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December 5, 2013

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

Gentlemen:

On August 1, 2013, the Public Service Commission advised Barbourville Utility Commission ("Barbourville") that it had failed to comply with KRS 278.200 when increasing its rate for wholesale sewer service to Knox County Utility Commission ("Knox County"). No response to that letter has been received nor has a new service contract between Barbourville and Knox County or revised tariff sheets been filed with the Public Service Commission.

As stated in my earlier letter, the Public Service Commission learned in June 2013 that Barbourville has increased its rate for wholesale sewer service rendered to Knox County on and after May 1, 2012.¹

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

¹ Knox County Utility Commission has applied to the Commission for authority to adjust its rates to reflect the increases in Barbourville Utility Commission's rate for wholesale sewer service. See Case No. 2013-00223, *Purchased Water Adjustment Filing of Knox County Utility Commission* (Ky. PSC filed June 13, 2013).

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 30 days prior to the effective date of the revision, file with the Commission the revised contract and rate schedule.”²

Consistent with 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 rates 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 in 2006³ to provide sewer service, it specifically advised Barbourville that its wholesale sewer service rate would be subject to Commission jurisdiction.

The Public Service Commission's records reflect that Barbourville executed a Sanitary Sewer Resolution and Agreement with Knox County Utility Commission on or about July 14, 2004. This agreement provided that Barbourville would charge a rate of \$2.55 per 1,000 gallons of wastewater for sewer service. The Public Service Commission has no record of any subsequent agreement or any request for adjustment of this wholesale rate. Pursuant to KRS 278.200, therefore, Barbourville may bill Knox County only at the rate of \$2.55 per 1,000 gallons. Until such time Barbourville files its proposed revisions with the Public Service Commission and obtains approval of those revisions, it may not charge Knox County a rate that differs from the contract rate of \$2.55 per 1,000 gallons. Furthermore, Barbourville must either refund to Knox County any collected charges that are in excess of this rate, or credit the excess to Knox County's account.

If Barbourville does not take any action within the next 14 days to comply with KRS 278.200, the Public Service Commission will consider the administrative proceedings against Barbourville to compel compliance. The Public Service

² Administrative Case No. 351, *Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Utility Service to Public Utilities* 1 – 2 (Ky. PSC Aug. 10, 1994).

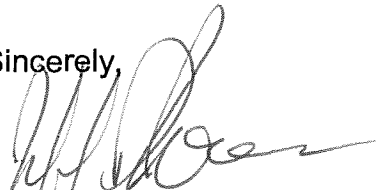
³ Case No. 2006-00096, *Application of Knox County Utility Commission for Approval of an Initial Tariff Establishing Rules, Regulations, and Rates for Service of Its Newly Formed Sewer Division* (Ky. PSC Mar. 29, 2006).

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Commission, however, would prefer to resolve this matter in an expeditious and amicable manner. It has directed Commission Staff to assist Barbourville in any manner that would enable Barbourville's compliance with the requirements of KRS Chapter 278. Commission Staff is available to discuss those requirements at Barbourville's convenience and to assist in the preparation of any required documents.

Any questions regarding this letter, as well as any request to arrange a conference to discuss this matter or to request assistance in the preparation of documents, should be directed to Gerald Wuetcher, Executive Advisor/Attorney, at (502) 782-2590.

Sincerely,



Jeff Derouen
Executive Director

cc: Knox County Utility District
Case File No. 2013-00223