

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF FRANKFORT)	
ELECTRIC & WATER PLANT BOARD OF AN)	CASE NO.
AMENDMENT TO WATER SUPPLY AGREEMENT)	2020-00269
WITH FARMDALE WATER DISTRICT)	

ORDER

On July 23, 2020, Frankfort Electric & Water Plant Board (Frankfort) filed with the Commission an amendment to its Water Supply Agreement (Amendment) with Farmdale Water District (Farmdale District). The Amendment extends the term of the Water Supply Agreement entered into between Frankfort and Farmdale District on January 18, 2011, for a term of 42 years from the date of the Amendment, which was entered into on July 6, 2020. As the Amendment was filed through the Commission’s electronic Tariff Filing System on July 23, 2020, the earliest possible effective date for the Amendment is August 22, 2020.

The Commission entered an Order on August 20, 2020, finding an investigation was necessary to determine the reasonableness of the Amendment and suspended the effective date of the Amendment for five months, up to and including January 21, 2021, and established a procedural schedule. Farmdale District, as the other party to the Amendment, was granted intervention in this matter by Order entered September 10, 2020. Commission Staff’s Initial Requests for Information were entered on September 16, 2020. In this initial request, Commission Staff (Staff) specifically asked Frankfort to address the Kentucky Supreme Court’s recent ruling in *Ledbetter Water Dist.*

v. Crittenden-Livingston Water Dist., 2018-SC-000494-DG, 2020 WL 1303913, at *1 (Ky. Feb. 20, 2020), *reh'g denied* (July 9, 2020) (*Ledbetter*), and explain why the proposed contract Amendment, with a term exceeding 20 years, is not void due to violating Kentucky Constitution § 164.

Frankfort filed a response on September 16, 2020, and in response to Staff's inquiry regarding the *Ledbetter* decision, Frankfort first stated that the decision was unpublished and not binding precedent.¹ Second, Frankfort adopted the brief filed in the *Ledbetter* decision by the Kentucky Rural Water Association, which sets forth an argument that water purchase agreements between two nonprofit organizations are not franchise agreements, citing *Southeast Bullitt Fire Prot. Dist. v. Southeast Bullitt Fire & Rescue Dep't*, 537 S.W.3d 828 (Ky. App. 2017) (*Southeast Bullitt*).² Third, Frankfort cites the *Southeast Bullitt* decision again to argue that *Ledbetter* does not consider Kentucky Constitution §163 in conjunction with Kentucky Constitution §164, which again distinguishes the proposed Amendment here as a contract and not a franchise.³ Fourth, Frankfort argues that applying the test from *Ledbetter*, results in the proposed Amendment at issue herein being defined as a contract for the sale of water and not a franchise agreement subject to requirements in the Kentucky Constitution §164.⁴

The Commission agrees with Frankfort's reasoning that the *Ledbetter* decision was unpublished and therefore not binding precedent. Additionally, considering the reasoning set forth in the *Ledbetter* decision and reading the plain language in the Kentucky

¹ Frankfort Response to Data Request of September 16, 2020 (filed Oct. 2, 2020) at 8.

² *Id.* at 9.

³ *Id.*

⁴ *Id.* at 10 and 11.

Constitution §163, the rights conveyed to constitute a utility franchise must include the right to install “pipes or mains . . . along, over, under or across the streets, alleys or public grounds.” The Commission finds that this contract is not a franchise agreement per the plain language of the Kentucky Constitution §163, and therefore it is not subject to the requirements of bidding in the Kentucky Constitution §164.

After consideration of the evidence of record and being otherwise sufficiently advised, the Commission finds that Frankfort has provided adequate justification to demonstrate that its Amendment is reasonable and not in contravention of the Kentucky Constitution §164.

IT IS THEREFORE ORDERED that:

1. The proposed Amendment is accepted for filing.
2. This case is closed and removed from the Commission’s docket.

By the Commission

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Linda C. Bidwell
Executive Director

Case No. 2020-00269

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