

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF)
PENDLETON COUNTY WATER DISTRICT OF) CASE NO. 2020-00158
AN AMENDMENT TO A SPECIAL CONTRACT)
WITH THE CITY OF BUTLER)

**CITY OF BUTLER’S MOTION TO INTERVENE AND
MOTION FOR IMMEDIATE APPROVAL OF CONTRACT**

The City of Butler (“Butler”), by counsel, hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 4(11) for intervention in the above-styled matter. In addition, Butler moves the Commission for expedited review and immediate approval of the contract between Pendleton County Water District (“Pendleton District”) and Butler. In support of its motions, Butler states the following:

Butler is a home-rule class City established under the laws of the Commonwealth of Kentucky. Its address is PO Box 229, 102 Front Street, Butler, KY 41006.

On May 1, 2020, Butler entered into an amended water purchase contract, whereby the term of the contract was extended to April 30, 2030, and the Pendleton District’s minimum bill to Butler would be based on an average of 45,000 gallons per day as opposed to 55,000 gallons per day. The contract also increased the volumetric rate from \$4.48 to \$4.82 per 1,000 gallons.

Motion to Intervene

The Commission has interpreted KRS 278.040(2) as requiring a person seeking intervention to have an interest in the rates or service of a utility as those are the only matters that are subject to the Commission’s jurisdiction. See Order, Kentucky Power Co., Case No. 2017-

00179 (Ky. PSC June 19, 2017). Butler satisfies this requirement because it is a wholesale customer of Pendleton District.

Administrative regulation 807 KAR 5:001, Section 4(11)(b) states:

The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Butler meets both these criteria. Butler has special interests in Pendleton District's rate case that will not otherwise be adequately represented. First and foremost, the only issue in this case relates to a wholesale water purchase contract between Pendleton District and Butler. No other party could adequately represent the special interests of Butler because it is only one of two parties to the contract. Butler is the only party that is negatively impacted by the Commission's suspension of the contract.

Butler is also likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. In this particular case, Butler plans to address several issues more fully described in the motion for immediate approval of the contract, including the negative impact to Butler and the reasons why the Commission should approve the contract.

Butler desires to play a constructive role in this matter and isolate issues that are most important to it. Butler's focus will serve to neither unduly complicate nor disrupt the proceeding. In fact, Butler seeks immediate approval of the contract, and if that motion is granted, there will be no additional work necessary.

The Commission has frequently granted intervention to wholesale customers in cases involving the rates of wholesale providers.¹ Butler respectfully requests that the Commission follow its prior precedent on intervention for wholesale customers.

Attorneys for Butler listed below possess the facilities to receive electronic transmission of all notices and messages related to this proceeding at the electronic mailing addresses listed below. All correspondence to Butler should be sent to the attorneys' addresses or email addresses listed below.

Accordingly, because Butler has a special interest in this case that is not otherwise adequately represented and because it is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Butler respectfully requests intervention in this proceeding.²

Motion for Immediate Approval of the Contract

The Commission should expedite the review of this matter and immediately approve the contract between Pendleton District and Butler.

A. Pendleton District's financial status will not be negatively impacted by the Commission's approval of the contract because Pendleton District's reduction in revenue is offset by the reduction in purchased-water expenses.

In its order establishing this case, the Commission indicated that the proposed change to Pendleton District's minimum bill for Butler could result in under-recovery of revenue for depreciation and maintenance costs.³ The Commission appears to be basing this on a

¹ See, e.g., *Big Rivers Elec. Corp and Meade County RECC*, Case No. 2019-00365 (Ky. PSC Nov. 22, 2019)(granting future wholesale customer Nucor Corporation's motion to intervene); *Knott Co. Water and Sewer Dist.*, Case No. 2019-00268 (Ky. PSC Sept. 5, 2019) (granting the City of Hindman's intervention); cf. *City of Princeton*, Case No. 2019-00444 (Ky. PSC Dec. 20, 2019)(declaring two wholesale purchases to be parties to the case).

² Even if the Commission were to deny Butler's intervention, the information contained herein should be treated as persuasive public comment.

³ See Order, Case No 2020-00158 (Ky. PSC May 26, 2020) at 3.

comparison of Pendleton District's rates approved in Case No. 2019-00310.⁴ It does not appear that Pendleton District or the Commission considered the significant improvement in Butler's line loss in that rate case, however, which will decrease Pendleton District's purchased water expense. Because the decrease in Pendleton District's purchased water expense offsets the anticipated reduction in revenue, the net impact will not create a situation of under-recovery for depreciation and maintenance costs.⁵

It is uncontested that Butler has made significant improvement in reducing its line loss. Pendleton District admits this in their response to Item 1 of the Commission's initial request for information.⁶

The consumption data verifies that Butler has made great strides in this area. Based on the information produced by Pendleton District in this case, Butler purchased 14,736,450 gallons of water from April 2018 to March 2019 and purchased only 13,430,020 gallons from April 2019 to March 2020. This is a reduction of nearly 9 percent.⁷

Utilizing the data from Pendleton District's 2018 Annual Report on file with the Commission, the contrast is starker. In 2018, Butler purchased 16,177,000 gallons of water.⁸ Using this number in comparison to the most recent reported data from Pendleton District (April 2019 to March 2020), Butler has reduced its needed consumption by approximately 17 percent.⁹

⁴ *Id.* at 2. If the Commission determines it is appropriate to incorporate the record of Case No. 2019-00310 into this case, Butler has no objection in doing so.

⁵ It is not clear to Butler how one could determine whether Pendleton District would "underrecover" revenue from Butler for certain types of expenses. Butler was unable to locate on the Commission's online materials any rate case in which Pendleton District's rates were based on a cost-of-service study that would determine the appropriate level of recovery from Butler for costs, including depreciation expense or maintenance expense.

⁶ See Pendleton District's Response filed June 24, 2020.

⁷ $(14,736,450 - 13,430,020) \div 14,736,450 = 8.87\%$.

⁸ See Pendleton District's 2018 Annual Report at 58, available at http://psc.ky.gov/UFR_PDF/Water/2018/28000_Pendleton_County_Water_District.pdf (last visited Aug. 14, 2020).

⁹ $(16,177,000 - 13,430,020) \div 16,177,000 = 16.98\%$.

The comparison to the 2018 Annual Report is the most relevant because that is the data on which Pendleton District's recent rate case was based.¹⁰ In the Staff Report from that case, the Staff recommended increasing revenue requirements to account for an increase in purchased water rates from Northern Kentucky Water District ("NKWD").¹¹ This adjustment was approved by the Commission.¹²

Implicit in the Commission Staff Report's analysis is that Pendleton District was purchasing at least 16,177,000 gallons from NKWD to supply that amount to Butler because Pendleton District's Annual Report indicates 16,177,000 in sales to Butler. But the most recent data shows that Butler now only purchases 13,430,020 gallons annually. This is a difference of 2,746,980 gallons.¹³ And in terms of Pendleton District's expenses, Pendleton District now pays \$3.98 per 1,000 gallons for water from NKWD.¹⁴ The reduction of 2,746,980 gallons of purchases from NKWD results in a purchased-water-expense reduction of \$10,932.98 annually.

The May 2020 contract between Pendleton District and Butler reduces the minimum bill to be paid for by Butler by 10,000 gallons per day from 55,000 gallons to 45,000 gallons. Pendleton District interprets this to result in a monthly average minimum bill to be based on 1,372,500 gallons.¹⁵ This reduction results in a monthly minimum bill to be reduced from \$7,503.15 to \$6,593.76, or \$909.39. On an annual basis, the reduction in revenue for the minimum bill is \$10,912.68. This reduction is remarkably close to the reduction in annual purchased water expenses by Pendleton District, which was \$10,932.98.

¹⁰ See *Pendleton Cnty. Water Dist.*, Case No. 2019-00310 (Ky. PSC March 10, 2020) at 2 (stating that the test year ended December 31, 2018).

¹¹ See Staff Report, Case No. 2019-00310 (filed Jan. 15, 2020).

¹² See *Pendleton Cnty. Water Dist.*, Case No. 2019-00310 (Ky. PSC March 10, 2020) at 3 (stating approval for the Staff's findings).

¹³ This amount does not factor in any line loss from Pendleton District. If such an analysis could be made, the impact would be even greater (i.e., additional savings for Pendleton District).

¹⁴ See NKWD Tariff No. 5, Sheet 9.1.

¹⁵ See Pendleton District's Response to Item 3 of the Commission's initial request for information.

It is also important to note that the volumetric rate that Butler will pay if it exceeds the minimum bill will be higher under the contract, in comparison to the rates approved in Case No. 2019-00310. Instead of paying \$4.48 per 1,000 gallons above the monthly minimum, Butler will pay \$4.82 if the contract is approved.

The volumetric rate is even higher if one compares it to actual usage. Butler purchased 13,430,020 gallons from April 2019 to March 2020. That is an average of 1,119,170 gallons per month. Dividing the May 2020 contract minimum of \$6,593.76 by the average of 1,119,170 gallons per month results in an average volumetric rate of \$5.89 per thousand gallons.

Because the reduction in Pendleton District's revenues will be offset by the reduction in purchased-water expense, Pendleton District will not "under recover," and Pendleton District's other customers will not be negatively affected.

B. Butler rarely requires more than the monthly minimum, particularly now that it has improved its water loss percentage. The contract is fair, just, and reasonable because it reflects Butler's progress on water loss.

As discussed above, the May 2020 contract places a monthly minimum purchase requirement based on 1,372,500 gallons. Based on the data presented by Pendleton District, Butler has only received more than 1,372,500 gallons one time since August 2018. More importantly, Butler has not received more than the tariffed amount of 1,672,917 gallons since April 2018. It is unfair to Butler to require it to continue to pay for water that it does not need.

It is important to note that Pendleton District's willingness to reduce the monthly minimum bill is based on the fact that Butler has reduced its line loss and it is unfair for Butler to pay for water not used.¹⁶ The Commission should likewise support Butler's reduction of line loss by approving the contract immediately. For several years, the Commission has discussed

¹⁶ See Item 1 of Pendleton District's Response filed June 24, 2020 (stating "since Butler has made great strides reducing its water usage[,] the water district wants to adjust their water rates" and "Pendleton County Water District and Butler have always had a good working relationship and Butler feels it is unfair to charge for water not used.")

the subject of line loss in nearly every Purchased Water Adjustment (“PWA”) final order for a utility that has line loss in excess of 15 percent. A cursory search of Commission decisions reveals **more than 70 orders** since February 2017 in which the Commission analyzed the amount of expense the utility incurs for having water loss in excess of 15 percent. In addition, the Commission established Case Nos. 2018-00394 and 2019-00041 to investigate issues of water loss.¹⁷

These actions demonstrate the Commission’s interest in encouraging the reduction of unaccounted-for water loss. The Commission should continue to advocate for reduction of a utility’s water loss. And one of the best signals to the water utility industry to demonstrate this commitment is to give credit to jurisdictional utilities and municipal utilities that reduce their water loss. Because the catalyst of the May 2020 contract was Butler’s reduction in line loss, the Commission should demonstrate its commitment to these types of progress by approving the contract immediately.

C. The contract should be approved immediately because it will greatly improve Butler’s financial condition.

As stated above, the May 2020 contract will reduce Butler’s purchased water expenses by \$10,912.68. Although this annual expense may not be a huge percentage of expenses for most water utilities in the Commonwealth, it is significant to Butler and other a small systems. Butler’s FY 2019 audit indicates that it had annual revenue from its water and sewer system of \$342,266 and expenses related to those two systems of \$364,482. If expenses related to the water system were half of the total expenses for both systems, the reduction of purchased water expenses of \$10,912.68 would represent a decrease of approximately 6% of the water utility expenses.

¹⁷ See, e.g., *North Logan Water Dist. No. 1*, Case No. 2020-00221 (Ky. PSC Aug. 5, 2020); *Peaks Mill Water Dist. Case No. 2017-00040* (Ky. PSC Feb. 7, 2017).

In comparison, the reduction of \$10,912.68 would only reflect 0.71% of Pendleton District's revenue. But even this miniscule percentage is overstated because Pendleton District will pay \$10,932.98 less for purchased water from NKWD. When balancing these two figures, Pendleton District will net an additional \$20 because its expenses are \$20 lower than the reduction in revenue.

The Commission seemingly recognized the importance of a quick review in this matter, as its initial order specifically said that it would "expedite its review" and not enter a procedural schedule at that time. Because the contract's terms results in such a significant reduction in Butler's expenses, the Commission should approve the contract immediately.

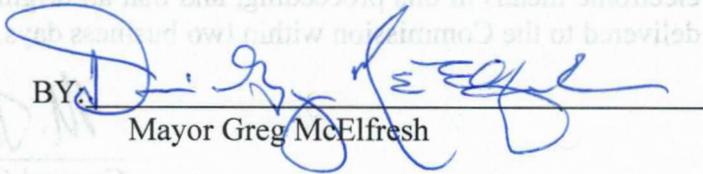
CONCLUSION

Butler has demonstrated that it has a special interest in the case that will not be adequately represented by any other party and is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. In fact, Butler's intervention will not unduly complicate or disrupt the proceedings because it merely seeks immediate approval of the contract at issue.

Evidence in the record of this case demonstrates the reasonableness of the proposed contract and, specifically, indicates that the contract will not negatively impact Pendleton District's other customers. In fact, Pendleton District's reduction in revenue will be offset by the reduction in Pendleton District's purchased water expense. In addition, the Commission's approval of the contract that considered Butler's improvement on water loss will further demonstrate the Commission's dedication to encouraging water utilities to address unaccounted-for water loss. Finally, the reduction in expense to Butler is significant for its small water system, thereby justifying the Commission's immediate approval of the contract.

VERIFICATION

I, Greg McElfresh, Mayor of the City of Butler, having first been duly sworn, hereby state that I have read the foregoing Motion and that the facts contained therein are, to the best of my knowledge and belief, true and accurate.

BY: 
Mayor Greg McElfresh

COMMONWEALTH OF KY)
)
COUNTY OF PENDLETON)

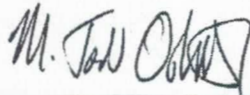
Subscribed and sworn to before me by Mayor Greg McElfresh on this the 21 day of August, 2020.


NOTARY PUBLIC, STATE AT LARGE, KY



NOTARY PUBLIC, STATE OF KY AT LARGE
COMMISSION EXPIRES 4-13-24
COMMISSION NUMBER KYN P 5657

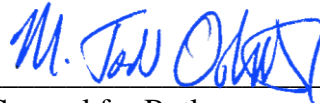
Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the August 17, 2020, electronic filing of this document is a true and accurate copy of the same document being filed in paper medium; that the electronic filing will be transmitted to the Commission on August 17, 2020; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this document will be delivered to the Commission within two business days.

A handwritten signature in blue ink, appearing to read "M. John O'Connell", is written above a horizontal line.

Counsel for Butler