

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE)
WATER SERVICE RATES OF CENTRAL CITY) CASE NO.
MUNICIPAL WATER & SEWER) 2017-00199

ORDER

On April 13, 2017, Central City Municipal Water & Sewer ("Central City") filed with the Commission a revised tariff sheet setting forth proposed adjustments to its existing rates for wholesale water service to Muhlenberg County Water District ("Muhlenberg") and Muhlenberg County Water District #3 ("Muhlenberg #3") effective on May 31, 2017. Central City's current monthly wholesale water rate to each of these wholesale purchasers is \$2.63 per 1,000 gallons.¹ Central City proposes to increase the monthly wholesale rate charged to each by \$0.56 per 1,000 gallons, from \$2.63 to \$3.19, or 21.3 percent.

On May 10, 2017, Muhlenberg and Muhlenberg #3, through counsel, each submitted a letter protesting the proposed rate adjustment and 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 Commission conducts a hearing." Muhlenberg and Muhlenberg #3 also assert that under KRS 278.200, the Supreme Court's decision in *Simpson*

¹ *City of Central City, Kentucky*, P.S.C. KY. NO. 1, 2nd Revised Sheet No. 1, effective March 17, 2013.

County Water District v. City of Franklin, 827 S.W.2d 460 (Ky. 1994), and prior Commission precedent, “a rate set forth in a contract between a city and a utility may not be charged until the Commission holds a hearing on the proposed change.” Muhlenberg and Muhlenberg #3 also request that the Commission, pursuant to 807 KAR 5:001, Section 8, direct the use of electronic filing procedures for such a proceeding.

Having considered the proposed rate adjustments, the protests to those adjustments, and being otherwise sufficiently advised, the Commission finds that the Kentucky Supreme 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.”² 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.”³

Although the Court also cited KRS 278.200 as support for the statement that, “[o]nce 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.” Upon the filing of a rate adjustment by either a city-owned utility or

² *Simpson County*, 872 S.W.2d at 463.

³ *Id.*

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 almost 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.”⁴ (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.

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 being filed. Following the Court’s decision in *Simpson County*, the

⁴ 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* (PSC Ky. Aug. 12, 2014) Order at 11.

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, the adjustment becomes 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 May 31, 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 October 30, 2017.

The Commission further finds that Muhlenberg and Muhlenberg #3 are likely to present issues or to develop facts that will assist the Commission in fully considering this matter and should be made parties to this proceeding.

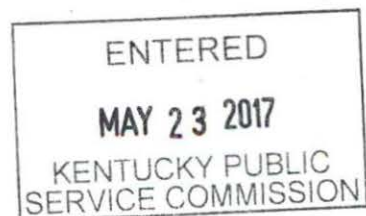
The Commission finds that Central City should, within ten days of the date of this Order, have its counsel enter an appearance into this proceeding that contains the name, address, telephone number, fax number, and electronic mail address of counsel. We find the Commission may, per 807 KAR 5:001, Section 8, order the use of electronic filing procedures. With its counsel's entry of appearance, Central City 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 Central City states its position on their use. We will establish a procedural schedule in a subsequent Order.

IT IS THEREFORE ORDERED that:

1. Central City's proposed rates for wholesale water service are suspended for five months from May 31, 2017, to October 30, 2017.
2. Muhlenberg and Muhlenberg #3 are made parties to this case.
3. Central City shall, by counsel, enter an appearance in this proceeding within ten days of the date of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel. Further, Central City, with its entry of appearance, shall 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 June 5, 2017. Any party who submits a motion to intervene after June 5, 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:


Executive Director

*David Rhoades
City Administrator
City of Central City
214 North First Street
Central City, KENTUCKY 42330

*Central City Municipal Water & Sewer
208 N. First Street
Central City, KY 42330

*Muhlenberg County Water District
Muhlenberg County Water District
301 Dean Road
P. O. Box 348
Greenville, KY 42345

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