

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

UTILITY COMMISSION OF THE CITY OF)
LONDON)
_____))
INVESTIGATION INTO THE RATE FOR) CASE NO. 2002-00036
WHOLESALE WASTEWATER SERVICE TO)
WOODS CREEK WATER DISTRICT)

ORDER

On November 27, 2001, the Utility Commission of the City of London (London) submitted a tariff sheet to the Commission to increase its rate for wholesale wastewater service to Woods Creek Water District (Woods Creek) to \$2.48 per 1,000 gallons. London provides wastewater treatment services to Woods Creek under the terms of a Wastewater Treatment Services Contract that was executed on May 19, 1998. This agreement provides for an initial rate of \$1.13 per 1,000 gallons of wastewater¹ and further provides that London may modify this rate at the end of every one year period.²

In Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994), the Kentucky Supreme Court held that this Commission has jurisdiction over contracts between municipal utilities and public utilities and that changes in any rate that a municipal utility assesses a public utility for wholesale utility service must be approved by the Public Service Commission. Pursuant to the Simpson County decision, we

¹ Wastewater Treatment Services Contract at §B(2)(b).

² Id. at §C(3).

directed that [a]ny municipal utility wishing to change or revise a contract or rate for wholesale utility service to a public utility shall, no later than 30 days prior to the effective date of the revision, file with the Commission the revised contract and rate schedule. Submission of Contracts and Rates of Municipal Utilities, Administrative Case No. 351 (Ky.PSC Aug. 10, 1994) at 2.

While London has complied with this requirement, it has failed to present evidence to demonstrate that the city of London's legislative body has approved the proposed revision. In prior proceedings, we have held that a municipal utility's proposed rate adjustment is void if filed without proper authorization from the city's legislative body. See City of Pikeville, Ky., Case No. 2000-540 (Oct. 8, 2001) at 3; Winchester Municipal Utilities, Case No. 96-616 (Ky.PSC Oct. 3, 1997) at 6. See also KRS 83A.130(11) (The legislative authority of the city shall be vested in and exercised by the elected council of the city.); Com. ex rel. Stephens v. South Central Bell Tel. Co., Ky., 545 S.W.2d 927, 931 (1976) (Ratemaking is a legislative function). Without such authorization, the filing has no legal standing and cannot be considered as an official action of the city. Pikeville at 3.

In response to a telephone inquiry from Commission Staff, London submitted City of London Ordinance No. 1000 in which the London City Council expressly authorizes periodic adjustment in London's sewer charges.³ This ordinance does not contain a sewer rate for wholesale customers; nor does it contain London's proposed rate of \$2.48 per 1,000 gallons of wastewater. As Woods Creek purchases water from

³ Letter from Randy Bingham, Superintendent, Utility Commission of the City of London, to Brent Kirtley, Manager, Tariffs Branch, Public Service Commission (Jan. 3, 2002).

London, the provisions of Ordinance No. 1000 that authorize London to establish a sewer service rate for certain customers⁴ do not appear applicable. In the absence of any ordinance expressly authorizing the proposed rate, it appears that the London City Council had not authorized the proposed rate revision and that London's filing is ultra vires.

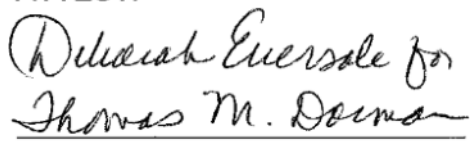
Based upon the above, the Commission finds prima facie evidence exists to conclude that London lacks the requisite authorization to adjust its wholesale wastewater service rate, and that its filing to revise its wholesale rate of \$1.13 per 1,000 gallons is void.

IT IS THEREFORE ORDERED that London shall, within 20 days of the date of this Order, show cause in writing why the Commission should not declare London's rate filing of November 27, 2001 as void and should not prohibit London from assessing any rate other than the rate of \$1.13 per 1,000 gallons for wastewater treatment service pending submission of evidence that London City Council has authorized the proposed rate of \$2.48 per 1,000 gallons.

Done at Frankfort, Kentucky, this 12th day of February, 2002.

By the Commission

ATTEST:


Thomas M. Doonan
Executive Director

⁴ London Ordinance No. 1000 at §14.