

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE PROPOSED)
WHOLESALE WATER SERVICE CONTRACT) CASE NO. 2008-00383
BETWEEN THE RICHMOND UTILITIES BOARD)
AND KIRKSVILLE WATER ASSOCIATION)

O R D E R

Richmond Utilities Board ("Richmond") is an agency of the city of Richmond, a city of the second class located in Madison County, Kentucky.¹ It owns and operates a water treatment and distribution system that provides, *inter alia*, wholesale water service to Kirksville Water Association ("Kirksville") and Madison County Utilities District.

Kirksville, a non-profit Kentucky corporation organized pursuant to KRS Chapter 273, owns and operates facilities that are used in the distribution of water to the public, for compensation, to approximately 1,999 customers² in Madison County, Kentucky. It is a utility subject to Commission jurisdiction.³

KRS 278.010(3) exempts municipal utilities from Commission regulation by excluding cities from the definition of "utility."⁴ In *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994), however, the Kentucky Supreme Court held

¹ KRS 81.010(2).

² Annual Report of Kirksville Water Association to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2007 at 27.

³ KRS 278.010(3)(d); KRS 278.012.

⁴ See *McClellan v. Louisville Water Company*, 351 S.W.2d 197 (Ky. 1961).

that this exemption did not extend to contracts for utility service between a municipal utility and a public utility. The Court ruled that “where contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the [c]ity relinquishes the exemption and is rendered subject to . . . [Commission] rates and service regulation.”⁵

Simpson County Water District and KRS 278.200⁶ effectively subject all contracts between municipal utilities and public utilities to the Commission’s jurisdiction, and they require all municipal utility transactions with a public utility to comply with the provisions of KRS Chapter 278. KRS 278.160 provides:

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any

⁵ *Simpson County Water District*, 872 S.W.2d at 463.

⁶ KRS 278.200 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.

utility for a compensation greater or less than that prescribed in such schedules.

KRS 278.180(1) provides:

[N]o change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.

Accordingly, KRS 278.160(1) and (2) and KRS 278.180(1) require that a municipality file with the Commission contracts involving rates and service between the municipality and a utility subject to Commission jurisdiction.

On April 3, 2008, Richmond filed a proposed tariff with the Commission to increase its wholesale rates to \$2.08 to Kirksville effective July 1, 2008. With its proposed tariff, Richmond provided a copy of a contract for service and sale of water between itself and Kirksville. The contract was to "extend for a term beginning with the date of execution of this contract by both Parties and ending on December 31, 2038," and it was dated March 28, 2008. The contract provided for a wholesale rate of \$2.02 per 100 cubic feet, dating from July 1, 2007.⁷ In addition to the \$2.02 rate, the contract provided for an automatic annual adjustment based on the Consumer Price Index ("CPI").

⁷ Because the contract stated the \$2.02 rate was to be effective approximately 9 months prior to the date on which the contract was signed, it appears to memorialize an agreement as to the rate that was already in place prior to the drafting of the contract.

The Commission accepted Richmond's tariff that increased its wholesale rates to Kirksville to \$2.08 per 100 cubic feet of water effective July 1, 2008, but Richmond's contract gives us concern. We have previously rejected automatic adjustment clauses based on the CPI for two reasons.⁸ First, the CPI is a measure of the prices paid by consumers on a variety of goods and services that are unrelated to the cost of providing water service.⁹ Second, the likelihood of negative CPI growth is remote. An automatic adjustment mechanism should reflect any change in cost of water service, including reductions.¹⁰

In addition to the automatic adjustment, one of the contractual provisions also states: "This Agreement shall become effective upon approval of the Kentucky Public Service Commission and the Farmers Home Administration. If such approvals are not obtained within thirty (30) days from the date of this Agreement, then the City and the Water District are relieved from any obligations hereunder." The contract was submitted to the Commission on April 3, 2008, and has not yet been accepted by the Commission.

Based upon the foregoing and being otherwise sufficiently advised, the Commission finds it appropriate to open these proceedings to investigate the reasonableness of the proposed wholesale water service contract between Richmond and Kirksville.

The Commission HEREBY ORDERS that:

1. Richmond shall state in writing within 20 days of the date of this Order:

⁸ See Case No. 2006-00067, Proposed Adjustment of the Wholesale Water Service Rate of the City of Lawrenceburg, Kentucky (Ky. PSC Nov. 21, 2006).

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 4.

a. Why the contract should not be declared void because of Richmond's failure to obtain Commission approval of the contract within 30 days from the date of the agreement.

b. Whether Richmond considers the CPI to be an accurate measure of changes in the cost of providing wholesale water service. If yes, explain why.

c. Why automatic annual adjustments to Richmond's wholesale water service based upon a price index are more reasonable than periodic rate filings with the Commission based upon Richmond's actual cost of providing water service.

2. Kirksville is made a party to this proceeding.

3. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

4. All documents that this Order requires to be filed with the Commission shall be served upon all other parties.

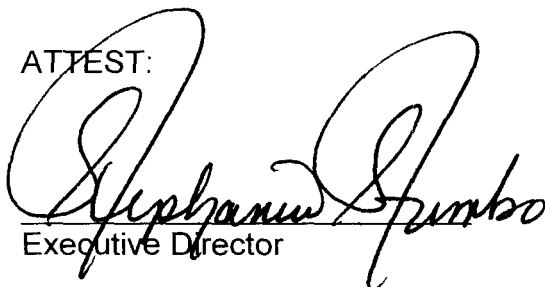
5. Any motion requesting an informal conference with Commission Staff to consider matters that may aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

Done at Frankfort, Kentucky, this 13th day of November, 2008.

By the Commission

Vice Chairman Gardner abstains.

ATTEST:


Executive Director