

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE) CASE NO.
WHOLESALE WATER SERVICE RATES OF) 2009-00465
THE CITY OF WHITESBURG)

O R D E R

On December 1, 2009, the Commission suspended the City of Whitesburg's ("Whitesburg") proposed adjustment to its existing wholesale water service rate to Letcher County Water and Sewer District for five months and initiated an investigation into the reasonableness of the proposed rate. In the same Order in which we suspended the proposed rate, we also directed that Whitesburg submit certain information necessary to support its proposed rate.

The rates that a municipal utility assesses a public utility for utility service are subject to Commission review and regulation.¹ KRS 278.180 requires that no change in these rates may occur without 30 days' notice to the Commission. KRS 278.190 provides that the Commission may suspend any proposed rate change before it becomes effective to investigate the reasonableness of that rate. The burden of proof in such proceedings is upon the utility "to show that the increased rate or charge is just and reasonable."

¹ See *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994).

In the present proceeding, Whitesburg bears the burden of demonstrating that its proposed wholesale water service rate is just and reasonable. As Whitesburg's notice did not contain any supporting evidence regarding the reasonableness of its proposed rate, the Commission directed in its December 1, 2009 Order that Whitesburg provide the documentary and testimonial evidence necessary to meet its burden. The Commission directed that Whitesburg provide, *inter alia*, financial reports, information on its water treatment and distribution facilities, and the cost-of-service studies used to develop the proposed wholesale rate.² Commission Staff subsequently issued two requests for information.

Based upon our review of Whitesburg's responses to the Commission's Order of December 1, 2009 and Commission Staff's requests for information, we have significant concerns as to whether Whitesburg can meet its burden of demonstrating the reasonableness of its proposed wholesale rate. It has failed to adequately respond to requests for the most basic information, to include a trial balance for the test period, an income statement for the test period, or a detailed explanation of how it calculated its proposed rate. The evidence already adduced is woefully inadequate to support any adjustment to Whitesburg's present wholesale rate. The Commission is particularly concerned that Whitesburg has not provided necessary information in light of the statutory deadline of KRS 278.190, which requires the Commission to issue a final decision on Whitesburg's proposed rate no later than September 2, 2010.

² The Commission originally directed that Whitesburg submit its supporting documents and information on or before December 23, 2009. On Whitesburg's request, we subsequently extended the time in which to submit this information to February 6, 2010.

We find that, in light of Whitesburg's lack of responsiveness to the Commission's Orders and to Commission Staff's discovery requests and the relative absence of supporting evidence in the existing record to support the proposed wholesale rate adjustment, Whitesburg should be required to show cause why this case should not be dismissed for Whitesburg's failure to meet its burden of demonstrating the reasonableness of its proposed wholesale rate.

Given Whitesburg's limited experience with Commission proceedings and procedure, we further find that an informal conference should be convened prior to the hearing to discuss the procedural aspects of this proceeding, the deficiencies in Whitesburg's responses, the evidence necessary to meet the required burden of proof, and the procedure to go forward. Commission Staff is instructed to provide to the fullest extent possible all necessary information and assistance in the procedural and substantive issues to ensure that Whitesburg has a full and complete understanding of its obligations under Kentucky law regarding its proposed wholesale rate adjustment.

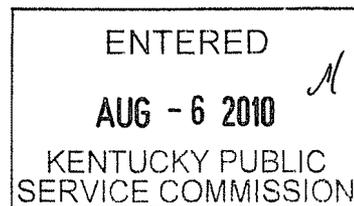
IT IS THEREFORE ORDERED that:

1. Whitesburg shall appear before the Commission on August 19, 2010 at 9:00 a.m., Eastern Daylight Time, in the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purposes of showing cause why this case should not be dismissed for Whitesburg's failure to meet its burden of proof regarding the reasonableness of its proposed wholesale rate and of presenting evidence concerning the reasonableness of its proposed rate.

2. A teleconference shall be held on August 12, 2010 at 2:00 p.m., Eastern Daylight Time. All parties shall telephone the Commission's offices at (502) 564-3940 at the appropriate time and request conference bridge 7099.

3. Whitesburg shall ensure that it has representatives participating in the teleconference who are familiar with the development of its proposed wholesale rate and who are authorized to act on its behalf.

By the Commission



ATTEST:

for *Carroll D. Greenwell*
Executive Director

Honorable James Asher
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