

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE	)	CASE NO.
WHOLESALE WATER SERVICE RATES OF	)	2009-00041
THE CITY OF BURKESVILLE	)	

O R D E R

On December 12, 2008, the City of Burkesville ("Burkesville") notified the Commission of its intent to increase its wholesale water rate for service provided to Cumberland County Water District ("Cumberland District") from \$2.09 per 1,000 gallons to \$3.43 per 1,000 gallons.<sup>1</sup> On December 29, 2008, Cumberland District filed an objection to Burkesville's proposed rate.

BACKGROUND

The Commission initiated an investigation of the reasonableness of Burkesville's proposed rate on March 20, 2009. During the course of the proceeding, several data requests were issued, and responses to those requests were received. Informal conferences were held on May 18, 2009, September 2, 2009, and September 16, 2009.

During the September 2, 2009 conference, the participants discussed the justification provided by the city for Burkesville's proposed rate. One particular difficulty in determining a reasonable rate related to the amount of water to be purchased by Cumberland District. Cumberland District is not currently purchasing any water from

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<sup>1</sup> Because the initially proposed effective date did not provide a 30-day notice period to the Commission, as required by KRS 278.180(1), it is void.

Burkesville, and it is unclear how much water will be purchased when Burkesville's new treatment plant is operational. As a result, it is difficult to determine how much of Burkesville's expenses should be allocated to the water district and the amount of additional expenses required for Burkesville to produce additional water to sell to Cumberland District.<sup>2</sup>

During that informal conference, Cumberland District stated that it probably would not have the ability to purchase significant amounts of water from Burkesville for one or two years. Based on this information, the participants discussed whether the parties could agree to a rate that would be a base volumetric amount with a "true-up" mechanism by which Burkesville would refund to or collect from Cumberland District any undercharges or overcharges based on a cost-of-service study to be performed at the end of a specified period of time. Ultimately, Burkesville officials proposed that the parties agree to a rate of \$3.43 with two contingencies. First, the water district would not purchase any water until the new plant becomes operational. Second, the parties would perform a cost-of-service study after six months or one year of plant operations and then any under- or over-recovery would be paid by the appropriate party. Cumberland District representatives stated that they would present that proposal to Cumberland District's board during its next meeting.

At the informal conference held on September 15, 2009, Cumberland District informed the parties that its board approved Burkesville's proposal. Burkesville stated that it would draft the agreement to be filed with the Commission. Staff also

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<sup>2</sup> Memorandum from Todd Osterloh, Public Service Commission Staff Attorney, to Case File (Sept. 4, 2008).

noted that the Commission was statutorily required to issue a decision in this case no later than October 12, 2009. Staff stated that the Commission would need the agreement, preferably, by September 30, 2009, in order to have time to review the case and issue an Order before the statutory deadline.<sup>3</sup> The agreement has not yet been filed.

### ANALYSIS

The city of Burkesville, a city of the fifth class,<sup>4</sup> owns and operates a water treatment and distribution system that provides, *inter alia*, wholesale water service to Cumberland District.

Cumberland District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that are used in the distribution of water to the public, for compensation, to approximately 2,409 customers in Cumberland County, Kentucky.<sup>5</sup> It is a utility subject to Commission jurisdiction.<sup>6</sup>

KRS 278.010(3) generally exempts municipal utilities from Commission regulation by excluding cities from the definition of “utility.”<sup>7</sup> In *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994), however, the Kentucky Supreme

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<sup>3</sup> Memorandum from Todd Osterloh, Public Service Commission Staff Attorney, to Case File (Sept. 18, 2008).

<sup>4</sup> KRS 81.010(5).

<sup>5</sup> Annual Report of Cumberland County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2008 at 5, 27.

<sup>6</sup> KRS 278.010(3)(d); KRS 278.015.

<sup>7</sup> See *McClellan v. Louisville Water Co.*, 351 S.W.2d 197 (Ky. 1961).

Court held that this exemption did not extend to contracts for utility service between a municipal utility and a public utility. The Court ruled that “where contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to . . . [Commission] rates and service regulation.”<sup>8</sup>

*Simpson County Water District* effectively subjects all contracts between municipal utilities and public utilities to the Commission’s jurisdiction, requires all municipal utility transactions with a public utility to comply with the provisions of KRS Chapter 278, and makes Commission approval a prerequisite to any change in a rate that a municipal utility assesses a public utility for wholesale utility service.

The Commission reviews rates to ensure that they are fair, just, and reasonable.<sup>9</sup> Pursuant to KRS 278.190(3), the Commission must issue a final Order as to the reasonableness of the proposed rate no later than ten months after a utility files a proposed rate schedule with the Commission. Because Burkesville filed its proposed rate with the Commission on December 12, 2008, we must issue a final Order no later than October 12, 2009.<sup>10</sup>

Ultimately, “the burden of proof to show that the increased rate or charge is just and reasonable” falls on the applicant.<sup>11</sup> In reviewing the documents filed by

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<sup>8</sup> 872 S.W.2d at 463.

<sup>9</sup> KRS 278.030.

<sup>10</sup> Because October 11, 2009 is a Sunday, the deadline is extended to the following state business day pursuant to KRS 446.030.

<sup>11</sup> KRS 278.190(3).

Burkesville, the Commission finds that the utility has not yet met its burden. Burkesville has not produced reliable information on the amount of water that Cumberland District would purchase and, therefore, a reasonable rate cannot be determined. That is not to say that Burkesville could never support its proposed rate, but we simply find that additional information would be required to be presented to the Commission before we could determine whether Burkesville's proposed rate is reasonable.

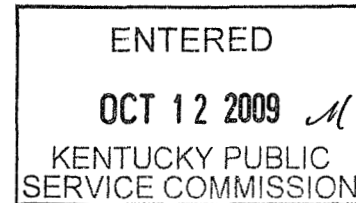
Because the Commission must issue a decision no later than October 12, 2009, and because Burkesville has failed to meet its burden of proof with respect to its proposed rate, we must deny the proposed rate. Nevertheless, we recognize that our Order should have no impact on Burkesville's revenues because Cumberland District is not currently purchasing any water from Burkesville, nor does it have plans to purchase water from Burkesville in the immediate future. Moreover, a settlement between the parties appears to be imminent.

Once an agreement between the parties is formalized, the parties should file that agreement with the Commission. If an agreement is filed that is similar to the one proposed at the September 2, 2009 informal conference, the Commission will process the proposed rate in an expeditious manner. Previously, the Commission has approved mutually agreed rates between cities and water districts as long as the

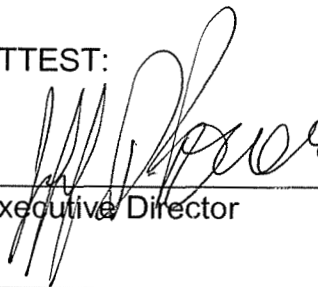
agreement is not unreasonable or unconscionable.<sup>12</sup> If no agreement can be formalized by the parties, Burkesville is entitled to file another rate case.

IT IS THEREFORE ORDERED that Burkesville's proposed wholesale rate increase is denied without prejudice.

By the Commission



ATTEST:

  
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Executive Director

<sup>12</sup> See, e.g., Case No. 2007-00258, Proposed Wholesale Adjustment of the Wholesale Water Service Rates of Shelbyville Municipal Water and Sewer Commission (Ky. PSC Aug. 1, 2007).

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