

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO)	
WHOLESALE WATER RATES CHARGED BY)	
THE CITY OF CARLISLE TO SHARPSBURG)	CASE NO.
WATER DISTRICT AND NICHOLAS COUNTY)	2021-00382
WATER DISTRICT PURSUANT TO KRS 278.200,)	
KRS 278.160, KRS 278.180, KRS 278.190 AND)	
807 KAR 5:011)	

ORDER

On September 30, 2021, pursuant to 807 KAR 5:011, the city of Carlisle (Carlisle) filed a revised tariff proposing to increase its existing rate for wholesale water service effective October 30, 2021, to Sharpsburg Water District (Sharpsburg District) and Nicholas County Water District (Nicholas District).¹ On its own motion, the Commission opened a formal proceeding to investigate the reasonableness of the proposed rate. By Order dated October 20, 2021, pursuant to KRS 278.190(2), the Commission determined that further proceedings were necessary and suspended the rates for five months, from October 30, 2021, up to and including March 30, 2022. In the same proceeding, the Commission opened an investigation to review whether Carlisle charged its wholesale customers unauthorized rates in violation of KRS 278.160.

LEGAL STANDARD

Pursuant to KRS 278.200, the Commission has jurisdiction over Carlisle's rates for wholesale water service to Sharpsburg District and Nicholas District. The Supreme

¹ KRS 278.190(3) requires that the Commission render a final decision on Carlisle's proposed rate no later than ten months after the filing of the schedule. This ten-month period ends on March 31, 2022.

Court's decision in *Simpson County Water District v. the City of Franklin*² specifically 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."³ Subsequently the Commission entered an order requiring that "each municipal utility providing wholesale utility services to a public utility shall submit to the Commission a copy of its contract..."⁴ Following the Court's decision in *Simpson County*, the Commission has allowed city-owned utilities to file rate adjustments by a tariff filing, and 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.⁵ This case presents the issue of whether Carlisle's proposed rate increase is fair, just, and reasonable based upon the evidentiary record.

Carlisle's wholesale water rate is subject to KRS 278.160 which requires rates to be filed with the Commission, and that no person shall be charged more or less than those filed rates. KRS 278.260 further provides that the Commission, on its own motion, may investigate whether "any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable."

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

³ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994)

⁴ Administrative Case No. 351 *Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Utility Service to Public Utilities* (Ky. PSC Sept. 10, 1994)

⁵ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994); *City of Danville v. Public Service Comm'n, et al.*, Civil Action No. 15-CI-00989, Opinion and Order (Franklin Circuit Court Division II, June 14, 2016).

In addition to suspending the proposed tariff for investigation, the Commission opened an investigation to determine if Carlisle engaged in unreasonable conduct related to its wholesale contracts with Nicholas District and Sharpsburg District.

DISCUSSION

Commission Staff issued three rounds of information requests to Carlisle. The first requests were entered October 25, 2021, and Carlisle filed responses on January 18, 2022, more than two months past the November 9, 2021, response due date. Commission Staff entered information requests on January 6, 2022, after a hearing was held in this matter, and partial responses were filed by Carlisle on January 24, 2022. After still not receiving full responses, Commission Staff entered the third round of information requests on January 31, 2022, with responses due on February 28, 2022. An informal conference was held on March 16, 2022, so Commission Staff could assist Carlisle in identifying the necessary information for the Commission to review the proposed rates that Carlisle had failed to provide. Carlisle provided responses to the requests for information on March 16 and March 17, 2022.

The Commission reviewed this information and compared its evaluation with that of the rates proposed by Carlisle. On March 29, 2022, the Commission issued an Order in this proceeding approving Carlisle's proposed rates and holding this case open to address the investigation into Carlisle's alleged unauthorized charges to Sharpsburg District and Nicholas District.

A hearing was held on April 14, 2022, in which evidence was taken regarding the alleged unauthorized charges. At the beginning of the April 14, 2022, hearing, Carlisle's counsel stipulated that Carlisle overcharged Nicholas District and Sharpsburg District,

and that Carlisle will credit those overcharges back over six billing periods unless the amount was small, in which case it may be able to credit the overcharge back in one billing period.⁶ The Commission issued additional requests for information to the parties in this proceeding on April 18, 2022, with responses due May 6, 2022. Sharpsburg District responded on April 21, 2022, Nicholas District responded on May 5, 2022, and Carlisle responded on May 9, 2022.

Upon review of the responses, the Commission made the following determinations. On March 18, 2019, Carlisle filed a tariff with an effective date of July 1, 2003, with the Commission reflecting the following wholesale water rates to both Nicholas District and Sharpsburg District:

First	1,000 gallons	\$11.21	Minimum Bill
Next	4,000 gallons	3.82	per 1,000 gallons
Next	5,000 gallons	2.95	per 1,000 gallons
Next	5,000 gallons	2.05	per 1,000 gallons
Next	10,000 gallons	1.90	per 1,000 gallons
Next	25,000 gallons	1.58	per 1,000 gallons
Over	50,000 gallons	1.52	per 1,000 gallons

Beginning in July 2020, Carlisle raised its rates to both Nicholas District and Sharpsburg District pursuant to Carlisle Ordinance 6-2000, which stated that the water rates shall be increased annually, at the start of a fiscal year, based on the change in the Consumer Price Index from the previous year. However, Carlisle did not file a revised tariff with the Commission reflecting the increased rates or request approval of the revised rate. The following rate schedule was provided by Carlisle to Sharpsburg District after Sharpsburg District inquired about the increased rate⁷:

⁶ Hearing Video Transcript (HVT) of the April 14, 2022 Hearing at 9:26:34–9:27:50.

⁷ Direct Testimony of Gayle Haney, Exhibit D, unnumbered page 2 (filed Dec. 1, 2021).

First	1,000 gallons	\$11.48 Minimum Bill
Next	4,000 gallons	3.96 per 1,000 gallons
Next	5,000 gallons	3.02 per 1,000 gallons
Next	5,000 gallons	2.10 per 1,000 gallons
Next	10,000 gallons	1.95 per 1,000 gallons
Next	25,000 gallons	1.61 per 1,000 gallons
Next	50,000 gallons	1.56 per 1,000 gallons
Over	100,000 gallons	1.58 per 1,000 gallons

In reviewing the billing records provided by Carlisle, the Commission was unable to arrive at the exact amount billed starting in July 2020 using the above rate schedule, however, for most months the difference between the amounts were only approximately \$0.20. For purposes of the overbilling calculation below, the Commission used Carlisle’s actual billing records, along with records provided by Nicholas District and Sharpsburg District.⁸

On September 30, 2021, Carlisle filed a revised tariff with an effective date of October 31, 2021, with the Commission reflecting the following wholesale water rates to Nicholas District and Sharpsburg District:

First	1,000 gallons	\$14.91 Minimum Bill
Next	4,000 gallons	5.08 per 1,000 gallons
Next	5,000 gallons	3.92 per 1,000 gallons
Next	5,000 gallons	2.73 per 1,000 gallons
Next	10,000 gallons	2.53 per 1,000 gallons
Next	25,000 gallons	2.10 per 1,000 gallons
Over	50,000 gallons	2.02 per 1,000 gallons

Carlisle appears to have begun billing at the above rate schedule in August 2021; however, when both Nicholas District and Sharpsburg District contacted Carlisle about the rates increasing without a filing being made with the Commission, Carlisle reverted to the rate schedule it began using in July 2020.

⁸ Carlisle’s response to Commission Staff’s First Request for Information (filed Jan. 18, 2022), Item 1, Exhibits 10-A-1, 10-A-2, 10-A-3, 10-A-4, and 10-B; Carlisle’s response to Commission Staff’s Post-Hearing Request for Information (filed Mar. 16, 2022), Item 6(d); Nicholas District’s response to Commission Staff’s Third Post-Hearing Request for Information (filed May 5, 2022), Items 2 and 3; Sharpsburg’s response to Commission Staff’s Second Post-Hearing Request for Information (filed Apr. 21, 2022), Item 2.

Consistent with KRS 278.160 and the Commission's Order in Administrative Case No. 351, contracts and rate schedules filed with the Commission shall control the rates and conditions for service. Changes to those contracts and rate schedules currently on file with the Commission shall be made in accordance with KRS 278.180 and Administrative Regulation 807 KAR 5:011. Until such changes are approved by the Commission or become effective by law, the prior contracts and rate schedules remain in effect.

Using Carlisle's billing records and the July 1, 2003 rate schedule that was on file with the Commission until the new rates in this proceeding were approved effective March 29, 2022, the Commission has calculated the amount overbilled to Nicholas District and Sharpsburg District. The month-by-month detail is included as an Appendix to this Order. For the period July 2020 to April 2022, Carlisle overbilled Nicholas District and Sharpsburg District by \$7,432.00 and \$2,092.50, respectively. For the January 2022 billing to Nicholas District, there was an unexplained discrepancy of \$688.19 between the actual amount billed to Nicholas District (\$9,310.85, including late fees and 911 fees)⁹ and the amount paid by Nicholas District (\$8,622.66).¹⁰ The amount that should have been billed based on the approved rate schedule was \$8,966.57. The bill provided by Nicholas District for the next billing period did not have a balance forward listed. As the record does not show that Nicholas District paid the unexplained discrepancy of \$688.19, and the amount paid by Nicholas District was less than the amount that should have been

⁹ Carlisle's response to Commission Staff's Post-Hearing Request for Information (filed Mar. 16, 2022), Item 6(d), Exhibit 10-A-1 Sup, unnumbered page 1, sum of Jan. 6, 2022 and Jan. 21, 2022 charges.

¹⁰ Nicholas District's response to Commission Staff's Third Post-Hearing Request for Information (filed May 5, 2022), Item 2, Exhibit 2, unnumbered page 1.

billed in accordance with the approved rate schedule, the Commission has not included the January 2022 information in the calculation of the overcharge related to Nicholas District.

FINDINGS

Upon review of the record, the Commission finds that Carlisle overcharged both Nicholas District and Sharpsburg District as outlined above and a refund of the overcharge is appropriate under KRS 278.030, and KRS 278.160. The refund should be paid by a monthly bill credit evenly allocated over the next 6 months' bills from Carlisle to Nicholas District and Sharpsburg or in one payment of the total overcharge. The parties should timely respond to this Order with any corrections or requested changes within 30 days of the date of its filing.

IT IS THEREFORE ORDERED that:

1. Within 30 days of the entry of this order the parties may file additional comments regarding the overcharge balance and refund schedule findings.

If no additional comments on this Order are received within 30 days of the date of the entry of this Order, the Commission will enter an order in accord with the above findings.

2. If comments regarding the overcharge and refund schedule in this Order are received within 30 days of the entry of this Order, the Commission will take them into consideration for the final Order.

3. The issue of the overbilling and refund will stand submitted for a final decision by the Commission effective 12:01 a.m. 30 days after the entry of this order.

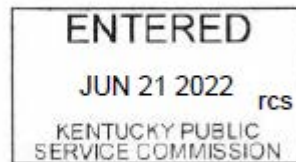
PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00382 JUN 21 2022

Carlisle Billings to Nicholas District

Month	Amount Billed	Amount that Should Have Been Billed	Amount Overcharged
July 2020	\$8,185.91	8,077.19	\$108.72
August 2020	8,211.14	7,908.65	302.49
September 2020	7,316.93	7,048.41	268.52
October 2020	9,595.29	9,240.24	355.05
November 2020	8,597.70	8,279.71	317.99
December 2020	9,949.31	9,580.82	368.49
January 2021	9,484.73	9,132.23	352.50
February 2021	11,220.65	10,801.35	419.30
March 2021	10,473.69	10,083.48	390.21
April 2021	8,418.09	8,110.61	307.48
May 2021	8,376.64	8,069.62	307.02
June 2021	9,782.05	9,421.66	360.39
July 2021	15,672.62	15,087.77	584.85
August 2021	12,600.77	12,132.58	468.19
September 2021	9,242.61	8,902.97	339.64
October 2021	7,403.99	7,133.15	270.84
November 2021	8,275.05	7,971.13	303.92
December 2021	9,533.68	9,181.96	351.72
January 2022			
February 2022	6,954.16	6,698.00	256.16
March 2022	10,909.84	10,503.47	406.37
April 2022	6,735.80	6,487.93	247.87
Totals	\$196,940.65	189,852.93	7,087.72

Carlisle Billings to Sharpsburg District

Month	Amount Billed	Amount that Should Have Been Billed	Amount Overcharged
July 2020	\$3,196.63	\$3,154.42	\$42.21
August 2020	3,219.75	3,100.31	119.44
September 2020	2,832.18	2,727.45	104.73
October 2020	3,062.70	2,949.22	113.48
November 2020	2,572.90	2,478.02	94.88
December 2020	2,842.29	2,737.18	105.11
January 2021	2,464.51	2,373.75	90.76
February 2021	3,082.61	2,968.37	114.24
March 2021	3,244.87	3,124.48	120.39
April 2021	3,558.98	3,426.65	132.33
May 2021	2,486.31	2,394.73	91.58
June 2021	2,806.11	2,702.37	103.74
July 2021	4,117.23	3,963.52	153.71
August 2021	2,703.74	2,703.74	0.00
September 2021	3,025.14	2,912.89	112.25
October 2021	2,777.55	2,674.71	102.84
November 2021	3,005.39	2,893.89	111.50
December 2021	2,878.20	2,771.53	106.67
January 2022	2,136.86	2,058.35	78.51
February 2022	1,716.26	1,653.73	62.53
March 2022	1,814.54	1,748.27	66.27
April 2022	1,789.89	1,724.56	65.33
Totals	\$61,334.64	\$59,242.14	\$2,092.50

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