

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC INVESTIGATION INTO CITY)	
OF FALMOUTH'S THREAT OF TERMINATION)	CASE NO.
OF WHOLESALE WATER SERVICE TO EAST)	2024-00403
PENDLETON WATER DISTRICT AND)	
PENDLETON COUNTY WATER DISTRICT)	

ORDER

East Pendleton Water District (East Pendleton District) and Pendleton County Water District (Pendleton District) (collectively, the Districts) are water districts organized pursuant to KRS Chapter 74. The city of Falmouth's (Falmouth), located in Pendleton County, Kentucky, is a municipality that sells wholesale water to the Districts. The Commission, on its own motion, establishes this proceeding to investigate Falmouth's threat of termination of water service to East Pendleton District and Pendleton District in contrast to existing tariffs, and to investigate the adequacy and reliability of Falmouth's water service supplied to the Districts, pursuant to KRS 278.160, KRS 278.200, and KRS 278.260(1). The Commission became aware of this issue following communications with Commission staff from counsel for the Districts and counsel for Falmouth.

East Pendleton District owns and operates facilities that distribute and furnish water to approximately 2,414 customers in Pendleton County. East Pendleton purchases wholesale water from Falmouth and Bracken County Water District.¹

¹ *Annual Report of East Pendleton Water District to the Public Service Commission for the Year Ending December 31, 2023*, at 49 and 54.

Pendleton District owns and operates facilities that distribute and furnish water to approximately 2,612 customers in Pendleton County, and sells wholesale water to the city of Butler, Kentucky.² Pendleton District purchases wholesale water from Falmouth and Northern Kentucky Water District.³

BACKGROUND

Falmouth currently sells wholesale water to the Districts at a rate of \$1.98 per thousand gallons.⁴ On July 17, 2024, Falmouth filed a tariff to increase its wholesale water rates to the Districts. Thereafter, on August 12, 2024, the Commission by Order⁵ suspended Falmouth's proposed tariff for five months from August 16, 2024, up to and including January 15, 2025, and opened an investigation into the reasonableness of Falmouth's proposed tariff. As a result of Falmouth's lack of participation in its own tariff filing and its failure to provide sufficient evidence to support its proposed increase, the Commission denied and dismissed Falmouth's proposed tariff on November 15, 2024, but encouraged Falmouth and the Districts to attempt to resolve disagreements related to Falmouth's wholesale rate. The Commission further notified Falmouth it may re-file for a wholesale water rate increase with the Commission at any time.⁶

² *Annual Report of Pendleton County Water District to the Public Service Commission for the Year Ending December 31, 2022*, at 51 and 57.

³ *Annual Report of Pendleton County Water District to the Public Service Commission for the Year Ending December 31, 2022*, at 56.

⁴ City of Falmouth Wholesale Water Tariff (effective June 27, 2007).

⁵ Case No. 2024-00244, *Electronic Tariff Filing of the City of Falmouth to Increase the Wholesale Water Rates Charged to East Pendleton Water District and Pendleton County Water District* (Ky. PSC Aug. 12, 2024), Order.

⁶ Case No. 2024-00244, *Electronic Tariff Filing of the City of Falmouth to Increase the Wholesale Water Rates Charged to East Pendleton Water District and Pendleton County Water District* (Ky. PSC Nov. 15, 2024), Order.

On December 18, 2024, the Commission received an email notice from attorney Joseph P. Cottingham, counsel for the Districts, that during the past month, Falmouth and the Districts had discussed Falmouth's proposal to increase its wholesale water rates but the parties had been unable to reach an agreement. Moreover, attorney Cottingham was contacted by attorney Brandon Voelker, counsel for Falmouth, and notified that if the Districts did not agree to Falmouth's proposed rates, Falmouth would shut off its water supply to the Districts.⁷

LEGAL STANDARD

The Commission has jurisdiction over the Districts' rates and services pursuant to and KRS 278.015 and KRS 278.040(2). Pursuant to KRS 278.200, the Commission has jurisdiction over Falmouth's rates and services for wholesale water service to the Districts. The Supreme Court's decision in *Simpson County Water District* 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

KRS 278.160(1) requires each utility to file with the Commission a schedule showing all rates and conditions for service established by it and collected or enforced.

DISCUSSION AND FINDINGS

Based upon the above, the Commission finds that an investigation should be initiated to consider the reasonableness of the potential termination of water service between Falmouth and the Districts.

⁷ See Appendix to this Order.

⁸ *Simpson County Water District v. City of Franklin*, 875 S.W.2d 460,463 (Ky. 1994).

The Commission further finds that, as Falmouth's potential termination of water service in contravention of its filed tariff raises serious questions about the adequacy and reliability of the Districts' ability to supply water to its customers, this proceeding should also investigate those subjects.

In order to provide notice of this investigation to additional interested parties, the Commission finds that the Executive Director should provide a copy of this Order to the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), the Kentucky Energy and Environment Cabinet's Division of Water, and the Pendleton County Judge Executive.

The Commission directs all entities to the Commission's July 22, 2021, Order in Case No. 2020-00085⁹ regarding filings with the Commission. All parties should be required to follow the procedures for filing outlined in this Order.

IT IS THEREFORE ORDERED that:

1. An investigation into the reasonableness of Falmouth's threat of termination of water service to the Districts is hereby established.
2. Falmouth and the Districts shall file a response to this Order and the allegations contained herein no less than 20 days after the date of service of this Order.
3. Falmouth shall continue selling wholesale water to the Districts at \$1.98 per thousand gallons throughout the pendency of this case unless otherwise ordered by the Commission.

⁹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

4. A formal conference in this matter shall be held at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, at a date and time to be set by a future order and served upon all parties.

5. Any interested party may, by counsel, file a motion to intervene within 14 days of the date of service of this Order or, if not served the Order, within 30 days of the issuance date of the Order.

6. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding that is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding a potential impact of possible modification of rates will not be deemed sufficient to establish a special interest.

7. Falmouth and the Districts are made parties to this proceeding.

8. The parties shall, by counsel, enter an appearance in this proceeding within seven days of the date of service of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.

9. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be following in this proceeding.

10. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of services of this Order, all named parties shall file a written statement with the Commission that:

a. Certifies that it, or its agent, possess the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

11. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of service of an order of the Commission granting intervention, file with the Commission a written statement that:

(1) It or its authorized agent possesses the facilities to receive electronic transmissions; and

(2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

12. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of

electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

13. All parties shall follow the procedures for filing outlined in the Commission's July 22, 2021, Order in Case No. 2020-00085.


14. All named parties shall respond to any request for information propounded by Commission Staff, as provided in those requests, whether listed on a procedural schedule or not.

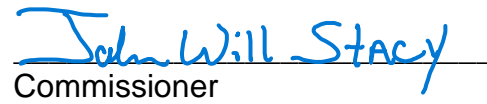
15. The Attorney General, the Kentucky Energy and Environment Cabinet's Division of Water, and Pendleton County Judge Executive, David Fields, shall each be served with a copy of this Order.

16. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:


Executive Director



APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2024-00403 DATED DEC 23 2024

TWO PAGES TO FOLLOW

From: joecotlaw@fuse.net <joecotlaw@fuse.net>

Sent: Wednesday, December 18, 2024 9:17 AM

To: Wallingford, Angie G (PSC) <angie.wallingford@ky.gov>

Cc: Jack Lawless <jslawlessconsulting@gmail.com>; Austin Monroe <amonroe@pcwater.org>

Subject: Follow Up to Case 2024-00244

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

This Message Originated from Outside the Organization

This Message Is From an External Sender.

Report Suspicious

Ms. Wallingford,

Thank you for taking my call this morning. This email contains the requested information. I have attached the original water supply contract and the extension. I represent East Pendelton Water District (EPWD) and Pendelton County Water District (PCWD), collectively the "Districts". On July 25, 2024, the City of Falmouth (Falmouth) filed a tariff filing. The PSC requested multiple filings from Falmouth that were not supplied to the PSC. The Districts filed to intervene August 20, 2024. The Districts requested additional documentation and tried to expand the discovery. After multiple requests and filings, Falmouth's tariff increase was denied, the case dismissed, and the PSC issued an order encouraging the parties to resolve the wholesale rate dispute. In the past month, the parties have discussed the wholesale rate but have been unable to reach an agreement. Falmouth cannot or chooses to not supply any pertinent information on which to base any negotiations. Finally, last night at approximately 6:30 PM, Falmouth's attorney contacted me and stated that if my clients do not agree to the stated rates for each District, Falmouth will shut off the water supply to my clients. Falmouth's attorney bases his threat on the case of Ledbetter Water District v. Crittenden-Livingston Water District, 2020 WL 1303913. Simply, the contract violates the Kentucky Constitution because it is beyond a 20-year agreement.

I am reaching out to the PSC in an attempt to resolve this without additional protracted litigation. Has the PSC been involved in any disputes such as this? Do you have any guidance on proceeding?

Thank you,

Joe Cottingham

Daley, Cottingham, Brandt & Associates, PLLC

Joseph P. Cottingham

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