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August 1, 2013

Mr. Lewis Hopper
Mr. Josh Callihan
Mr. Chris Brewer
Barbourville Utilities Commission
202 Daniel Boone Drive
Barbourville, Kentucky 40906

Gentlemen:

The Public Service Commission has learned that Barbourville Utilities Commission has increased its rate for wholesale sewer service rendered on and after May 1, 2012.

In *Simpson County Water District v. City of Franklin, Ky.*, 872 S.W.2d 460 (1994), the Kentucky Supreme Court held that the Public Service Commission has jurisdiction over contracts between municipal utilities and public utilities and that changes in any rate that a municipal utility assesses a public utility for wholesale utility service must be approved by the Public Service Commission. In reaching its decision, the Kentucky Supreme Court relied upon KRS 278.200, which provides:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but **no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission** in the manner prescribed in this chapter [emphasis added].

Pursuant to the *Simpson County* decision, the Public Service Commission in Administrative Case No. 351 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

Mr. Lewis Hopper
Mr. Josh Callihan
Mr. Chris Brewer
August 1, 2013
Page 2

30 days prior to the effective date of the revision, file with the Commission the revised contract and rate schedule." A copy of the *Simpson County* decision and the Public Service Commission's Order are enclosed.

Consistent with KRS 278.160 and the Public Service Commission's Order in Administrative Case No. 351, contracts and rate schedules filed with the Public Service Commission shall control the rates and conditions of service of the parties. Changes to those currently on file with the Public Service 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, the old contracts and rate schedules remain in effect. Please note that when the Public Service Commission issued a Certificate of Public Convenience and Necessity to Knox County Utility District in 2006¹ to provide sewer service, it specifically advised Barbourville Utilities Commission that its wholesale sewer service rate would be subject to Commission jurisdiction. A copy of the Commission's Order is enclosed.

The Commission has not approved the rate increase that became effective May 1, 2012 as it applies to wholesale service to Knox County Utility District. Therefore, Barbourville Utilities Commission may bill Knox County Utility District only at the rate of \$2.55 per 1,000 gallons – the wholesale rate set forth in that the Sanitary Sewer Resolution. A copy of this agreement is enclosed. Until such time Barbourville Utilities Commission files its proposed revisions with and obtains the approval of the Public Service Commission, it may not charge Knox County Utility District a rate that differs from this rate. Furthermore, Barbourville Utilities Commission must either refund to McKinney Water District any additional charges collected since May 1, 2013, or credit that amount to Knox County Utility District's account.

For your reference, I am enclosing the Public Service Commission's letter of October 16, 2007, which contains guidance on the procedures that a municipal utility must follow when changing its rates for utility service to public utilities.

Any questions regarding this letter should be directed to Gerald Wuetcher, Executive Advisor/Attorney, at (502) 782-2590.

Sincerely,



Jeff Derouen
Executive Director

Enclosures

cc: Knox County Utility District (w/o encls)
Case File No. 2013-00223 (w/o encls)

¹ Case No. 2006-00096, *Application of Knox County Utility Commission for Approval of an Initial Tariff Establishing Rules, Regulations, and Rates for Service of Its Newly Formed Sewer Division* (Ky. PSC Mar. 29, 2006).