

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ELECTRONIC PROPOSED )  
ADJUSTMENT OF THE WHOLESALE ) CASE NO. 2017-00417  
WATER SERVICE RATES OF )  
LEBANON WATER WORKS )**

**MOTION TO MODIFY  
PROCEDURAL SCHEDULE**

Lebanon Water Works Company (the “Company”), by counsel, hereby respectfully moves the Kentucky Public Service Commission (“Commission”) to modify the procedural schedule in this proceeding to permit the parties to file written testimony and conduct more extensive discovery. In support of this request, the Company states as follows:

1. On September 13, 2017, the Company filed notice with the Commission of the changes in its tariff and to its wholesale water rates. On September 25, 2018, Marion County Water District (“Marion District”) filed its protest of the wholesale rates. On November 13, 2017, the Commission established this proceeding and suspended the Company’s rates from November 15, 2017 to April 14, 2018. Unlike earlier proceedings involving municipal wholesale rate adjustments, the Commission did not include a procedural schedule

in its Order establishing this proceeding or by issuance of a separate order shortly thereafter.<sup>1</sup>

2. On February 28, 2018, the Commission issued an Order in which it assigned the burden of proof in this matter to the Company and established a procedural schedule. This schedule requires the Company to respond by March 7, 2018 to requests for information appended to the Order. It further provides that requests for information to the Company and Marion District be filed by March 14, 2018, with responses due by March 28, 2018. This schedule does not permit either party to file written testimony.

3. The Company believes the filing of written testimony by both parties would provide for a more efficient and effective review of the proposed rates and significantly assist the Commission in rendering a decision in this matter. The present record is devoid of any evidence to enable the Commission to render a decision on the proposed rates or the parties to submit informed requests for information. The Company did not file an Application in this proceeding.<sup>2</sup> As a municipal utility, the Company is not required to submit with its notice of

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<sup>1</sup> *Electronic Proposed Adjustment of the Wholesale Water Service Rates of Central City Municipal Water & Sewer*, Case No. 2017-00199 (Order establishing case issued May 23, 2017 and procedural schedule issued on June 22, 2017); *Proposed Adjustment of the Wholesale Water Service Rates of Madisonville Water Distribution*, Case No. 2017-00133, Order (Order establishing case issued March 30, 2017 and procedural schedule issued on May 1, 2017).

<sup>2</sup> The Commission's February 28, 2018 Order provides: "The information needed in this case will be obtained through the Application, responsive filings in the record, and Commission Staff's Requests for Information . . ." As the Company has not filed an Application in this proceeding, the Company does not believe the record is sufficiently developed.

proposed rate adjustment any supporting evidence or information as 807 KAR 5:001, Section 16, or 807 KAR 5:076 requires for Commission-regulated utilities proposing rate adjustments.<sup>3</sup> Furthermore, unlike Commission-regulated utilities, a municipal utility is not required to submit an annual financial report or audit report to the Commission.<sup>4</sup> Thus, the present record contains no information about the Company's financial condition or its need for the proposed rate adjustment.

4. Because the current procedural schedule does not allow for the development of an adequate evidentiary record, it does not afford either party its right to due process. Kentucky Courts and the Commission have consistently held that a party is entitled “to know the issues on which the decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it.”<sup>5</sup> Without filed testimony and the opportunity to conduct meaningful discovery, the Company is unable to develop its case to the Commission or to understand and address Marion District's concerns. Due process requires the establishment of a procedural schedule that will allow the Company the

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<sup>3</sup> See *Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Utility Service to Public Utilities*, Administrative Case No. 351 (Ky. PSC Aug. 1, 1994) (providing 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).

<sup>4</sup> See 807 KAR 5:006, Section 4. This regulation applies only to “utilities.” Municipal utilities are expressly exempted from the definition of “utility.”

<sup>5</sup> *Utility Reg. Comm'n v. Kentucky Water Serv. Co.*, 642 S.W.2d 591, 593 (Ky. App. 1982) (quoting *Ohio Bell Telephone Co. v. Pub. Utilities Comm'n*, 301 U.S. 292 (1937)); see also *Ky. American Water Co. v. Commonwealth*, 847 S.W.2d 737, 741 (Ky. 1993) (“Under Due Process, he AG and the City were entitled to know what evidence is being considered and are entitled to an opportunity to test, explain and/or refute that evidence.”); *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, Order (Ky. PSC Aug. 14, 2013) (holding that taking administrative notice “would violate the procedural due process rights of the other parties to this case by denying them an opportunity to cross-examine the forecast set forth in the proffered testimony”).

opportunity to meet its burden of demonstrating the reasonableness of its proposed rates.

5. In its protest letter, Marion District also acknowledges the present evidentiary record is insufficient to enable a complete and meaningful evaluation of the proposed rates. It argues that it is unable to ascertain whether the Company's "proposed adjustment is consistent with the methodology set forth in the water purchase contract." The Company simply seeks to provide testimony to meet its burden and show that the proposed adjustment is reasonable and consistent with the methodology set forth in the contract.

6. It is absolutely essential that an adequate body of evidence be developed to ensure a proper and complete review of the proposed wholesale rate. The Company and Marion District have previously agreed that a single, uniform rate be assessed to Marion District and the Company's retail customers. Marion District now suggests that the Commission should establish a wholesale rate for Marion District specifically based upon its usage and cost-causing characteristics. It is a radical departure from past practice and may possibly have significant implications for the Company's operations and for the Company's retail customers. Such a departure requires a full and complete understanding of the Company's operations and finances and its costs to provide wholesale service. Therefore, it is particularly important for the record to be fully developed.

7. In the past, the Commission has established a procedural schedule at the outset of a wholesale rate investigation. In virtually every other municipal wholesale rate case in the preceding ten years, the Commission has required the filing of written testimony and provided for extensive discovery at the outset of the case.

8. The Company proposes a modified procedural schedule, attached as Exhibit 1, which requires for the Company to file written testimony by March 21, 2018. It will afford the Company generally the same amount of time to prepare and file its written testimony as the Commission has typically allowed in other municipal wholesale rate proceedings. It also permits Marion District to file written testimony by Marion District by May 14, 2018. It also allows for extensive written discovery by Commission Staff and the parties.

9. Without modification of the procedural schedule to allow for the filing of written testimony, this case will require a lengthy hearing to develop an adequate evidentiary record. Extensive and lengthy direct examination of each party's witnesses will be required. The parties as part of the cross-examination process will likely make numerous requests for the production of documents at the hearing. The result is likely to be an unwieldy, prolonged, and expensive hearing process. It can be avoided by permitting the use of written testimony and extending the period for discovery.

10. While the proposed procedure schedule will not enable the Commission to issue a final decision before the suspension period expires, such a result will not unduly burden either party. If the proposed rates are implemented subject to refund and later reduced by the Commission, KRS 278.190(2) provides for the refund of any excess rates. Because only one customer is involved, the expense and burden of recordkeeping will be minimal. Furthermore, because 807 KAR 5:068, Section 7 provides an effective and simple means to return any refund to Marion District's ratepayers, Marion District's burden from any required refund should also be relatively light.

11. This Motion is not made for purposes of delay.

12. A proposed Order is attached to this Motion as Exhibit 2. In the filed electronic version of this document, the proposed Order in Microsoft Word format is included as an electronic attachment.

**WHEREFORE**, Lebanon Water Works Company respectfully requests an Order modifying the current procedural schedule in this matter to permit the Company and Marion District to file written testimony of their witnesses as set forth in Exhibit 1.

Dated: March 2, 2018

Respectfully submitted,



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*Counsel for Lebanon Water Works  
Company*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Lebanon Water Works Company's March 2, 2018 electronic filing of this Motion is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on March 2, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and one copy in paper medium of this Motion will be delivered to the Commission on or before March 6, 2018.



Damon R. Talley

# **EXHIBIT 1**

**EXHIBIT 1**

**PROPOSED PROCEDURE SCHEDULE  
CASE NO. 2017-00417**

Lebanon Water Works shall file its written testimony and exhibits of its witnesses no later than ..... 03/21/2018

Commission Staff and Marion District may file requests for information to Lebanon Water Works no later than ..... 04/02/2018

Lebanon Water Works shall file its responses to the first requests for information no later than ..... 04/12/2018

Commission Staff and Marion District may file supplemental requests for information to Lebanon Water Works no later than ..... 04/23/2018

Lebanon Water Works shall file its responses to supplemental requests for information no later than ..... 05/03/2018

Marion District shall file the written testimony and exhibits of its witnesses no later than ..... 05/14/2018

Commission Staff and Lebanon Water Works may file Requests for information to Marion District no later than ..... 05/24/2018

Marion District shall file its responses to the requests for information no later than ..... 06/04/2018

Lebanon Water Works shall file any rebuttal testimony no later than..... 06/08/2018

Public hearing shall be held at the Commission’s offices at 211 Sower Boulevard, Frankfort, Kentucky for the purpose of cross-examination of Witnesses ..... TBD

Final Order must be issued no later than ..... 07/12/2018

# **EXHIBIT 2**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PROPOSED ADJUSTMENT OF )  
THE WHOLESALE WATER SERVICE RATES ) CASE NO. 2017-00417  
OF LEBANON WATER WORKS )

ORDER

Lebanon Water Works Company (“the Company”) has moved for modifications to the procedural schedule that the Commission established in its Order of February 28, 2018. Having considered the motion and being otherwise sufficiently advised, the Commission finds that the motion should be granted and that modifications should be made to the procedural schedule to permit each party the opportunity to file written testimony in this matter.

IT IS THEREFORE ORDERED that:

1. The Company’s Motion to Modify Procedural Schedule is granted.
2. The procedural schedule set forth in the Commission’s Order of February 28, 2018 is stricken and is replaced with the procedural schedule set forth in Appendix A to this Order.
3. The Parties shall follow the procedural schedule set forth in Appendix to this Order.
4. All other provisions of the Order of February 28, 2018 shall remain in full force and effect.

By the Commission

ATTEST:

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Executive Director

Case No. 2017-000417

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2017-00417 DATED

Lebanon Water Works shall file its written testimony and exhibits of its witnesses no later than .....	03/21/2018
Commission Staff and Marion District may file requests for information to Lebanon Water Works no later than .....	04/02/2018
Lebanon Water Works shall file its responses to the first requests for information no later than .....	04/12/2018
Commission Staff and Marion District may file supplemental requests for information to Lebanon Water Works no later than .....	04/23/2018
Lebanon Water Works shall file its responses to supplemental requests for information no later than .....	05/03/2018
Marion District shall file the written testimony and exhibits of its witnesses no later than .....	05/14/2018
Commission Staff and Lebanon Water Works may file requests for information to Marion District no later than.....	05/24/2018
Marion District shall file its responses to the requests for information no later than .....	06/04/2018
Lebanon Water Works shall file any rebuttal testimony no later than .....	06/08/2018
Public hearing shall be held at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky for the purpose of cross-examination of Witnesses.....	TBD
Final Order must be issued no later than .....	07/12/2018