

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESAL)
WATER SERVICE RATES OF CENTRAL CITY) Case No. 2019-00260
MUNICIPAL WATER & SEWER)

**JOINT MOTIONS TO HOLD THE PROCEDURAL SCHEDULE IN ABEYANCE,
APPROVE SETTLEMENT AGREEMENT AND STIPULATION, AND ACCEPT
CENTRAL CITY’S PROPOSED WHOLESAL RATE**

The City of Central City (“Central City”), Muhlenberg County Water District, and Muhlenberg County Water District No. 3 (“Water Districts”), by counsel, jointly move for an Order holding the procedural schedule in abeyance, approving the attached Settlement Agreement and Stipulation, and accepting Central City’s proposed wholesale rate. In support of their motions, the Movants state the following:

I. Background

On June 24, 2019, Central City filed with the Commission a revised tariff sheet setting forth proposed adjustments to its existing rates for wholesale water service to the Water Districts to be effective on July 31, 2019. Central City proposed to increase wholesale water service from \$2.63 to \$3.31 per 1,000 gallons.

On July 22, 2019, the Water Districts each filed with the Commission a request that a formal proceeding be established to review the reasonableness of Central City’s proposed wholesale rate and that the proposed wholesale rate not be permitted to become effective pending a hearing. In their request, the Water Districts identified several issues that they sought additional clarification, including information on which to determine the reasonableness of the

proposed rates, compliance with contractual provisions, and details of Central City's proposed project on which it has obtained approval for favorable funding.

On July 30, 2019, the Commission established Case No. 2019-00260 to review the reasonableness of Central City's proposed wholesale rate. In the Order establishing this docket, the Commission issued its initial request for information, to which Central City filed responses on August 28, 2019. Commission Staff and the Water Districts issued another set of requests for information on September 4, 2019, to which Central City filed responses on September 18, 2019.

On August 12, 2019, Central City filed a motion for the Commission to accept a proposed tariff on rate-case-expense surcharge and incorporate the proposed tariff into this proceeding.

In late September, counsel for the parties began discussing the possibility of an efficient resolution to this matter. The Water Districts have thoroughly reviewed the information that has been presented by Central City in this case. Through their review, the Water Districts have determined that Central City's proposed wholesale rate of \$3.31 per 1,000 gallons is fair, just, and reasonable.

In exchange for the Water Districts' agreement to stipulate to this Commission that Central City's proposed wholesale rate of \$3.31 per 1,000 gallons is fair, just, and reasonable, Central City has agreed to three items: (1) that the rates will become effective on October 31, 2019; (2) that it will waive its recovery of rate-case expense if the Commission grants the Parties' joint motion to approve this Settlement Agreement and Stipulation; and (3) that it will execute an agreement, whereby Central City would reserve 300,000 gallons of storage capacity for Muhlenberg District No. 3. A copy of this Settlement Agreement and Stipulation is attached hereto as Exhibit 1.

II. Analysis

Changes to a City's wholesale rate have a unique history before this Commission. Throughout the last century, Kentucky courts struggled in determining the extent to which the Commission has jurisdiction over a City's rates. Initial interpretations of the exemption of Cities from the definition of utility under KRS 278.010 resulted in the theory that Cities had exclusive control over the rates inside their city limits, but the Commission had jurisdiction over City-set rates for customers located outside their city limits. *See, e.g., City of Olive Hill v. Public Service Commission*, 203 S.W.2d 68 (Ky. 1947); *Louisville Water Company v. Preston Street Road Water District*, 256 S.W.2d 26 (Ky. 1953).

Kentucky's high court reversed those decisions in 1961 when it determined that the exemption in KRS 278.010 for Cities applied to all City operations. *McClellan v. Louisville Water Co.*, 351 S.W.2d 197, 198 (Ky. 1961). The Court reaffirmed the *McClellan* holding in 1974 in *City of Georgetown v. Public Service Commission*, 516 S.W.2d 842, 845 (Ky. 1974).

The regulatory paradigm for Cities contracting with utilities shifted in 1994. In *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 461 (Ky. 1994), a 4-member majority of the Supreme Court held that KRS 278.200 provided for an exception to the exemption of Commission regulation of Cities in KRS 278.010. Shortly after this case was decided, the Commission gave notice to municipal utilities that it had jurisdiction over wholesale rates of Cities.¹

Since 1994, most municipal rate increases subject to Commission jurisdiction have been approved through the Tariff Filing System without subsequent Commission orders.² In those

¹ Administrative Case No. 351, Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Utility Service to Public utilities (Aug. 10, 1994).

² *See, e.g., Bowling Green Municipal Utilities*, TFS 2019-00291; *City of Jackson*, TFS2018-00258.

situations, Cities file proposed rate changes and provide 30 days' notice prior to the effective date. The Commission approves these rate increases when there is no protest filed by a wholesale purchaser.

If the wholesale purchaser protests a City's rate increase, the Commission will commonly establish a case to review the City's proposal. On occasion, the case will require discovery, intervenor testimony, and an evidentiary hearing prior to a Commission order.³ On other occasions, the parties to the case have reached a settlement. In those settled cases, the Commission has reviewed the settlement and approved the proposed rates when the settlement is neither unreasonable nor unconscionable.⁴

This standard of review is consistent with the purpose of the Commission's authority over a City's wholesale rate to a jurisdictional utility, which is "to ensure that any public utility 'consumer/customer that has contracted and become dependent for its supply of water from a city utility is not subject to either excessive rates or inadequate service.'" *City of Lawrenceburg*, Case No. 2006-00067 (Ky. PSC Nov. 21, 2006) (quoting *Simpson County Water District*, 872 S.W.2d at 465). In the *Lawrenceburg* case, the Commission explained that the "municipal utility and public utility have discussed these proposed rates and have reached an accommodation" on the then-current rate, which the Commission determined was not unreasonable or

³ See, e.g., *City of Pikeville*, Case No. 2019-00080; *City of Lebanon*, Case No. 2017-00417.

⁴ See, e.g. *Frankfort Electric and Water Plant Bd.*, Case No. 2014-00254 (Ky. PSC Nov. 12, 2014); (Ky. PSC Mar. 16, 2011); *Frankfort Electric and Water Plant Bd.*, Case No. 2010-00485 (Ky. PSC Mar. 16, 2011); *City of Irvine*, Case No. 2010-00148 (Ky. PSC Sept. 10, 2010); *City of Lawrenceburg*, Case No. 2009-00056 (Ky. PSC July 13, 2009); *City of Burkesville*, Case No. 2009-00041 (Ky. PSC Oct. 12, 2009); *Shelbyville Municipal Water and Sewer Commission*, Case No. 2007-00258 (Ky. PSC Aug. 1, 2007); *City of Williamstown*, Case No. 2005-00297 (Ky. PSC Nov. 30, 2005); *City of Ashland*, Case No. 97-452 (Ky. PSC Mar. 27, 1998); *City of Hodgenville*, Case No. 96-326 (Ky. PSC Apr. 11, 1997); *City of Mount Sterling*, Case No. 95-193 (Ky. PSC Sept. 1, 1995); see also *E. Clark Water Dist. v. City of Winchester*, Case No. 2005-00322 (Ky. PSC Aug. 16, 2006).

unconscionable.⁵ The Commission noted that it “sees no need to conduct further proceedings in this matter regarding the agreed rate.”⁶

The Commission took a similar approach in a case involving the City of Warsaw. In that case, Warsaw proposed a rate of \$1.50 per 1,000 gallons, and Gallatin County Water District eventually agreed to the proposed rate. In reviewing the agreement, the Commission explained that the purpose of Commission jurisdiction articulated in *Simpson County* was met because the water district “made clear its objections to the proposed rate adjustment” and the City addressed the utility’s concerns.⁷

The Commission should take the same approach in the present case. The two Water Districts articulated their concerns at the outset of this case. During the course of the proceeding, Central City has been able to provide information addressing those concerns. Notably, one of these issues raised by the Water Districts related to the reasonableness of the rates. The Water Districts are now satisfied that the proposed wholesale rate of \$3.31 per 1,000 gallons is a fair, just, and reasonable rate. Accordingly, the Commission should approve the parties’ agreement, and approve the proposed wholesale rate of \$3.31 per 1,000 gallons to be effective on and after October 31, 2019.

The record of the case provides support that the proposed rate is neither unreasonable nor unconscionable.⁸ Central City has provided sufficient information to support its proposed rate, as evidenced by the Water Districts’ agreement as to its reasonableness. In addition, Central City’s response to Item 5 of the Commission Staff’s First Request for Information suggests that

⁵ *City of Lawrenceburg*, Case No. 2009-00056 (Ky. PSC July 13, 2009).

⁶ *Id.* The Commission also discussed and rejected the parties’ proposal for an automatic increase based on an indexing factor. In the present case, there is no such proposal.

⁷ *City of Warsaw*, Case No. 99-131 at 1 (Ky. PSC Jan. 20, 2000).

⁸ Even if a higher standard is applied to this case, the parties agree that Central City’s proposed rate of \$3.31 per 1,000 gallons is fair, just, and reasonable.

Central City may be able to justify a higher rate than what was proposed. Moreover, another regulatory agency—U.S.D.A.’s Rural Development—has reviewed Central City’s financial situation and determined that the proposed wholesale rate of \$3.31 per 1,000 gallons is appropriate.⁹

The proposed effective date of October 31, 2019, provides a defined date on which the wholesale rate would become effective. It provides sufficient time for which the Water Districts can calculate and approve a purchased water adjustment, if they choose to do so.

The anticipated contract whereby Central City would reserve 300,000 gallons of storage capacity for Muhlenberg District No. 3 provides assurance to the district that it has the ability to comply with minimum water storage regulations even if there are significant increases in consumption. Muhlenberg District No. 3 is currently in compliance, as evidenced by Case No. 2019-00051, but additional growth could affect the utility. Central City currently has sufficient storage capacity to make this commitment.

All parties benefit from an expedient resolution of this matter. Central City and each of the Water Districts incur expenses associated with litigating this case. Central City, alone, has incurred over \$20,000 in expenses. Significant additional expense would be incurred if the parties had to respond to additional discovery and appear for an evidentiary hearing. Even if Central City could recover these expenses from its wholesale customers,¹⁰ the total sum would not be recovered for three years, and the concept of time value of money diminishes the value of Central City’s recovery. In addition to benefitting the parties, the Commission and its Staff serve

⁹ Approval of the parties’ joint motion does not require the Commission to accept or reject Central City’s contention that the Commission should accept the proposed rate because of the policy expressed in KRS 278.023.

¹⁰ As discussed, Central City agrees to waive its opportunity to recover rate case expense if this settlement is approved.

to gain from a quick resolution, as they can devote their attention and resources to contested issues in other matters.

This same reason supporting approval of the agreement also supports the parties' request to hold the procedural schedule in abeyance pending an order on the Joint Motion to Accept the Settlement Agreement and Stipulation. Additional discovery and other litigation steps will require expenditure of additional time and resources, which are unnecessary in the present case. The Commission has granted motions to hold the procedural schedule in abeyance when a municipal utility has reached an agreement with Commission-jurisdictional utilities.¹¹

III. Conclusion

The Commission has jurisdiction over Central City's contractual wholesale water rates to the Water Districts, as held by the Supreme Court in *Simpson County*. In that case, the Court explained the purpose of Commission jurisdiction, which is "to ensure that any public utility 'consumer/customer that has contracted and become dependent for its supply of water from a city utility is not subject to either excessive rates or inadequate service.'" *Simpson County Water District*, 872 S.W.2d at 465. The Commission has consistently determined that this purpose is satisfied when the contracting parties agree on the rate for wholesale service when the agreed-upon rate appears to be neither unreasonable nor unconscionable. That standard has been met in this case. Accordingly, the parties respectfully request an order with the following provisions:

- A. The parties' motion to hold the procedural schedule in abeyance is granted.
- B. The parties' motion to approve the Joint Settlement and Stipulation and accept the proposed wholesale rate is granted.
- C. Central City's wholesale rate to the Water Districts shall be \$3.31 per 1,000 gallons for all water sold on and after October 31, 2019.

¹¹ See *Frankfort Electric and Water Plant Bd.*, Case No. 2010-00485 (Ky. PSC Mar. 16, 2011).

D. Central City's motion for the Commission to accept a proposed tariff on rate-case-expense surcharge is denied as moot.

Respectfully submitted,



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WATER DISTRICT AND MUHLENBERG
COUNTY WATER DISTRICT NO. 3

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE)
WATER SERVICE RATES OF CENTRAL CITY) Case No. 2019-00260
MUNICIPAL WATER & SEWER)

SETTLEMENT AGREEMENT AND STIPULATION

This Settlement Agreement and Stipulation is entered this 30th day of September 2019 by and between the City of Central City (“Central City”), Muhlenberg County Water District (“Muhlenberg District”), and Muhlenberg County Water District (“Muhlenberg District No. 3”), (collectively “the Parties”).

WITNESSTH

WHEREAS, On June 24, 2019, Central City filed with the Commission a revised tariff sheet setting forth proposed adjustments to its existing rates for wholesale water service to Muhlenberg and Muhlenberg District No. 3 to be effective on July 31 , 2019;

WHEREAS, Central City proposes to increase wholesale water service from \$2.63 to \$3.31 per 1,000 gallons;

WHEREAS, on July 22, 2019, the Water Districts each filed with the Commission a request that a formal proceeding be established to review the reasonableness of Central City’s proposed wholesale rate and that the proposed wholesale rate not be permitted to become effective pending a hearing;

Exhibit 1

WHEREAS, in their request, the Water Districts identified several issues for which they sought additional clarification, including information on which to determine the reasonableness of the proposed rates, compliance with contractual provisions, and details of Central City's proposed project on which it has obtained approval for favorable funding;

WHEREAS, on July 30, 2019, the Commission established Case No. 2019-00260 to review the reasonableness of Central City's proposed wholesale rate;

WHEREAS, in the Order establishing this docket, the Commission issued its initial request for information;

WHEREAS, on August 12, 2019, Central City filed a motion for the Commission to accept a proposed tariff on rate-case-expense surcharge, and incorporate the tariff into this proceeding;

WHEREAS, on September 4, 2019, the Commission Staff and the Water Districts filed requests for information;

WHEREAS, the Water Districts have reviewed the information filed by Central City in responses to various data requests, and are satisfied that the proposed wholesale rate of \$3.31 per 1,000 gallons is a fair, just, and reasonable rate;

WHEREAS, the Water Districts are satisfied with the procedure following its July 22 request to establish a formal proceeding and do not challenge compliance with the contractual provisions between Central City and each Water District;

WHEREAS, the Water Districts are satisfied that Central City is actively pursuing its proposed projects, for which Central City will obtain favorable financing from Rural Development, and that those projects will assist in the provision of wholesale service to the Water Districts;

WHEREAS, the Parties acknowledge that the Commission commonly allows a party seeking a rate adjustment to recover reasonable rate-case expense;

WHEREAS, the Parties agree that there is mutual benefit in resolving rate cases in an expedient manner so that the parties can avoid incurring additional rate-case expense;

WHEREAS, the Parties agree that it is in the best interest of the Parties to suspend the procedural schedule prior to the filing deadline for Central City's responses to supplemental requests for information;

WHEREAS, the proposed effective date of October 31, 2019, will allow sufficient time for the Water Districts to approve and prepare documentation for a Purchased Water Adjustment;

WHEREAS, the adoption of this Settlement Agreement and Stipulation as a fair, just, and reasonable disposition of the issues presented by the proposed wholesale rate adjustment will eliminate the need for the Commission and the Parties to expend significant resources litigating those issues, will eliminate the need for a hearing, and will eliminate the possibility of, and any need for, rehearing or judicial review of the Commission's final order in Case No. 2019-00260;

WHEREAS, the Parties acknowledge and understand that this Settlement Agreement is subject to the Commission's approval insofar as it constitutes an agreement by the Parties for settlement, and, absent express agreement stated herein, does not represent agreement on any specific claim, methodology, or theory supporting the appropriateness of any proposed or recommended adjustments to Central City's rates, terms, or conditions;

WHEREAS, the Parties agree that this Settlement Agreement, viewed in its entirety, is a fair, just, and reasonable resolution of all the issues in Case No. 2019-00260; and

WHEREAS, the Parties believe sufficient and adequate evidence supports this Settlement Agreement, and further believe the Commission should approve it;

NOW, THEREFORE, for and in consideration of the promises and conditions set forth herein, the Parties hereby stipulate and agree as follows:

1. The preamble to this Agreement is hereby incorporated and made a part hereof.
2. Effective for service rendered on and after October 31, 2019, Central City should be authorized to assess a rate of \$3.31 per 1,000 gallons for wholesale water service to Muhlenberg District and Muhlenberg District No. 3.
3. The rate of \$3.31 per 1,000 gallons is a fair, just, and reasonable rate for Central City's wholesale water service to Muhlenberg District and Muhlenberg District No. 3.
4. The Parties agree to file a joint motion to approve this Settlement Agreement and Stipulation and accept Central City's proposed wholesale rate of \$3.31 per 1,000 gallons.
5. The Parties agree to file a joint motion to suspend the procedural schedule, in order to allow the Commission to reach a decision on the Parties' joint motion to approve this Settlement Agreement and Stipulation without the need for the parties to incur additional rate-case expense.
6. Central City agrees to waive recovery of rate-case expense if the Commission grants the Parties' joint motion to approve this Settlement Agreement and Stipulation and accept Central City's proposed wholesale rate.
7. Central City and Muhlenberg District No. 3 intend to execute an agreement, whereby Central City would reserve 300,000 gallons of storage capacity for Muhlenberg District No. 3 for a three (3)-year term.
8. The Parties agree that the foregoing stipulations and agreements represent a fair, just, and reasonable resolution of the issues addressed herein and request the Commission to approve the Settlement Agreement and Stipulation.

9. This Settlement Agreement and Stipulation is subject to the acceptance of and approval by the Commission. The Parties agree to act in good faith and to use their best efforts to recommend to the Commission that this Settlement Agreement be accepted and approved.

10. If the Commission issues an order adopting this Settlement Agreement and Stipulation in its entirety, each of the Parties agrees that it shall file neither an application for rehearing with the Commission, nor bring an action for review in Franklin Circuit Court with respect to such order.

11. If the Commission does not accept and approve this Settlement Agreement in its entirety, then: (a) this Settlement Agreement and Stipulation shall be void and withdrawn by the Parties from further consideration by the Commission and neither of the Parties shall be bound by any of its provisions, provided that neither of the Parties is precluded from advocating any position contained in this Settlement Agreement and Stipulation; and (b) neither the terms of this Settlement Agreement and Stipulation nor any matters raised during the settlement negotiations shall be binding on either of the Parties or be construed against either of the Parties.

12. If the Settlement Agreement and Stipulation is voided or vacated for any reason after the Commission has approved it, neither of the Parties will be bound by the Settlement Agreement and Stipulation.

13. The Settlement Agreement and Stipulation shall in no way be deemed to divest the Commission of jurisdiction under Chapter 278 of the Kentucky Revised Statutes.

14. The Settlement Agreement and Stipulation shall inure to the benefit of and be binding upon the Parties hereto, their successors and assigns.

15. The Settlement Agreement and Stipulation constitutes the complete agreement and understanding among the Parties, and any and all oral statements, representations or

agreements made prior hereto or contained contemporaneously herewith shall be null and void and shall be deemed to have been merged into the Settlement Agreement and Stipulation.


16. The Parties hereto agree that, for the purpose of the Settlement Agreement and Stipulation only, the terms are based upon the independent analysis of the Parties to reflect a fair, just, and reasonable resolution of the issues herein and are the product of compromise and negotiation.

17. The Parties agree that this Settlement Agreement and Stipulation may be executed in multiple counterparts.

IN WITNESS WHEREOF, the Parties, through counsel, have affixed their signatures.

City of Central City, Kentucky

HAVE SEEN AND AGREED

By: 
M. Todd Osterloh, Counsel

Muhlenberg County Water District and
Muhlenberg County Water District No. 3

HAVE SEEN AND AGREED

By: 
Damon R. Talley, Counsel

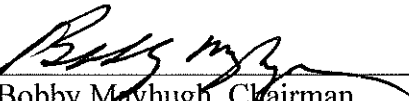
City of Central City

HAVE SEEN AND AGREED

By: 
Tony Armour, Mayor

Muhlenberg County Water District

HAVE SEEN AND AGREED

By: 
Bobby Mayhugh, Chairman

Muhlenberg County Water District No. 3

HAVE SEEN AND AGREED

By: Don Garrett
Don Garrett, Chairman