

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST CLARK COUNTY WATER DISTRICT)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2005-00322
)	
CITY OF WINCHESTER, ACTING BY AND)	
THROUGH WINCHESTER MUNICIPAL UTILITIES)	
COMMISSION)	
)	
DEFENDANT)	

ORDER

East Clark County Water District (“East Clark District”) has filed with the Commission a formal complainant against Winchester Municipal Utilities (“WMU”) in which it alleges, *inter alia*, that the current rates that WMU is assessing for wholesale water service are in violation of the parties’ water purchase agreement and are unfair and unreasonable. WMU has answered this Complaint and denied the allegations of contract violations and unjust and unreasonable rates. Having carefully examined these pleadings, the Commission finds that a procedural schedule should be established for this proceeding.

The Commission acknowledges East Clark District’s request that WMU be required to prepare or commission a cost-of-service study reflecting its current financial and operating conditions. At this time, we decline to direct the preparation of such study by WMU or Commission Staff.

East Clark District is the complainant and, therefore, bears the burden of proof. See Energy Regulatory Comm'n v. Kentucky Power Co., 605 S.W.2d 46, 50 (Ky.App. 1980) (“Applicants before an administrative agency have the burden of proof.”). Moreover, East Clark District challenges the reasonableness and fairness of a filed rate. Such a rate is presumed reasonable. See, e.g., Southwestern Electric Power Co. v. Grant, 73 S.W.3d 211 (Tx. 2002) (“The ‘filed-rate doctrine’ . . . holds that a tariff filed with and approved by an administrative agency under a statutory scheme is presumed reasonable unless a litigant proves otherwise.”) To direct WMU to prepare such study improperly shifts the burden of proof in this proceeding to WMU.

We note that WMU originally possessed the burden of proof to demonstrate the reasonableness of its rates when it filed its proposed rate in December 2004.¹ At that time, East Clark District could have objected to the proposed rate and requested a Commission investigation. Such a request would have led to suspension of the proposed rate and a rate investigation. In such investigation, WMU would have had the burden to demonstrate that the proposed rate was reasonable and consistent with the terms of the water purchase agreement. East Clark District did not object, but affirmatively stated that it had no objections.

Our decision should not be construed as holding that the preparation of a cost-of-service study is unnecessary or would not be required at a future point in these proceedings. Should East Clark District present sufficient evidence to demonstrate that WMU’s present rate is unreasonable or is inconsistent with the provisions of the parties’

¹ Case No. 2004-00506, Proposed Rate Adjustment of Wholesale Water Service Rate of Winchester Municipal Utilities (Ky.P.S.C Dec. 17, 2004).

water purchase agreement, the Commission may require that WMU prepare or cause the preparation of such study.

IT IS THEREFORE ORDERED that:

1. The procedural schedule set forth in Appendix A to this Order shall be followed.

2. a. All requests for information and responses thereto shall be appropriately indexed.

b. All responses to requests for information shall include the name of the witness who will be responsible for responding to the questions related to the information provided.

c. Each response shall be under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

d. The party responding to a request for information shall serve the original, an electronic copy, and 5 paper copies on the Commission and an electronic and paper copy on all parties of record.

e. Any party serving a request for information upon another party to this proceeding shall at the time of service of that request also serve upon that party by electronic mail an electronic copy of its request. The electronic copy shall be in Microsoft Word[®]97 format.

f. All electronic versions of responses to requests for information shall be submitted in portable document format [.pdf] and be capable of viewing with Adobe® Acrobat® Reader.™ Spreadsheets shall also be submitted in Microsoft Excel®97 format. All spreadsheets in electronic submissions shall be self-contained and shall not contain any linked references to or macro commands involving external files.

g. Within 5 days of the date of this Order, the parties shall advise the Commission and all other parties of record of the electronic mail addresses to which electronic copies of information requests and responses to information requests should be sent.

3. Any party that files written testimony shall file with the Commission an original and 8 copies. Written testimony shall be in verified form.

4. The parties shall consider any request for information from Commission Staff as if ordered by the Commission.

5. Any objections or motions relating to discovery or procedural dates shall be filed upon 4 business days' notice or include an explanation why such notice was not possible.

6. Service of any document or pleading in paper form shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

7. Service of any document or pleading in electronic form shall be made by transmitting the document or form by electronic mail to the electronic mail address that the party has designated in compliance with Ordering Paragraph 2(g) of this Order.

8. At any hearing in this matter, neither opening statements nor summarization of direct or rebuttal testimonies shall be permitted.

9. Direct examination of witnesses shall be limited to the authentication and adoption of that written testimony. No summarization of written testimony by the witness shall be permitted.

10. Witnesses who have filed written direct and rebuttal testimony shall present that testimony at the same sitting. Opposing parties may cross-examine such witnesses on both direct and rebuttal testimonies.

11. Within 30 days of the filing of the hearing transcript with the Commission, the parties shall submit a written initial brief.

12. Within 45 days of the filing of the hearing transcript with the Commission, the parties may submit a written reply brief addressing arguments presented in the initial briefs

13. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

14. To be timely filed with the Commission, a document must be received by the Executive Director of the Commission within the specified time for filing except that any document shall be deemed timely filed if it has been transmitted by United States express mail, or by other recognized mail carriers, with the date the transmitting agency received said document from the sender noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

15. As the Complainant bears the burden of proof in this matter, its failure to appear at the formal hearing and to present proof in support of its complaint may result in the dismissal of its complaint with prejudice.

16. The failure of Defendant to appear at the formal hearing may result in the entry of an Order granting the Complainant's requested relief.

Done at Frankfort, Kentucky, this 3rd day of April, 2006.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2005-00322 DATED APRIL 3, 2006

East Clark District's interrogatories and requests for production
of documents shall be served upon WMU no later than 04/17/06

WMU's responses to East Clark District's interrogatories and requests
for production of documents shall be served upon all parties no later than..... 05/01/06

East Clark District's second set of interrogatories and requests for production
of documents shall be served upon WMU no later than 05/15/06

WMU's responses to East Clark District's second set of interrogatories
and requests for production of documents shall be served upon all parties
no later than 05/31/06

East Clark District's third set of interrogatories and requests for production
of documents shall be served upon WMU no later than 06/15/06

WMU's responses to East Clark District's second set of interrogatories
and requests for production of documents shall be served upon all parties
no later than 06/30/06

East Clark District shall file with the Commission the written testimony
of its witnesses, in verified form, no later than..... 07/17/06

Interrogatories and requests for production of documents shall be served
upon East Clark District no later than 07/31/06

East Clark District's responses to interrogatories and requests for
production of documents shall be served upon all parties no later than 08/14/06

Second set of interrogatories and requests for production of documents
shall be served upon East Clark District no later than 08/28/06

East Clark District's responses to second set of interrogatories and
requests for production of documents shall be served upon all parties
no later than 09/11/06

WMU shall file with the Commission the written testimony of its witnesses,
in verified form, no later than..... 09/25/06

Interrogatories and requests for production of documents
to WMU shall be served upon WMU no later than 10/09/06

WMU's responses to interrogatories and requests for production of documents shall be served upon all parties no later than..... 10/23/06

East Clark District shall file rebuttal testimony, in verified form, no later than 11/06/06

Public Hearing is to begin at 9:00 a.m., Eastern Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of East Clark District and WMU..... To Be Scheduled