

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
IN THE MATTER OF: ELECTRONIC INVESTIGATION
INTO THE CITY OF ALBANY FOR ALLEGED
ASSESSMENT OF AN UNAPPROVED RATE FOR
CUMBERLAND COUNTY WATER DISTRICT
CASE NO.: 2025-00390

RESPONSE BY THE CITY OF ALBANY

Comes the City of Albany, by and through counsel, and, in response to the order and investigation, states and declares as follows:

ADMISSION

The City of Albany admits the tariff filed with the P.S.C. is \$2.10 per thousand gallons. Said filing was effective October 15, 2009.

The filing did not mention the base rate. The base rate in the original contract dated November 5, 2003 is \$2,125.00 for 1.5 million gallons. The below attorney assumes that the base rate was to continue. Otherwise, some of the bills calculated were undercharged rather than overcharged.

CALCULATIONS

As calculated, the difference between the actual charges to Cumberland County Water District from the listed rate of \$2.10 per thousand is \$165,366.62. The invoices and calculations are attached.

The calculations do not include the tax charged. Please note that invoices were not available prior to December 15, 2017. However, an examination of subsequent invoices show that the variance between the listed tariff and the amount charged did not occur until the invoice dated November 23, 2018.

PRIOR CONTRACT

The most recent tariff filing was based upon a water purchase contract dated November 5, 2003 between the City of Albany and the Cumberland County Water District which was received by the P.S.C. on August 13, 2009.

The contract states that it is effective for the term of 40 years. Said contract is in violation of Section 164 of the Kentucky Constitution which prohibits any franchise from exceeding 20 years.

See OAG 81-365. (Cities may contract with one another for water services; however, such contract is a franchise subject to KY Const Section 164 limiting the duration to 20 years.)

KY Const. Section 164. (No county, city, town, taxing district or any other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding 20 years.)

ALTERATION OF CONTRACT/RATES

Although not required to sell water to Cumberland County Water District, the City of Albany plans to do so as supply is available. The city wishes to stay on good terms with the Cumberland County Water District. However, a city is not required to furnish water to a nonresident customer and can terminate an agreement to furnish this utility when it is in the best interest of the city, without liability. **See OAG 62-475.**

Also, the City of Albany is permitted to charge different rates to Cumberland County Water District than would to its customers pursuant to OAG 78-656. That opinion states that a city may charge a higher rate outside the city than it charges inside the city for water.

PLAN OF ACTION

The City of Albany has now filed an amended tariff which is consistent with the current rates charged to the Cumberland County Water District. The City of Albany is currently upgrading its infrastructure. The rate structure may be revised in the future after a rate study has been prepared.

RECENT HISTORY AND BASIS FOR CURRENT RATES

According to the city clerk, the City of Albany passed an ordinance to amend the rates charged to Cumberland County Water District by an amount per year to account for inflation and cost increases. It appears that the rates were changed progressively from November, 2018 forward. Due to an apparent administrative oversight, no new tariff was filed.

Nevertheless, newly appointed Mayor James Bray, along with residents of Clinton County and Albany, Kentucky suffered a severe water crisis during the winter of 2024. The media reported said shortages on many outlets.

The City of Albany draws its water supply from Lake Cumberland using electrical pumping stations. Customers include farmers, cattle farmers, chicken farmers, residents, and Cumberland County Water District. During December, 2024 a winter storm caused both pumps to be inoperable due to the loss of electricity.

Due to aging infrastructure, the city lost pressure and holding tanks quickly emptied leaving residents without water with some for 2 weeks or longer. A state of emergency was declared. Although parts of Clinton County successfully restored normal water usage, some in more rural parts of the county had to travel from their homes to obtain water. Needs were met by UK Extension agents by providing water for cattle farmers. Also, VFW

provided showers and portable laundry services.

As the City of Albany recovered, infrastructure improvements have been addressed including the installation of master water meters to find leaks and the repair of said leaks. Also, valves for holding tanks have been upgraded and/or replaced. The City of Albany sought additional sources for water in the event of future crisis and ensure that the future shortages did not occur as City of Albany has many customers including Tyson Chicken Processing Plant.

The City of Albany sought to purchase water from the Monticello Utility Commission. Their proposed rate was \$3.50 per thousand gallons. As the costs was greater than anticipated, and as the City was able to recover water pressure, the contract was not further pursued. Said rate is far in excess of the rate of \$2.92 per thousand gallons charged by the City of Albany to the Cumberland County Water District. It was impractical to pay more for water than it was being sold by the City of Albany.

Therefore, in the future, the City of Albany cannot sell water to Cumberland County Water District for less than it costs the City of Albany to purchase it itself during emergencies.

REASONABLENESS OF RATES

The tariff under review for City of Albany to Cumberland County Water District, being the amount currently charged, of \$2.92 per thousand gallons after 1.5 million gallons (0.00292), is reasonable. As stated above, it is less than the rate of \$3.50 proposed to purchase same from the Monticello Utility Commission.

The attached rates and charges of Cumberland County Water District show the rate charged to residential customers is \$34.63 minimum bill for the first 2,000 gallons (0.0173) and for the next 3,000 gallons, \$0.00960 per gallon.

Therefore, the rates charged by City of Albany have been reasonable.

CONCLUSION

City of Albany will comply with any P.S.C. rulings or directives in this matter. In the future, the City of Albany will review its rate structure and seek cooperation with all entities, including Cumberland County Water District. Its immediate plan is to continue to sell water to Cumberland County Water District. A new tariff has now been filed by the City of Albany, awaiting approval, which is consistent with the current rate charged.

Respectfully submitted,



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