosed, identifies all required information. When it files its application for rate adjustment, a municipal utility shall notify its public utility customers of the proposed rate changes in the same manner as municipal utilities that file new rate schedules.

The Public Service Commission has 30 days from the filing of a rate schedule or an application for rate adjustment to suspend the rate for further review. See KRS 278.190. Where a municipal utility files a new rate schedule and the Public Service Commission suspends the proposed rate for further review, the municipal utility must provide the information which Commission Regulation 807 KAR 5:001, Section 10, requires.

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If the proposed rate is suspended, it may not be placed into effect for five months. KRS 278.190(2). If the Public Service Commission has not approved the proposed rate within this five-month period, then the municipal utility may place the proposed rate into effect subject to refund. The Public Service Commission must rule on the proposed rate within ten months of the filing of the rate schedule or application. See KRS 278.190(3).

A municipal utility must comply with one of these procedures even when its wholesale customers have agreed to the proposed rate adjustment. Failure to follow these procedures will prevent the proposed rates from becoming effective. Please note that as of the date of this letter, Leitchfield has yet to file any revisions to its existing wholesale water service rate of \$1.439 per 1,000 gallons. Until proper and timely notice of the proposed adjustment is given, Leitchfield may only assess the rate of \$1.439 per 1,000 gallons.

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. Questions concerning this opinion should be directed to Gerald Wuetcher, Deputy General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read 'Beth O'Donnell', is written over the word 'Sincerely,'. The signature is fluid and somewhat abstract, with several loops and a long horizontal stroke at the end.

Beth O'Donnell  
Executive Director

Enclosures  
cc: David B. Vickery, Esq.