

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

**ELECTRONIC INVESTIGATION INTO)
WHOLESALE WATER RATES CHARGED BY)
THE CITY OF CARLISLE TO SHARPSBURG)
WATER DISTRICT AND NICHOLAS COUNTY) CASE NO. 2021-
00382
WATER DISTRICT PURSUANT TO KRS 278.200,)
KRS 278.160, KRS 278.180, KRS 278.190 AND)
KAR 5:011)**

**EMERGENCY HEARING BRIEF
MOTION
ON BEHALF OF THE CITY OF CARLISLE, KENTUCKY**

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Comes now the City of Carlisle, by counsel, and in anticipation of the Emergency Hearing before the PSC on FRI 17 DEC 2021, submits this Hearing Brief and Motion.

HEARING BRIEF

In its Notice of Hearing, City of Carlisle identified three (3) matters of possible interest to be raised and heard by the Commission.

1. Reasonableness of Tariff filed by the City
2. Overcharging Sharpsburg Water District
3. Wholesale of Carlisle Water by the Nicholas County Water District

TARIFF

As to the reasonableness of the tariff, Carlisle submits this is now a non-issue. As demonstrated by earlier pleadings, the Nicholas County Water District, at its Board Meeting of 27 JUL 2021, attended by the Mayor of Carlisle, the tariff submitted by the City to the PSC was negotiated between the City's Mayor and the NCWD Board, and agreed to prior to its filing with the PSC. See Carlisle's Exhibit 2 and Exhibit 3.

The other wholesale customer affected by the increased rates in this tariff has filed its Witness List and Proposed Testimony in this case. Therein is found at page 5:

Q: "What is the position of the Sharpsburg Water District as to the Revised Tariff of the City of Carlisle?"

A: By Gayle Haney, Manager of the Sharpsburg Water District:
"Sharpsburg is unaware of any reason to object to the revised Tariff, and therefore, has no objection. Sharpsburg Water District has already filed a request with the Public Service Commission an application for a pass-through rate adjustment."

Based on the foregoing, it is respectfully submitted that the issue of the reasonableness of the City of Carlisle Tariff filed with the PSC on 30 SEP 2021 is moot and Moves that so much of the Commission's Investigation resulting in this Hearing be Ordered Dismissed as Agreed and Settled, with the 30 SEP 2021 Tariff effective IAW PSC regulations.

OVERCHARGE

The City has in effect its Ordinance 6-2000, a copy of which is in the record in this case as Exhibit 4 to its Response of 9 NOV 2021. The Ordinance speaks for itself, but essentially applies a Cost of Living increase to all of the City's utility rates, from water, to sewer, to trash collection. It is based on the US DPT of Labor Consumer Price Index change year-over-year, and is applied to all of its customers, those living inside the City boundary and those outside, to its retail but not its wholesale customers. The increase is effective 1 JUL of each year, which shows up in the AUG billing for its customers, which appears to coincide with the increase in rates alleged by the Sharpsburg Water District. See Testimony of Harney, pages 4

and 5, and Exhibits B and C. The person who handles billings was instructed by the Mayor to include the COLA pursuant to the Ordinance for the wholesale customers as well as the retail customers for 2020, beginning 1 JUL, which shows up in the AUG billing.

The City of Carlisle hereby Stipulates that the increase in water rates charged Sharpsburg that is the subject matter of this Investigation is pursuant to the provisions of its Ordinance 6-2000. It is the understanding of counsel that the PSC position on such "COLA" increases is not in accordance with its policy regarding such. It is respectfully submitted that in the face of such a great number of charges and benefits that are annually adjusted based on the US DPT of Labor calculated change in the Consumer Price Index year over year, for the PSC to categorically reject same as imposed by a municipal utility that produces and sells at wholesale potable water, applied universally to all its customers, citizens of the city as well as those not, amounts to an unconstitutional arbitrary decision in violation of Section 2 of the Kentucky Constitution.

WHOLESALE BY NICHOLAS COUNTY WATER DISTRICT

The ages old Water purchase Agreement in effect between Carlisle and NCWD calls for the delivery of four (4,000,000) million gallons of potable water per month. See Appendix B of the Commission's Order of 20 OCT 2021. It will be the testimony of Ricky Moore that the city has sold NCWD in excess of twice that contractual limit per month periodically over the last few years. A point to be ascertained at this hearing is the disposition of the potable water sold NCWD by Carlisle. In the current Tariff of the NCWD, in the Contents Section at "G" is reflected a "Wholesale Rate." Perusal of the Tariff finds Section "G" but which reflects no wholesale rate.

The NCWD has proposed to construct WX21181016 with the Kentucky Infrastructure Authority, labeled "Wholesale Connection and Interconnect Project." Carlisle is unaware of the extent of the wholesale of potable water by the NCWD, but what counsel used to call "an indicator" in his other role as a retired COL of Special Forces and Military Intelligence, is present in the three (3) factors noted above: the purchase of water far in excess of what is contractually necessary for its retail customers, a proposed project to "enhance" its wholesale capacity, and a Tariff expressing but not disclosing a "wholesale rate," all of which indicates the

conclusion NCWD is “wheeling” potable water bought from Carlisle to the other water utilities from which it is able to purchase potable water, to wit: Western Fleming Water District, Kentucky American Water, and Buffalo Trace Water District. Apparently the water flows both ways; or perhaps the ultimate disposition is to the unnamed wholesale customer of NCWD as reflected in the incomplete Tariff and the beneficiary of the “Wholesale Connection and Interconnect Project” noted above.

Mayor Clark will testify as to a connecting water line between NCWD and the Harrison County Water District, in his private capacity he constructed same over twenty (20) years ago, and it is on information and belief that potable water bought from Carlisle is being sold to HCWD by NCWD.

Assuming NCWD is in fact re-selling potable water it buys from Carlisle to another water utility, what it is doing rather than whole selling is simply serving as a “common carrier” of the commodity produced by Carlisle and ultimately used by a customer with whom Carlisle is not in a contractual relationship. This is not to say NCWD is not entitled to a cost of transmission and capital charge for the use of its equipment, but as NCWD produces nothing, how can it whole sell anything?

Unless and until NCWD can account for all the water it buys from Carlisle being sold at retail to its customers, the Kentucky PSC should refrain from ordering any modification of the contract between these parties as to quantity of water to be supplied. To Order otherwise will simply place a governmental *imprimatur* on expansion of a continuing inequity: NCWD should not be able to legally “arbitrage” water to another utility.

CONCLUSION

Based on the foregoing, it is respectfully requested that the Kentucky PSC:

1. Order filing of the Carlisle tariff in issue in accordance with its regulations as to effective date.

2. Find that any overcharge of Sharpsburg is based on a valid City of Carlisle Ordinance applicable to all of its customers, both retail and wholesale, and which ordinance applies a simple and universally accepted manner of keeping up

with actual cost increases year-over-year used by government at all levels in the United States, business, financial institutions, and

3. Determine and Find the ultimate disposition of the potable water sold by Carlisle to the Nicholas county Water District as being consumed totally by its retail customers, lost, or sold at whole sale to another water utility, over which transactions the PSC has jurisdiction; and Order that any such water sold to another water utility be outside the terms of the Water Purchase Agreement between the parties, and revert to the obligations of contract or subject to the negotiation process between the parties.

Respectfully submitted,

/s/ Henry Watson III

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CERTIFICATE OF SERVICE

The undersigned certifies that the electronic filing has been transmitted to the Commission on December 16, 2021, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Henry Watson III

Henry Watson III

Counsel for the City of Carlisle