

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE	)	CASE NO.
WHOLESALE WATER SERVICE RATES OF	)	2009-00041
THE CITY OF BURKESVILLE	)	

O R D E R

The city of Burkesville ("Burkesville"), a city of the fifth class,<sup>1</sup> owns and operates a water treatment and distribution system that provides, *inter alia*, wholesale water service to Cumberland County Water District ("Cumberland District").

Cumberland District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that are used in the distribution of water to the public, for compensation, to approximately 2,383 customers in Cumberland County, Kentucky.<sup>2</sup> It is a utility subject to Commission jurisdiction.<sup>3</sup>

KRS 278.010(3) generally exempts municipal utilities from Commission regulation by excluding cities from the definition of utility.<sup>4</sup> In *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994), however, the Kentucky Supreme Court held this exemption did not extend to contracts for utility service between a

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<sup>1</sup> KRS 81.010(5).

<sup>2</sup> Annual Report of Cumberland County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2007 at 5, 27.

<sup>3</sup> KRS 278.010(3)(d); KRS 278.015.

<sup>4</sup> See *McClellan v. Louisville Water Company*, 351 S.W.2d 197 (Ky. 1961).

municipal utility and a public utility. The Court ruled that “where contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the [c]ity relinquishes the exemption and is rendered subject to . . . [Commission] rates and service regulation.”<sup>5</sup>

*Simpson County Water District* effectively subjects all contracts between municipal utilities and public utilities to the Commission’s jurisdiction, requires all municipal utility transactions with a public utility to comply with the provisions of KRS Chapter 278, and makes Commission approval a prerequisite to any change in a rate that a municipal utility assesses a public utility for wholesale utility service.

Pursuant to the *Simpson County Water District* decision, the Commission in Administrative Case No. 351 directed that all municipal utilities that provide wholesale utility service to a public utility “file with the Commission a copy of their contracts with the public utility and a schedule of their rates for wholesale service.”<sup>6</sup> We further 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.”<sup>7</sup> KRS 278.160(1) and (2) and KRS 278.180(1) supported and required this directive.

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<sup>5</sup> 872 S.W.2d at 463.

<sup>6</sup> Administrative Case No. 351, *Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Service to Public Utilities* (Ky. PSC Aug. 10, 1994) at 1-2.

<sup>7</sup> *Id.* at 2.

KRS 278.160 provides:

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

KRS 278.180(1) provides:

[N]o change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.

On December 12, 2008, Burkesville notified the Commission of its intent to increase its wholesale water rate for service provided to Cumberland District from \$2.09 per 1,000 gallons to \$3.43 per 1,000 gallons. The tariff page Burkesville filed with its notice listed an effective date of November 20, 2008. Because the proposed effective date did not provide a 30-day notice period to the Commission, as required by KRS 278.180(1), it is void. Accordingly, Burkesville cannot implement its proposed rate until it has been approved by the Commission or it becomes effective by operation of law.

On December 29, 2008, Cumberland District filed an objection to Burkesville's proposed rates. Based upon the foregoing and being otherwise sufficiently advised, the Commission finds it appropriate to open this proceeding to investigate the reasonableness of Burkesville's proposed wholesale water service rate to Cumberland District.

IT IS HEREBY ORDERED that:

1. Burkesville's proposed wholesale water service rate to Cumberland District shall be suspended until it has been approved by the Commission or it becomes effective by operation of law.

2. Cumberland District is made a party to this proceeding.

3. Burkesville shall, no later than March 25, 2009, file with the Commission the original and 6 copies of the information listed in Appendix A, with a copy to all parties of record.

a. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided.

b. Each response shall be answered 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.

c. Any party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

4. At any hearing in this matter, neither opening statements nor summarization of direct testimony shall be permitted.

5. 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.

6. All documents that this Order requires to be filed with the Commission shall be served upon all other parties.

7. To be timely filed with the Commission, a document must be received by 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.

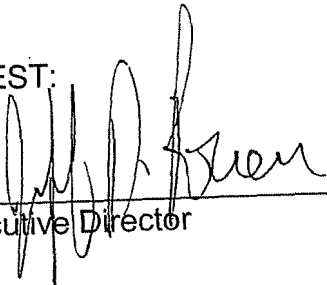
8. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

9. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission

ENTERED  
MAR 20 2009 *M*  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

Case No. 2009-00041

## APPENDIX A

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2009-00041 DATED MARCH 20, 2009

1. Provide a copy of all current agreements and contracts between Burkesville and Cumberland District.
2. State, for each of the last 12 months, how much water Burkesville has sold to Cumberland District.
3. Describe in detail all calculations used in determining the proposed wholesale rate.
4. Provide copies of the most recent cost-of-service analysis and management analysis for Burkesville's water system.
5. State the current maximum treatment and distribution capacity for Burkesville's facilities.
6. State Burkesville's maximum peak day requirements.
7. Describe in detail any plans to expand Burkesville's treatment plant.
8. Provide a copy of the city's resolution authorizing Burkesville to charge the wholesale rate to Cumberland District.
9. Provide the independent auditor's report for the city's water operations, shown separately from any joint ventures, for the last two fiscal years.
10. State the test period on which the proposed wholesale rate is based.
11. Provide the general ledgers for the water operations for the proposed test period and the most recently concluded fiscal year. These general ledgers shall include all check registers and spreadsheets used to record and track financial transactions.

12. For each outstanding revenue issuance related to Burkesville's water operations, provide:

a. The bond ordinance or resolution authorizing the issuance of revenue bonds.

b. An amortization schedule.

c. A detailed explanation as to why the debt was incurred.

d. A calculation of the annual debt service payment for each of the next three years. Show each component of the calculation separately.

13. Provide a detailed depreciation schedule for the water division.

14. Provide an adjusted trial balance and audit adjustments for the proposed test period and the most recently completed fiscal year. The trial balance shall be traced and referenced directly to the general ledgers requested in Item 4 above.

15. For Burkesville's water operations, provide a reconciliation for any differences between the test period trial balance, the most recent audit report, and the cost-of-service study on which the proposed wholesale rate is based.



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