

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTONIC TARIFF FILNG OF)
LEXINGTON-FAYETTE URBAN COUNTY)
GOVERNMENT REVISING ITS MONTHLY)
SEWER USER FEE AND MONTHLY TAP-ON)
CONNECTION FEES TO JESSAMINE-SOUTH)
ELKHORN WATER DISTRICT)

Case No. 2022-00186

STATEMENT REGARDING HEARING AND MOTION

Lexington-Fayette Urban County Government (“LFUCG”), by counsel, hereby responds to the Commission’s Order dated June 24, 2022 regarding the necessity of a hearing in this matter. In addition, LFUCG respectfully requests the Commission accept this statement that is being filed after the deadline set forth in the aforementioned Order.

Statement Regarding Hearing

LFUCG believes that there is sufficient information in the record of this case for the Commission to approve LFUCG’s sewer rate to Jessamine-South Elkhorn Water District (“JSEWD”). If the Commission or its Staff seeks additional information through an evidentiary hearing, LFUCG will gladly participate and present witnesses in that hearing.

Background

On LFUCG filed with the Commission revised tariff sheets setting forth a proposed increase to its existing monthly sewer user fee and tap-on connection fees charged to JSEWD effective July 1, 2022. This increase is consistent with the contract executed by the parties on January 3, 2003 (“Agreement”), which states that JSEWD shall pay to LFUCG “sewer user fees

as set forth in Section 16-59, of LFUCG’s Code of Ordinances.”¹ LFUCG’s proposed 8.3% increase applied to all customers inside LFUCG’s service territory, including JSEWD.

There are a variety of reasons why the Commission should approve LFUCG’s wholesale sewer rates. First and foremost, JSEWD has not objected to the proposed increase. The Commission commonly accepts a municipality’s wholesale rate to a utility when the utility does not object.²

Second, the proposed increase is consistent with the circumstances under which LFUCG provides service to JSEWD. It is worth remembering that, unlike a typical arms-length transaction or a situation in which a municipal utility is actively marketing services to a regulated utility, the Agreement was primarily entered into as the result of a Kentucky Division of Water administrative action and approval process for the benefit of certain landowners in Jessamine County. The Agreement specifically mentions this stating: “the Kentucky Division of Water, as a condition for approval of LFUCG’s updated 201 Plan, has required that sewer service be made available to the northern Jessamine County watersheds described in Section 1 below.”³ LFUCG’s Fayette County sewer customers do not otherwise benefit through the inclusion of these additional Jessamine County customers into the system.⁴

The revenue generated from JSEWD is intended to reasonably compensate LFUCG for the total overall costs associated with using its sewer system without unduly penalizing existing ratepayers for the additional burdens placed on the system through the inclusion of these additional users. As a part of the Agreed Order with the Division of Water, LFUCG has been required to invest more than \$100 million in capital improvements at the West Hickman Wastewater

¹ Agreement at ¶ 14.

² See, e.g., *Salyersville Water Works*, Case No. 2006-00499, 2006 WL 4590821 (Ky. PSC Dec. 19, 2006).

³ Agreement at p. 2.

⁴ LFUCG Response to Staff 1-4.

Treatment Plant since 2013, but has only collected approximately \$2 million from JSEWD. LFUCG's must continue to fund significant capital expenditures in order to maintain compliance, as indicated in the 2021 Annual Consolidated Financial Report:

The sanitary sewer capital construction component of the Consent Decree consists of 115 capital improvement projects intended to rehabilitate the sanitary sewer system to prevent recurring sanitary sewer overflows and unpermitted bypasses. The cost estimate for all the Remedial Measures Plan (1Uv1P) capital projects is \$591 million, and LFUCG must complete the projects by December 31, 2026. As of September 2021, a total of 61 RMP projects have been completed and another 23 are in the design / construction phase, totaling approximately \$311 million in capital expenditures. Generally projections show total RMP capital project expenses trending below the original estimated expenditure for the projects completed or are under construction to date. LFUCG will continue to closely monitor this trend as the overall project scope has now begun to transition away from the storage tank projects and into the pipeline upgrade projects-schedules of which are being adversely impacted by serious pipe supply shortages and price increases.⁵

The additional revenue generated by LFUCG through this increase is needed to pay for these capital expenditures that are necessary in order to comply with LFUCG's Agreed Order with the Division of Water.

Third, relatively small annual increases, such as the one being proposed by LFUCG for all its customers help avoid significantly large increases that create rate shock.⁶ The avoidance of rate shock benefits JSEWD and JSEWD's customers by providing a relatively predictable utility rate on which those customers can base their decisions.

Fourth, the overall impact of LFUCG's proposed 8.3% increase to JSEWD is relatively small and could be significantly increased if rate case expense were added. Based on Fiscal Year

⁵ LFUCG Response to Staff 2-1.

⁶ LFUCG Response to Staff 1-11.

2022 revenues, the proposed increase would generate approximately \$81,378 in additional revenue from JSEWD. The costs incurred in fully litigating a municipal rate case can approach or exceed this amount of annual increase requested by LFUCG. Examples of municipal rate case expense include the following: Pikeville - \$89,488.64;⁷ City of Lebanon - \$162,695;⁸ City of Augusta - \$69,535;⁹ City of Danville - \$57,190;¹⁰ Hopkinsville Water and Environment Authority - \$153,416;¹¹ and Frankfort Electric and Water Plant Board - \$78,405.¹² To date, LFUCG has not requested to include rate case expense in JSEWD's rate, but it would be appropriate to do so.¹³ If a hearing is scheduled, LFUCG may request a rate-case-expense surcharge to recoup all expenses incurred with this matter.

Fifth, although the Commission does not need to approve the methodology of the proposed increase in order to approve the proposed rates, LFUCG has provided support for utilizing the Consumer Price Index for increase a municipality's wholesale rate increase. A report prepared by authors at the Lawrence Berkeley National Laboratory—a U.S. Department of Energy National Laboratory managed by the University of California—confirms that water and wastewater rates have historically increased faster than CPI. In the summary of findings, it states: “Steep annual increases in water and wastewater rates that outpace the Consumer Price Index (CPI) have increasingly become the norm across the United States. . . . Further, evaluation

⁷ Case No. 2020-00080.

⁸ Case No. 2017-00417.

⁹ Case No. 2015-00039.

¹⁰ Case No. 2014-00392.

¹¹ Case No. 2009-00373.

¹² Case No. 2008-00250.

¹³ “Rate case expenses have long been considered as appropriate expenses for inclusion in utility rates.” *City of Owenton*, Case No. 98-283 (Ky. PSC Feb 22, 1999)(citing *West Ohio Gas Co. v. Public Utilities Comm'n*, 294 U.S. 63, 74 (1935)). “It is a well-settled principle of utility law that rate case expenses ‘must be included among the costs of operation in the computation of a fair return.’” *Kentucky-American Water Company*, Case No. 2010-00036 at 46 (Dec. 14, 2010)(quoting *West Ohio Gas Co.* 294 U.S. at 74). The Supreme Court has even declared that “[t]he charges of engineers and counsel, incurred in defense of its security and perhaps its very life, were as appropriate and even necessary as expenses could well be.” *West Ohio Gas Co.*, 294 U.S. at 74.

of the current and upcoming challenges facing water and wastewater utilities suggests that sharp rate increases are likely to continue in the foreseeable future.”¹⁴

In addition, some commentators also suggest that a Construction Cost Index (CCI”) has more correlation to the provision of water and wastewater utility services than CPI.¹⁵ Engineering News-Record calculated its annual CCI for April 2022 at 8.9%.¹⁶ Another CCI published by Mortenson calculated an annual 18.3% CCI after the first quarter of 2022.¹⁷ These construction cost indexes further support the reasonableness of LFUCG’s across-the-board increase of 8.3%.

Ultimately, LFUCG submits that its proposed 8.3% increase in sewer rates to JSEWD are reasonable and that the Commission can approve this increase on the following narrow grounds: (1) JSEWD, nor any other party, has objected to the proposed increase or provided any evidence that the proposed rates are unreasonable; (2) LFUCG’s proposed 8.3% increase is being applied to all customers, including those customers inside Fayette County; (3) the proposed increase is consistent with an Agreed Order executed by LFUCG, which was conditioned on LFUCG making sewer service available to the northern Jessamine County watersheds; and the burden of increased rate case expense can be avoided by approval of the proposed rates.

Motion

The Commission’s Order dated June 24, 2022, requested statements from parties regarding the necessity of a hearing no later than October 14, 2022. The undersigned counsel performed a calendaring mistake in setting internal deadlines, and apologizes for this mistake. Upon

¹⁴ LFUCG Response to Staff 1-11.

¹⁵ See Shadi Eskaf (Senior Project Director at the Environmental Finance Center at University of North Carolina), “Using an Index to Help Project Capital Costs Into the Future,” available at <https://efc.web.unc.edu/2012/09/26/using-an-index-to-help-project-capital-costs-into-the-future/>

¹⁶ LFUCG Response to Staff 1-11.

¹⁷ *Id.*

discovering this mistake, counsel took steps to remedy the issue as quickly as possible. But as a result of this error, this Statement is being filed on the first business day after the deadline set by Commission Order. Respectfully, LFUCG requests that the Commission grant acceptance of this untimely filing.

Respectfully submitted,



STURGILL, TURNER, BARKER & MOLONEY, PLLC

James W. Gardner

M. Todd Osterloh

Rebecca C. Price

333 W. Vine Street, Suite 1500

Lexington, Kentucky 40507

Telephone No.: (859) 255-8581

Facsimile No.: (859) 231-0851

jgardner@sturgillturner.com

tosterloh@sturgillturner.com

rprice@sturgillturner.com

*Attorneys for Lexington-Fayette Urban County
Government*

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