

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE)
WATER SERVICE RATES OF THE CITY OF) CASE NO. 2012-00501
BRANDENBURG, KENTUCKY)

ORDER

On May 8, 2013, the City of Brandenburg, Kentucky ("Brandenburg") moved for Commission approval of its use of a formula set forth in its water purchase contract with Meade County Water District ("Meade District") as the basis for an adjustment of its rate for wholesale water service to Meade District. It further requested that Brandenburg be permitted 90 days from the entry of an Order approving the use of this formula to file the "required information" with the Commission.¹ In the alternative, Brandenburg requested that, if the Commission does not permit the use of the contract formula, we grant Brandenburg an additional 120 days to submit the information that we have previously directed Brandenburg to submit.

Before addressing Brandenburg's motion, a brief review of the history of this case is in order. On September 24, 2012, Brandenburg filed with the Commission notice of a proposed increase in its rate for wholesale water service to Meade District. After receiving from Meade District an objection to the proposed increase and a request for an investigation of the proposed rate, the Commission initiated this proceeding on November 19, 2012.

¹ We assume "required information" to mean the rate resulting from the application of the formula to Brandenburg's test period of operations.

In our Order initiating this investigation, we established a procedural schedule and directed Brandenburg to submit certain information regarding its operation no later than January 15, 2013. We further directed Commission Staff to hold a conference call with the parties to explain Commission procedures and address any questions regarding our November 19, 2012 Order. On December 14, 2012, Commission Staff conducted this conference call in which Brandenburg's representatives participated.

Following this conference call, Brandenburg requested a suspension of the procedural schedule and additional time to submit the information required by the November 19, 2012 Order. On January 3, 2013, we granted Brandenburg's request and extended the time to March 15, 2013 for Brandenburg to submit the information required by the November 19, 2012 Order. We further suspended the procedural schedule in this proceeding.

As of this date, more than nine months have passed since Brandenburg first filed its notice of a proposed rate revision. Despite this passage of time, it appears from Brandenburg's motion that Brandenburg has yet to develop a basis for its proposed rate and is still attempting to formulate a new wholesale rate. If its proposed rate was based upon a formula set forth in its water purchase contract,² Brandenburg would not

² On February 7, 1984, Brandenburg and Meade District executed a water purchase contract that specified a rate of \$0.87 per 1,000 gallons. The contract further provided for annual modifications. It stated: "An increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder, but such costs shall not include increased capitalization of the Seller's system. Other provisions of this contract may be modified or altered by mutual agreement. The calculation of the costs of performance shall be based on the Computation of Water Rates, attached hereto as Attachment 'A'." Attachment A is a worksheet showing the calculations for the original rate. It does not contain any specific or expressed formula for calculating the rate. Any formulas must be inferred from these calculations.

Brandenburg and Meade District have twice executed amendments to the original contract. In 1991, they extended the term of the contract for 40 years. In 1999, they amended the contract term to 25 years following completion of Brandenburg's new water treatment facility, reduced the contract rate from

now be seeking a ruling on its proposed use of that formula or an additional 90 days from such ruling to ascertain the rate that this formula would produce.

As to the first question – the use of the water purchase contract formula, we find the relief requested would require the Commission to rule on the merits of the case before any evidence has been placed before us. Approving the use of such formula requires the Commission not only to determine whether the formula is reasonable but whether it produces a fair, just, and reasonable rate. Since Brandenburg is a municipal utility and is not required to file any reports with the Commission on its financial condition and since it has yet to provide any information in response to our Order of November 19, 2012, we lack any evidence to make such a determination. Accordingly, we find that Brandenburg’s motion for approval of the “contract formula” should be denied.

As to the second question – the request for additional time to respond to the Commission’s Order of November 19, 2012, we find that Brandenburg has had sufficient time to produce the requested information and should not be afforded additional time. We further find that this proceeding should be dismissed due to Brandenburg’s failure to comply with the Order of November 19, 2012. Clearly, it is not prepared to proceed to demonstrate the reasonableness of its proposed rate.

The Commission encourages Brandenburg to review its wholesale rate and to engage its wholesale customer in discussions regarding a possible adjustment of that

\$1.35 per 1,000 gallons to \$1.15 per 1,000 gallons, modified the contract quantity to be provided from not to exceed 3,000,000 gallons monthly to not to exceed 400,000 gallons daily. Additionally, Brandenburg modified the contract rate from \$0.87 per 1,000 gallons to \$1.05 per 1,000 gallons in 1988 and from \$1.05 per 1,000 gallons to \$1.20 per 1,000 gallons in 1990. In none of the documents evidencing a change in rates is a worksheet presented, any calculations shown, or any reference to a rate formula.

rate. To the extent that Brandenburg finds that an adjustment is required and it is unable to reach an agreement on such adjustment with its wholesale customer,³ it should again file for a revision with the Commission. We note that the information listed in our Order of November 19, 2012, will likely be requested in any future proceeding. To the extent that Brandenburg is unable to reach agreement with Meade District, it should be prepared to provide this information in a future proceeding. The availability of this information will expedite our review. We further note that Commission Staff is available to provide information on the Commission's procedures and processes. Brandenburg should avail itself of this resource whenever possible.

IT IS THEREFORE ORDERED that:

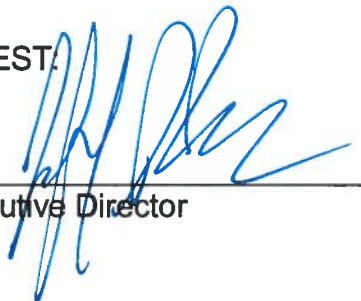
1. Brandenburg's motion for approval of the use of the contract formula is denied.
2. Brandenburg's motion for an extension of time in which to comply with the Commission's Order of November 19, 2012 is denied.
3. This proceeding is dismissed without prejudice.
4. This case is closed and is removed from the Commission's docket.

³ To the extent that the parties reach an agreement on a rate adjustment, the Commission's review will be limited and of relatively short duration. *See, e.g.,* Case No. 95-193, *Proposed Adjustment of the Wholesale Water Service Rates of the Mount Sterling Water And Sewer Commission* (Ky. PSC Sep. 1, 1995).

By the Commission

ENTERED
JUL 05 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2012-00501

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