

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PROPOSED)
ADJUSTMENT OF THE WHOLESALE)
WATER SERVICE RATES OF) CASE NO. 2019-00260
CENTRAL CITY MUNICIPAL WATER)
& SEWER)

**OBJECTION TO CENTRAL CITY’S MOTION FOR
RECONSIDERATION**

Pursuant to KRS 278.400 and 807 KAR 5:001, Section 5, Muhlenberg County Water District (“Muhlenberg District”) and Muhlenberg County Water District No. 3 (“Muhlenberg District #3”) submit this objection to the City of Central City’s (“Central City”) Motion for Reconsideration (“Motion”). First, Central City’s Motion should be denied because it was filed after the time period provided in KRS 278.400. Second, even if the Kentucky Public Service Commission (“Commission”) finds that Central City made a timely filing, the Motion should nevertheless be denied because KRS 278.023 does not apply to cities or municipally owned utilities.

I. Central City’s Motion for Reconsideration is Untimely

According to KRS 278.400, “any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined.” The statute further states that service of an Order

is complete three (3) days after the date the Order is mailed. Therefore, a Motion for Reconsideration of a Commission Order must be filed within 23 days of the Order date. In this case, the Commission Order was entered on July 30, 2019. Central City filed its Motion **24** days later, on August 23, 2019. Therefore, Central City's Motion is untimely and should be denied.

II. Central City's Assertion that KRS 278.023 Applies to Cities is Incorrect

In the event the Commission does not deny Central City's Motion on the basis of untimeliness, the Motion should nevertheless be denied because KRS 278.023 does not apply to cities. In its filings, Central City asserts that KRS 278.023 applies to municipal utilities and therefore the Commission must accept the agreement between Central City and Rural Development. But Central City's position is contrary to the clear and unambiguous language of the statute, which does **not** include a city as one of the applicable entities that undertakes a construction project financed by the United States Department of Agriculture. Even assuming that Central City's proposed construction project benefits all water customers, as stated in its Motion, the Motion should not be granted because KRS 278.023 does not apply in this case.

Central City's suggestion of a policy that exempts municipal utility's wholesale rates from Commission jurisdiction if such rates are specified in a Rural Development letter of conditions is not supported by the legislative history of

Kentucky statutes or regulations. The legislative history of KRS 278.023 shows that the General Assembly has made no effort to add cities to the list of applicable entities in the statute, despite the Kentucky Supreme Court's decision in *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994). Furthermore, 807 KAR 5:069, the administrative regulations dealing with federally funded construction projects, has been amended four (4) times since 2013, and the Commission has chosen not to redefine "water utility" to include a city-owned utility.

Lastly, Central City's assertion that KRS 278.023 applies to cities is solely based on an order from Case No. 2003-00358¹ that authorized the City of Harlan to charge the rates specified by Rural Development. Diligent research has revealed this case as the only case that allows a municipal utility to take advantage of KRS 278.023. The City of Harlan Order thus appears to be an anomaly. Even if the Commission were inclined to agree with the City of Harlan Order, Central City has not yet met its burden of showing the facts of the City of Harlan case and this case are the same.

¹ *Proposed Adjustment of the Wholesale Water Service Rates of the Harlan Municipal Water Works*, Case No. 2003-00358, Order (Ky. PSC Oct. 24, 2003).

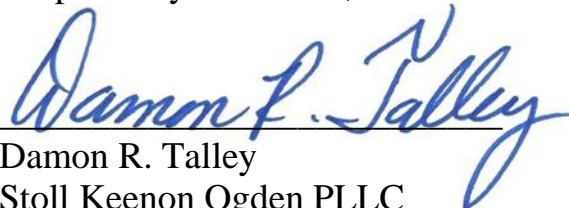
III. Muhlenberg District and Muhlenberg District #3 Request Oral Arguments if the Commission Does Not Deny Central City's Motion for Reconsideration because it was Untimely Filed

If the Commission does not deny Central City's Motion because of untimeliness, Muhlenberg District and Muhlenberg District #3 respectfully request the Commission to schedule oral arguments on the merits of the Motion.

WHEREFORE, because Central City filed its Motion for Reconsideration outside of the time afforded by KRS 278.400 and because KRS 278.023 does not apply to cities, Muhlenberg District and Muhlenberg District #3 respectfully request that Central City's Motion for Reconsideration be denied.

Dated: August 29, 2019

Respectfully submitted,



Damon R. Talley
Stoll Keenon Ogden PLLC
P.O. Box 150
Hodgenville, KY 42748-0150
Telephone: (270) 358-3187
Fax: (270) 358-9560
damon.talley@skofirm.com

Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3017
Fax: (859) 246-3647
gerald.wuetcher@skofirm.com

Katelyn L. Brown
Stoll Keenon Ogden PLLC
500 West Jefferson Street, Suite 2000
Louisville, KY 40202-2828
Telephone: (502) 568-5711
Fax: (502) 333-6099
katelyn.brown@skofirm.com

*Counsel for Muhlenberg County Water
District and Muhlenberg County Water
District No. 3*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the electronic filing of this document is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on August 29, 2019; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that on or before September 3, 2019 this document in paper medium will be delivered to the Public Service Commission.


Damon R. Talley