

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF WHOLESAL E            )    CASE NO.  
WATER SERVICE RATES OF THE CITY OF         )    2009-00428  
GREENSBURG   )

O R D E R

The City of Greensburg ("Greensburg") proposes to adjust its existing rate for wholesale water service to Green-Taylor Water District ("Green-Taylor") effective for service on and after November 9, 2009. Green-Taylor objects to the proposed adjustment and requests an investigation of the proposed adjustment.

Green-Taylor, 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 4,766 customers in Adair, Green, Metcalfe, and Taylor counties.<sup>1</sup> It is a utility subject to Commission jurisdiction.<sup>2</sup>

KRS 278.010(3) exempts municipal utilities from Commission regulation by excluding cities from the definition of "utility."<sup>3</sup> In *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994), however, the Kentucky Supreme Court held

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<sup>1</sup> Annual Report of Green-Taylor Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2008.

<sup>2</sup> KRS 278.010(3)(d); KRS 278.015.

<sup>3</sup> See *McClellan v. Louisville Water Company*, 351 S.W.2d 197 (Ky. 1961).

that this exemption did not extend to contracts for utility service between a 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>4</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 directed in Administrative Case No. 351 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>5</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>6</sup> KRS 278.160(1) and (2) and KRS 278.180(1) supported and required this directive.

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<sup>4</sup> *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994).

<sup>5</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>6</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.

By letter dated July 20, 2009, Greensburg notified the Commission of its intent to increase its wholesale water rate for service provided to Green-Taylor by 20 percent. The tariff page that Greensburg filed with its notice listed an effective date of November 9, 2009, which provided a 30-day notice period to the Commission as required by KRS 278.180(1).

On October 12, 2009, Green-Taylor filed an objection to Greensburg's proposed rates. Based upon the foregoing and being otherwise sufficiently advised, the

Commission finds it appropriate to open these proceedings to investigate the reasonableness of Greensburg's proposed wholesale water service rate to Green-Taylor.

IT IS HEREBY ORDERED that:

1. Greensburg's proposed rate revision is suspended for five months, from November 9, 2009 up to and including April 8, 2010.

2. Green-Taylor is made a party to this proceeding.

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

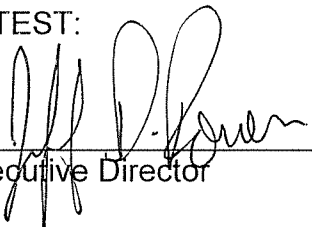
4. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

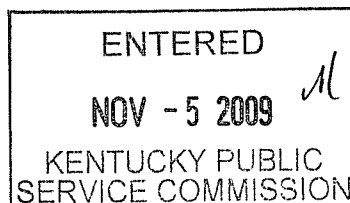
5. All documents that this Order requires to be filed with the Commission shall be served upon all other parties.

6. Commission Staff shall conduct an informal conference to discuss the processing of this case on November 19, 2009 at 2:00 p.m., Eastern Standard Time, at the Commission's offices in Frankfort, Kentucky. Parties wishing to participate telephonically are directed to call (502) 564-3940 and request Bridge 7098 at the designated time.

By the Commission

ATTEST:

  
Executive Director



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