

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST LOGAN WATER DISTRICT	)	
and	)	
NORTH LOGAN WATER DISTRICT	)	
	)	
COMPLAINANTS	)	
	)	CASE NO. 2001-00212
v.	)	
	)	
CITY OF RUSSELLVILLE, KENTUCKY	)	
	)	
DEFENDANT	)	

ORDER

The city of Russellville, Kentucky ( Russellville ) has applied for rehearing of the Commission s Order of July 3, 2002, in which we declared Russellville s wholesale rate of \$2.45 per 1,000 gallons void and directed the City to refund all amounts billed and collected for wholesale water service rendered on or after April 21, 2001 and on or before July 3, 2002 that are in excess of the rate of \$1.55 per 1,000 gallons. Having carefully considered Russellville s application and the responses thereto, we deny the application for rehearing.

Russellville advances three arguments in support of its application. First, it argues that the Commission s treatment of Russellville s filing of March 22, 2002 is inconsistent with our treatment of other municipal rate filings. Citing the Commission s action in Case No. 2002-00260,<sup>1</sup> Russellville argues that our practice of allowing a

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<sup>1</sup> Case No. 2002-00260, Revision of the Wholesale Sewer Service Rate Charged by the Utility Commission of the City of London to Wood Creek Water District (Ky. PSC July 8, 2002).

municipal utility to cure a deficient tariff filing by enacting an ordinance authorizing a proposed revision in wholesale rates is inconsistent with our finding that Russellville's rate of \$2.45 per 1,000 gallons is void. It further argues that its action in the case at bar, by enacting an ordinance approximately 8 months after its initial submission, is the same as taken by the city of London in Case No. 2002-00260 and therefore requires the same result. Russellville argues that since it adopted the ordinance prior to the Commission issuing a show cause regarding the ordinance issue, the rate was already in effect.

The facts of Case No. 2002-00260 are readily distinguishable from those of the present case. In that case, the Utility Commission of the city of London ( London ) filed revised tariff sheets that stated a revised rate for wholesale sewage treatment and collection services provided to Wood Creek Water District. On these sheets, London stated the effective date for the proposed rate revision and generally complied with the provisions of Administrative Regulation 807 KAR 5:011, Sections 6 and 9. In its submission, London advised the Commission that an ordinance adopting the proposed rate revision was pending before the London City Council, but had not yet been adopted. We found that the tariff sheets could not be accepted for filing until the ordinance was adopted and held that the statutory notice period set forth in KRS 278.180 would not begin to run until the date of the ordinance's adoption.

In the case at bar, Russellville's submission of March 22, 2001<sup>2</sup> never complied with Administrative Regulation 807 KAR 5:011, Sections 6 and 9.<sup>3</sup> It submitted no tariff sheets setting forth the proposed rate or stating an effective date for the proposed rate revision. Moreover, it filed no application meeting the requirements of Administrative Regulation 807 KAR 5:001, Section 8. Russellville's enactment of an ordinance authorizing the wholesale rate of \$2.45 per 1,000 gallons, therefore, could not alone cure the deficiencies of its submission of March 22, 2001.

The Commission notes that Russellville and London were treated in the same manner. When Russellville submitted revised tariff sheets on December 20, 2001, which met the requirements of Administrative Regulation 807 KAR 5:011, Sections 6 and 9, for a proposed wholesale rate that its legislative body had authorized by ordinance, the Commission reviewed the rate, determined further proceedings were necessary, and suspended the rate pending completion of those proceedings.<sup>4</sup> Similarly, after London had filed revised tariff sheets that met the same regulatory

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<sup>2</sup> Throughout its Application for Rehearing, Russellville refers to its submission of March 23, 2001 as an application for rate adjustment. As noted in our Order of July 3, 2002, the application consisted of a copy of a letter to the East Logan Water District in which Russellville advised that [c]opies of the study have been mailed to the Public Service Commission for their [sic] review. See Order of July 3, 2002 at 4-5. Such a submission, in the Commission's opinion, does not constitute an application.

<sup>3</sup> For a discussion of the defects in Russellville's submission, see Order of July 3, 2002 at 9, fn. 18.

<sup>4</sup> See Case No. 2002-00023, Proposed Adjustment of the Wholesale Rates of the City of Russellville, Kentucky (Ky. PSC Jan. 18, 2002).

requirements and had shown that its legislative body had authorized the proposed rate, we reviewed the proposed rate and took appropriate action upon it.<sup>5</sup>

Russellville next argues that our Order of July 3, 2002 is contrary to KRS 278.190(3),<sup>6</sup> which requires Commission action upon a proposed rate within 10 months of its filing. It asserts that the Commission's declaration that the rate of \$2.45 is void came more than 15 months after Russellville's filing with the Commission. Our authority to deny the proposed rate of \$2.45 per 1,000 gallons, Russellville argues, lapsed 10 months after its submission of March 22, 2001 and the proposed rate became effective as a matter of law no later than January 21, 2002.

We find no merit to this argument. The 10-month statutory requirement applies only to properly filed rate schedules and applications. See KRS 278.190(3) (emphasis added) ( the commission shall decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of **such schedules.** ) As previously noted, Russellville's submission neither contained a rate schedule nor constituted an application for rate adjustment. Moreover, assuming arguendo that the submission of March 22, 2001 constituted a properly filed rate schedule or application for rate adjustment, the lack of any ordinance approving the proposed wholesale rate rendered

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<sup>5</sup> In that case, we found the proposed rate should be allowed to become effective upon the running of the statutory notice period. Unlike Case No. 2002-00023, the public utility affected by the proposed rate revision did not question the reasonableness of the proposed rate or request further investigation of that rate.

<sup>6</sup> At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and **the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules** [emphasis added].

the filing void. No authority for the filing existed until Russellville's City Council approved the proposed rate by ordinance on November 20, 2001. Under such circumstances, the Order of July 3, 2002 would have met the time requirement of KRS 278.190(3).

Russellville also argues that the Order of July 3, 2002 conflicts with the Commission's earlier actions in reviewing and processing the submission of March 22, 2001. It refers to correspondence and electronic mail messages that members of Commission Staff issued. It asserts that these documents demonstrate that the Commission had approved the proposed rate.

The Commission finds no merit in this argument. The correspondence of Commission Staff members is not binding upon the Commission. See Union Light, Heat and Power Co. v. Public Service Commission, Ky., 271 S.W.2d 361, 365 (1954) (the commission, like a court, acts and speaks only through its written orders.). Commission Staff's actions do not substitute for an Order of this Commission. Bee's Old Reliable Shows, Inc. v. Kentucky Power Co., Ky., 334 S.W.2d 765 (1960). Moreover, implied in any statements issued by Commission Staff was the assumption that Russellville's legislative body had enacted an ordinance approving the proposed wholesale rate. The record contains no evidence to suggest that Commission Staff was aware of the lack of such ordinance.<sup>7</sup>

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<sup>7</sup> This correspondence, however, deeply disturbs us. The correspondence on its face suggests that Commission Staff members were aware that the submission of March 22, 2001 failed to meet the requirements of Administrative Regulation 807 KAR 5:011 and yet maintained that the submission was a valid rate filing. In one electronic mail message, a Commission Staff member notes the absence of tariff sheets and an effective date for the proposed wholesale rate and requested such documents.

Based upon the above discussion, the Commission finds no reason to revise or amend our earlier findings. We find merit, however, in Russellville's request that any refund of the monies currently in escrow be postponed pending judicial review of our Orders. We will revise our earlier Order to extend the time during which Russellville must refund the escrow amounts to permit Russellville to exercise its statutory right of judicial review and to request any reviewing court to stay enforcement of that refund.

Finally, while we have directed a refund of amounts improperly collected, we are fully aware of the circumstances that led to Russellville's submission of March 22, 2001. We are of the opinion that any rate revision that results from the proceedings in Case No. 2002-00023 must take into account the costs that Russellville has incurred to repair its water treatment and distribution systems and must ensure that the Water Districts pay their appropriate portion of those costs. Russellville's failure to properly apply for a rate revision does not negate this principle nor should it serve as an excuse for the Water Districts to avoid their responsibilities.

IT IS THEREFORE ORDERED that:

1. Except as set forth in Ordering Paragraphs 2 and 3 of this Order, Russellville's Application for Rehearing is denied.
2. Within 60 days of the date of this Order, Russellville shall refund to the Water Districts any monies billed and collected for water service rendered on or after April 21, 2001 and before July 3, 2002 that are in excess of the rate of \$1.55 per 1,000 gallons.

3. The Water Districts may, on or after October 10, 2002, dissolve the escrow accounts created to comply with the Commission's Order of October 5, 2001 and make unrestricted use of the proceeds of those accounts.

Done at Frankfort, Kentucky, this 12<sup>th</sup> day of August, 2002.

By the Commission

ATTEST:

  
Executive Director