

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE ) CASE NO.  
WATER SERVICE RATES OF LEBANON WATER ) 2017-00417  
WORKS )

ORDER

On September 13, 2017, Lebanon Water Works ("Lebanon Water") filed with the Commission a revised tariff sheet setting forth proposed adjustments to its existing rates for wholesale water service to Marion County Water District ("Marion District") effective on November 15, 2017. Lebanon Water's current monthly wholesale water rates to Marion District consist of a meter charge of \$6.75 per meter and a volumetric charge of \$2.50 per 100 cubic feet. Lebanon Water's proposal increases the meter charge by \$0.60, or 8.9 percent, to \$7.35 per meter. It increases the volumetric charge by \$0.85, or 34 percent, to \$3.35 per 100 cubic feet. Lebanon Water further proposes to assess a surcharge over a period of 36 months to Marion District to cover any rate case expenses it may incur to participate in and defend its proposed rates in any Commission proceeding that is initiated to investigate the reasonableness of the proposed rates. The proposed monthly surcharge would be equal to one thirty-sixth of the total amount of expenses that Lebanon Water incurs to defend its proposed rates.

On September 25, 2017, Marion District, through counsel, submitted a letter requesting the Commission to "initiate a formal proceeding to investigate the reasonableness of the proposed rate, establish a procedural schedule that allows for

discovery, and issue all orders necessary to ensure that the proposed rate is not placed into effect or otherwise assessed before the required hearing.”<sup>1</sup> Marion District also asserts that under KRS 278.200 and the Kentucky Supreme Court’s decision in *Simpson County Water District v. City of Franklin*, 827 S.W.2d 460 (Ky. 1994), “a rate set forth in a contract between a non-regulated entity (i.e. a municipally-owned water company) and a utility may not be charged until the Commission holds a hearing on the proposed change.”<sup>2</sup> Marion District further requests that the Commission, pursuant to 807 KAR 5:001, Section 8, direct the use of electronic filing procedures for such proceeding.

Having considered the proposed rate adjustments and the protest to these rate adjustments, and being otherwise sufficiently advised, the Commission finds that the Kentucky Supreme Court (“Court”) has definitively held that we have jurisdiction over the wholesale rates charged by a city to a jurisdictional utility. Specifically, the Court stated that “where contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to the PSC rates and service regulation.”<sup>3</sup> The Court further quoted KRS 278.200, which provides that “no such rate or service standard shall be changed . . . until a hearing has been held before the commission in the manner prescribed in this [KRS 278] chapter.”<sup>4</sup>

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<sup>1</sup> Letter from Kaelin G. Reed, attorney, Mattingly & Nally-Martin, PLL to John S. Lyons, Commission Acting Executive Director, dated Sept. 15, 2017 at 2.

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

<sup>3</sup> *Simpson County*, 872 S.W.2d at 463.

<sup>4</sup> *Id.*

Although the Court also cited KRS 278.200 as support for the statement, “Once established by contract, such service can only be abrogated or changed after a hearing before the PSC,” it is clear from the totality of the Court’s decision and the controlling statute that the requirement for a hearing is “in the manner prescribed in this [KRS 278] chapter.”<sup>5</sup> Upon the filing of a rate adjustment by either a city-owned utility or a jurisdictional utility, “the manner prescribed in this [KRS 278] chapter” for a hearing is set forth in KRS 278.190(1), which provides as follows:

Whenever any utility files with the commission any schedule stating new rates, the commission *may*, upon its own motion, or upon complaint as provided in KRS 278.260, and upon reasonable notice, hold a hearing concerning the reasonableness of the new rates.” (Emphasis added.)

Thus, the holding of a hearing to review any rate adjustment is discretionary, subject only to the constitutional requirements of due process. Absent a request for a hearing by a person with an interest in the rates or by the Commission on its own motion, a proposed rate becomes effective by operation of law upon expiration of the statutory notice required by KRS 278.180. The Commission acknowledged the discretionary nature of a hearing for a tariff revision by a city-owned utility over three years ago, when we stated that such a filing by a municipal utility “requires an *opportunity* for a hearing by the Commission before the proposed revision can become effective.”<sup>6</sup> (Emphasis added.) Any other Commission decisions to the contrary are in error and not in accordance with the authority set out in KRS 278.200.

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<sup>5</sup> *Simpson County*, 872 S.W.2d at 463.

<sup>6</sup> Case No. 2011-00419, *Proposed Revision of Rules Regarding the Provision of Wholesale Water Service by the City of Versailles to Northeast Woodford Water District* (Ky. PSC KY Aug, 12, 2014) Order at 11.

When the Commission does exercise its discretion to hold a hearing upon the filing of a rate adjustment, KRS 278.190(2) provides that “the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate . . . .” When a proposed rate is suspended under KRS 278.190(2), subsection 3 of that statute imposes upon the applicant the burden of proof and requires the Commission to rule on the merits of the application within ten months of the application’s filing. Following the Court’s decision in *Simpson County*, the Commission has allowed city-owned utilities to file rate adjustments by a tariff filing and, absent a hearing request by a jurisdictional utility customer or on the Commission’s own motion, for the adjustment to become effective upon expiration of the notice period. If a hearing is requested and the Commission suspends the proposed rate, the requirements and procedures set forth in KRS Chapter 278 and the Commission’s regulations apply equally to filings by a city-owned utility or a jurisdictional utility.

Here, the Commission finds that an investigation will be necessary to determine the reasonableness of the proposed rates and that such an investigation cannot be completed by the tariff’s effective date of November 15, 2017. Pursuant to KRS 278.190(2), the Commission will, therefore, suspend the effective date of the proposed rates for five months, up to and including April 14, 2018.

The Commission further finds that Marion District is likely to present issues or to develop facts that will assist the Commission in fully considering this matter and should be made a party to this proceeding.

We find the Commission may, per 807 KAR 5:001, Section 8, order the use of electronic filing procedures. Lebanon Water should indicate its position on the use of

electronic filing procedures and whether it has any objection to their use in this proceeding. The Commission will defer a decision on whether to order the use of electronic filing procedures until after Lebanon Water states its position on their use. We will establish a procedural schedule in a subsequent Order.

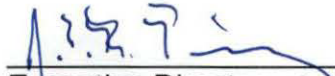
IT IS THEREFORE ORDERED that:

1. Lebanon Water's proposed rates for wholesale water service are suspended for five months from November 15, 2017, to April 14, 2018.
2. Marion District is made a party to this case.
3. Lebanon Water shall, within ten days of the date of this Order, state its position on the use of electronic filing procedures and whether it has any objection to their use in this proceeding.
4. Requests for intervention shall be filed no later than November 29, 2017. Any party who submits a motion to intervene after November 29, 2017, and upon a showing of good cause is granted full intervention, shall accept and abide by the existing procedural schedule.

By the Commission



ATTEST:

  
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Executive Director  
*for Gwen Pearson*

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