

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF THE CITY OF)	
BURKESVILLE TO INCREASE ITS WHOLESALE)	CASE NO.
RATE TO CUMBERLAND COUNTY WATER)	2024-00075
DISTRICT)	

ORDER

On March 1, 2024, the city of Burkesville (Burkesville) filed with the Commission a revised tariff sheet and contract setting forth a proposed three-phase increase to its existing rates for wholesale water service to Cumberland County Water District (Cumberland District) effective April 15, 2024. By Order dated April 8, 2024,¹ the Commission approved two of the three proposed rates set to be effective April 15, 2024, and April 15, 2025. However, pursuant to KRS 278.190(2), the Commission determined that further proceedings were necessary and suspended the proposed 2026 rate along with the portion of the water purchase contract setting forth the Phase 3 rate, for five months, up to and including September 14, 2024. Burkesville responded to one request for information from Commission Staff.²

On September 12, 2024, a final Order³ was entered denying Burkesville's proposed Phase 3 wholesale rate of \$3.26 per 1,000 gallons but approving a Phase 3

¹ Case No. 2024-00075, *Electronic Tariff Filing of the City of Burkesville to Increase its Wholesale Rate to Cumberland County Water District* (Ky. PSC Apr. 8, 2024), Order at 5.

² Burkesville's Response to Commission Staff's First Request for Information (Staff's First Request) (filed May 13, 2024).

³ Order (Ky. PSC Sept. 12, 2024) at 5.

wholesale rate of \$3.11 per 1,000 gallons to be effective April 15, 2026. Thereafter, on October 2, 2024, Burkesville filed a motion to reconsider⁴ the Commission’s findings that approved a Phase 3 wholesale rate of \$3.11 per 1,000 gallons in its final Order. By Order entered October 22, 2024,⁵ the Commission granted Burkesville’s Motion to Reconsider in order to afford Burkesville the opportunity to present the Commission with new information that Burkesville did not present in its original tariff filing and accordingly scheduled an Informal Conference that was held on November 8, 2024. A memorandum reflecting the discussions during the informal conference was entered on November 14, 2024.⁶ There are no intervenors, and this matter now stands submitted to the Commission for a decision.

LEGAL STANDARD

Pursuant to KRS 278.200,⁷ the Commission has jurisdiction over Burkesville’s rates for wholesale water service to Cumberland District. The Supreme Court’s decision in *Simpson County Water District v. City of Franklin* specifically 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.”⁸ Following the Court’s decision in *Simpson County*, the Commission has allowed city-owned utilities to file rate adjustments

⁴ Burkesville’s Response to Order & Motion to Reconsider with Notice of Supplement to Record & Motion for Extension of Time (filed Oct. 2, 2024) at 2.

⁵ Order (Ky. PSC Oct. 22, 2024) at 4-5.

⁶ Informal Conference Memorandum filed Nov. 14, 2024.

⁷ KRS 278.200.

⁸ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994).

by a tariff filing, and 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.⁹

Burkesville's wholesale water rate charged to Cumberland District is subject to KRS 278.030,¹⁰ which provides that a utility may collect fair, just and reasonable rates. KRS 278.260¹¹ explains that the Commission may, on its own motion, investigate whether "any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable." Thus, in accordance with KRS 278.030, KRS 278.200, and KRS 278.260, the Commission must determine whether Burkesville's proposed rate increase is fair, just and reasonable based upon the evidentiary record.

Furthermore, KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable

⁹ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994); *City of Danville v. Public Service Comm'n, et al.*, Civil Action No. 15-CI-00989, Opinion and Order (Franklin Circuit Court Division II, June 14, 2016).

¹⁰ KRS 278.030.

¹¹ KRS 278.260.

minds.”¹² An order can only be unlawful if it violates a state or federal statute or constitutional provision.¹³

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

BACKGROUND

Prior to Burkesville’s March 1, 2024, filing with the Commission, Burkesville’s monthly wholesale water rate to Cumberland District was \$2.15 per 1,000 gallons.¹⁴ In its March 1, 2024, filing, Burkesville requested the wholesale water rate be increased in three phases as shown in the table below. In support of its proposed rates, Burkesville submitted its “Analysis and Recommendations for Wholesale Water Rate” (Wholesale Water Rate Analysis) document, prepared by Kentucky Rural Water Association, with its proposed tariff. The calculated rate in the Wholesale Water Rate Analysis was \$3.11, or 44.7 percent of its existing rate.¹⁵ However, Burkesville’s proposal increased the wholesale water rate by \$1.11 per 1,000 gallons, or approximately 51.6 percent, to \$3.26 per 1,000 gallons once the third stage of the phase-in rate was implemented.

¹² *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

¹³ *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

¹⁴ P.S.C. Ky. No. 1, Burkesville Tariff (issued Sept. 27, 2019) effective Sept. 21, 2017.

¹⁵ City of Burkesville Response to Commission Staff’s First Request (dated May 13, 2024).

Phase	Effective Date	Incremental Percent	Requested Amount	Cumulative Dollars	Cumulative Percent
	Sep 30, 2019 (base rate)	n/a	\$ 2.15		
1	April 15, 2024 (proposed rate)	14.7%	\$ 2.47	\$ 0.32	14.9%
2	April 15, 2025 (proposed rate)	15.0%	\$ 2.84	\$ 0.69	32.1%
3	April 15, 2026 (proposed rate)	15.0%	\$ 3.26	\$ 1.11	51.6%
	Cumulative Percent Increase	44.7%	51.6%		

DISCUSSION

Burkesville’s Wholesale Water Rate Analysis was based on 2023 operating costs plus projected average debt service, resulting in a calculated rate of \$3.11 per 1,000 gallons sold.¹⁶ While Burkesville provided its reasons for a phased rate, the proposed Phase 3 rate exceeded its calculated rate.¹⁷ It is clear from the calculations in the table above that Burkesville attempted to spread its calculated 44.7 percent increase equally over three years.¹⁸ However, it applied each increment to each prior year’s calculated rate rather than applying an accumulated increase against the base rate of \$2.15 for each phase.¹⁹ This approach resulted in a proposed Phase 3 rate that is \$0.15 per 1,000 gallons higher than its rate analysis, and results in an aggregate rate increase of 51.6 percent for Phase 3.²⁰ While the Commission recognizes that Burkesville intended to propose a Phase 3 rate of 51.6 percent, it also must recognize that the proposed increase exceeded the 44.7 percent rate established by the Wholesale Water Rate Analysis. As

¹⁶ Order (Ky. PSC Sept. 12, 2024) at 4.

¹⁷ Order (Ky. PSC Sept. 12, 2024) at 4-5.

¹⁸ Order (Ky. PSC Sept. 12, 2024) at 4.

¹⁹ Order (Ky. PSC Sept. 12, 2024) at 4.

²⁰ Order (Ky. PSC Sept. 12, 2024) at 4.

such, the Commission approved a Phase 3 rate of \$3.11 per 1,000 gallons in its September 12, 2024 Order.²¹

Burkesville subsequently filed its Motion to Reconsider on October 2, 2024. The Commission interpreted Burkesville's motion to reconsider as a request for rehearing regarding the Phase 3 rates approved in the Commission's September 12, 2024, final Order, and scheduled an Informal Conference on November 8, 2024, to afford Burkesville the opportunity to present the Commission with new information that it did not present in its original tariff filing.

At the Informal Conference, representatives from Burkesville, Cumberland District, and Kentucky Rural Water Association (KRWA) (collectively, the Parties) were present and afforded the opportunity to discuss issues in the final Order as part of the reconsideration. An Informal Conference Memorandum²² memorializing what was discussed at the Informal Conference was entered into the record on November 14, 2024, and no comments were entered regarding the contents of the Memorandum. Aside from remarks relating to how Burkesville and Cumberland District both agreed that the contract was negotiated in good faith by the parties and that the proposed rates seemed to be in the best interest of its customers, four items were raised by the parties during the Informal Conference.

First, it was the understanding of the Parties that a precedent was established following the decision in *Simpson County*²³ that the Public Service Commission would not

²¹ Order (Ky. PSC Sept. 12, 2024) at 5.

²² 20241114_PSC Letter Filing IC Memo and Attendance List Into the Record.pdf (filed Nov. 14, 2024).

²³ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994).

intervene in a contract between a municipality and water district when the contract was negotiated in good faith. Second, the Parties believed that the Commission should have accepted or rejected the contract and proposed rates in their entirety rather than approving the proposed Phase 1 and Phase 2 rates but modifying the proposed Phase 3 rates. Third, the Parties believed the Commission incorrectly analyzed the proposed rates one year at a time instead of looking at them holistically which would take into account the prevention of rate shock to customers. Lastly, the Parties stated their concern that the Commission's denial of the proposed Phase 3 rates would remove the incentive to a phase-in approach to rate making, which would be against the public's interest.

In response to the four items raised by the Parties at the Informal Conference, the Commission notes that KRS 278.200 and the Court's decision in *Simpson County*²⁴ both grant the Commission broad authority to accept, alter, or deny rate agreements between a municipality and utility. KRS 278.200 states,

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...

The Court's decision in *Simpson County* held that when a city and utility contract for water rates and services, those rates and services are subject to Public Service Commission jurisdiction pursuant to KRS 278.200, saying in pertinent part,

We find that where contracts have been executed between a utility and a city, such as between the City of Franklin and Simpson County Water District, KRS 278.200 is applicable

²⁴ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994).

and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation.²⁵

Thus, even if a contract is negotiated in good faith between a city and utility, that contract is still subject to PSC review and modification, and the proposed rates and terms within the contract must be fair, just and reasonable in accordance with KRS 278.030.

Moreover, the Commission is granted broad authority under KRS 278.200 to grant, reject, or amend all or part of a proposed agreement between a city and utility. The Commission may accept certain parts of a contract, reject other parts of the contract, or direct the parties to amend aspects of a contract. Regarding the proposed contract between Burkesville and Cumberland District, the Commission analyzed the proposed rates both individually and holistically. However, while the Commission determined that the proposed Phase 1 and Phase 2 rates were reasonable, thus, accepted those rates, it found the proposed Phase 3 rate to be unreasonable. As a result, the Commission found that the proposed Phase 3 rate should be denied and modified to reflect the calculations supported by the Wholesale Water Rate Analysis.

Lastly, the Commission, as a matter of policy, does not deny or discourage phase-in approaches to ratemaking. Rather, the Commission routinely approves phase-in rates that are properly supported and believes it to be a reasonable approach to ratemaking in many circumstances. However, the proposed phase-in rates must still be fair, just and reasonable in accordance with KRS 278.030, otherwise the proposed rates will be denied or require modification. Here, based upon the record, the Commission was unable to conclude that the Phase 3 rate was reasonable.

²⁵ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994).

Thus, in accordance with KRS 278.400 and applicable case law, because no new information was presented by the Parties during the rehearing process, the Parties did not bring attention to any material errors or omissions that require correcting in the final Order, and because the Parties did not contend that any of the Commission's findings in the final Order were unreasonable or unlawful, the Commission affirms its decision in the final Order entered on September 12, 2024.

IT IS THEREFORE ORDERED that:

1. The Commission denies the requested relief sought by Burkesville and affirms the final Order issued September 12, 2024.
2. Within 20 days of the date of service of this Order, Burkesville shall file with the Commission, using the Commission's electronic Tariff Filing System, the Water Purchase Contract and revised tariff sheet reflecting only the rates and charges approved by this Order, and any previous Order in this proceeding, and its effective date, and also stating that the rates and charges were authorized by this Order.
3. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner

ATTEST:



Executive Director



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