

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF MUHLENBERG)	
COUNTY WATER DISTRICT #3 OF A WATER)	CASE NO.
PURCHASE AGREEMENT WITH THE CITY OF)	2023-00366
SACRAMENTO)	

ORDER

On October 25, 2023, Muhlenberg County Water District #3 (Muhlenberg District #3) filed a Water Purchase Agreement (Agreement) between it and the city of Sacramento, Kentucky (Sacramento), that sets forth the rates and terms of the sale of wholesale water by Muhlenberg District #3 to Sacramento. The Agreement indicated that it commenced on June 1, 2023, and will terminate on May 31, 2024. Because Muhlenberg District #3 did not provide 30 days' notice of the proposed Agreement pursuant to KRS 278.180(1), the earliest possible effective date for the Agreement is November 24, 2023, which is 30 days after the filing date. Muhlenberg District #3 responded to one request for information from Commission Staff. The responses are attached to this Order as Appendix B and will be included in the evidentiary record of this matter.

In Case No. 2018-00346¹, the Commission adopted the findings made in the Staff Report² which stated that if Muhlenberg District #3 began selling water to a wholesale customer in the future, it was encouraged to file another application for a rate increase in

¹ Case No. 2018-00346, *Application of Muhlenberg County Water District #3 for Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076* (Ky. PSC Apr. 8, 2019), Order.

² Case No. 2018-00346, *Application of Muhlenberg County Water District #3 for Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076* (Ky. PSC Jan. 22, 2019), Staff Report at 3.

order to calculate a wholesale rate. In Case No. 2022-00231,³ the Commission clarified this statement to indicate that a request to establish a wholesale rate must be made in a general rate proceeding pursuant to KRS 278.180 or in an alternative rate filing proceeding pursuant to 807 KAR 5:076. While the Commission's Order in Case No. 2022-00231 was silent on the issue of tariff filings and special contracts because the Commission was seeking to articulate the types of cases in which it is appropriate to propose a new rate, Commission regulations do permit utilities to propose a new rate outside of a case.⁴ Commission regulations permit a wholesale rate to be established by means of a special contract as has been proposed in this instance.⁵

KRS 278.030 provides that a utility may collect fair, just and reasonable rates and that the service it provides must be adequate, efficient and reasonable. Having reviewed the proposed Agreement and being otherwise sufficiently advised, the Commission finds that an investigation is necessary to determine the reasonableness of the proposed Agreement and that such investigation cannot be completed by November 24, 2023. Pursuant to KRS 278.190(2), the Commission will, therefore, suspend the effective date of the proposed Agreement for five months, up to and including April 23, 2023.

The Commission directs Muhlenberg District #3 to the Commission's July 22, 2021 Order in Case No. 2020-00085⁶ in which the Commission mandated the use of electronic

³ Case No. 2022-00231, *Electronic Purchased Water Adjustment Filing of Muhlenberg County Water District No. 3* (Ky. PSC Jun. 6, 2023) Order at 3.

⁴ See 807 KAR 5:011, Section 6(2)(b) and 807 KAR 5:011, Section 13.

⁵ 807 KAR 5:011, Section 13.

⁶ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

filing procedures listed in 807 KAR 5:001, Section 8. The Commission finds that electronic filing procedures should be used, consistent with the filing procedures set forth in Case No. 2020-00085.

The Commission further finds that a procedural schedule should be established to review the reasonableness of the proposed Agreement. The procedural schedule is attached as Appendix A to this Order.

Additionally, any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing may be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing. Hearings are held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky. Witnesses who sponsor schedules, testimony, or responses to requests for information are expected to participate in person at a hearing.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the reasonableness of the proposed Agreement.
2. The proposed Agreement is suspended for five months from November 24, 2023, up to and including April 23, 2024.
3. Muhlenberg District #3 shall, by counsel, enter an appearance in this proceeding within seven days of the date of service of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.

4. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of the date of service of this Order, Muhlenberg District #3 shall file by electronic means a written statement that it waives any right to service of Commission Orders by United States mail and that it or its authorized agent possess the facilities to receive electronic submissions.

6. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of service of an order of the Commission granting intervention, file with the Commission a written statement that:

(1) It or its authorized agent possesses the facilities to receive electronic transmissions; and

(2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

7. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

8. The procedural schedule set forth in Appendix A to this Order shall be followed.

9. Muhlenberg District #3 shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

10. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding, which is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding the potential impact of possible modification of rates will not be deemed sufficient to establish a special interest.

11. Any motion to intervene after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

12. Muhlenberg District #3 shall give notice of the hearing in accordance with the provisions set forth in 807 KAR 5:001, Section 9(2). In addition, the notice of the hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov" and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, psc.ky.gov." At the time publication

is requested, Muhlenberg District #3 shall forward a duplicate of the notice and request to the Commission.

13. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

14. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.

15. Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.

16. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video recording shall be made of the hearing.

17. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of times with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.


18. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

19. The Executive Director shall serve a copy of this Order upon Sacramento.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00366 DATED NOV 22 2023

Requests for intervention shall be filed no later than 11/30/2023

Initial requests for information to Muhlenberg District #3
shall be filed no later than 12/07/2023

Muhlenberg District #3 shall file responses to
initial requests for information no later than..... 12/21/2023

All supplemental requests for information to Muhlenberg District #3
shall be filed no later than 01/12/2024

Muhlenberg District #3 shall file responses to supplemental requests
for information no later than 01/26/2024

Intervenor testimony, if any, in verified prepared
form shall be filed no later than..... 02/02/2024

All requests for information to Intervenors shall
be filed no later than..... 02/16/2024

Intervenors shall file responses to requests for
information no later than..... 02/29/2024

Muhlenberg District #3 shall file, in verified form, its rebuttal
testimony no later than..... 03/07/2024

Muhlenberg District #3 or any Intervenor shall request either a
hearing or that the case be submitted for decision
based on the record no later than..... 03/14/2024

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00366 DATED NOV 22 2023

THREE PAGES TO FOLLOW

Hinton, Daniel E (PSC)

From: Ariel Miller
Sent: Monday, November 6, 2023 2:09 PM
To: Hinton, Daniel E (PSC)
Subject: Fwd: KY-PSC Electronic Filing Center NotificationTFS2023-00491

This Message Originated from Outside the Organization

This Message Is From an External Sender.

Report Suspicious

Please see below. I'm realizing the email address in the prior email was incorrect. I'm not sure why Ben never received any of the previous emails.

Get [Outlook for iOS](#)

From: Ariel Miller
Sent: Wednesday, October 25, 2023 2:38:30 PM
To: dehinton@ky.gov <dehinton@ky.gov>; benjamin.rogness@ky.gov <benjamin.rogness@ky.gov>
Subject: FW: KY-PSC Electronic Filing Center NotificationTFS2023-00491

Daniel and Ben,

Please see the below responses from the utility staff to your requested information.

Thank you,

Ariel Miller

From: Ben Tooley
Sent: Wednesday, October 25, 2023 2:35 PM
To: Ariel Miller
Cc: Cindy Darr
Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2023-00491

Ariel,

See the following responses to your questions.

1. They had a tank project coming up in which Sacramento explained they could not receive water from the McLean Co plant while their tank was out of service. I suggested that MCWD3 would be interested in helping them if they would agree to buying a minimum amount of water every month, in which they agreed.
2. We started with the wholesale rate of \$3.86 per 1,000 gallons which is what we applied for in 2019. Since then Central City raised the wholesale rate to MCWD3 which we passed through to Sacramento which made the \$4.48 per 1,000 for the current contract with Sacramento in 2023.
 - 3a. No, MCWD3 would pass on any wholesale rate change from Central City to MCWD3 to both retail customers and Sacramento.
 - 3b. Any further adjustments to the Wholesale rate to Sacramento would be filed with the Commission with either an ARF filing or a pass through adjustment if Central City were to raise the wholesale rate to MCWD3.

Hope this helps.
If you have any further questions please let me know.

Thanks

*Ben Tooley, General Manager
Muhlenberg County Water District #3
PO Box 67
Bremen, KY 42325
Office: 270-525-6333*

From: Ariel Miller
Sent: Wednesday, October 25, 2023 1:21 PM
To: Cindy Darr
Cc: Ben Tooley
Subject: FW: KY-PSC Electronic Filing Center NotificationTFS2023-00491

Cindy and Ben,

Please see the below questions from the Commission Staff regarding the tariff filing I posted this afternoon with the updated purchased water agreement with the city of Sacramento. Can you see if you can answer these questions and reply to just me so that I can get a response together to formally submit?

Thank you,

Ariel

From: Hinton, Daniel E (PSC) <dehinton@ky.gov>
Sent: Wednesday, October 25, 2023 2:16 PM
To: Ariel Miller
Cc: Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>
Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2023-00491

Ariel,

In case No. 2019-00051, Muhlenberg #3 indicated that Sacramento had joined the McLean County Regional Water Commission and executed a long-term water purchase agreement with McLean County RWC. Therefore, Muhlenberg #3 indicated in that case that it did not expect Sacramento to return as customers in the foreseeable future. Staff has a couple of questions related to that and the contract:

1. What changed since 2019-00051 that caused Sacramento to return as a wholesale purchaser of Muhlenberg #3?
2. Can you provide support for how Muhlenberg #3 came up with the initial rate of \$4.48 per 1,000 gallons?
3. The contract states that as Central City's wholesale rate to Muhlenberg #3 is increased, the wholesale rate charged to Sacramento shall also increase.
 - a. Could there be a situation where the Central City rate went up and Muhlenberg #3 did not pass the increase on to its retail customers but did pass the increase on to Sacramento?
 - b. Does Muhlenberg #3 plan to file with the Commission when it does increase the rate to Sacramento? If so, explain what that filing will entail.

Responses can be emailed to us at the above addresses.

If you have any questions, please let us know.

Thanks.

Daniel

From: KY Public Service Commission <psc.tariffs@ky.gov>
Sent: Wednesday, October 25, 2023 1:27:15 PM (UTC-05:00) Eastern Time (US & Canada)
To:
Cc: PSC Tariffs <psc.tariffs@ky.gov>
Subject: KY-PSC Electronic Filing Center NotificationTFS2023-00491

This notification has been sent to you regarding your recent Tariff filing : TFS2023-00491
file(s) have been transmitted successfully.

Documents received for Contract filing: TFS2023-00491 for Magoffin County Water District
10/25/2023 1:27:10 PM

File Summary:

File Name: Sacramento_purchase_agreement_5-30-23.pdf

Description: Contract

Thank you.

*Ariel Miller
Kentucky Rural Water Association
Post Office Box 1424
1151 Old Porter Pike
Bowling Green, KENTUCKY 42102-1424

*Ben Tooley
Muhlenberg County Water District #3
P. O. Box 67
Bremen, KY 42325

*Muhlenberg County Water District #3
4789 Main Street
P. O. Box 67
Bremen, KY 42325