

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PROPOSED ADJUSTMENT OF) CASE NO.
THE WHOLESALE WATER SERVICE RATES OF) 2017-00417
LEBANON WATER WORKS)

ORDER

On September 13, 2017, Lebanon Water Works (“Lebanon Water”) filed with the Commission a revised tariff sheet setting forth proposed adjustments to its existing rates for wholesale water service to Marion County Water District (“Marion District”), with a proposed effective date of November 15, 2017 (“Application”). On September 25, 2017, Marion District filed a protest letter requesting information from Lebanon Water and asserting Marion District’s right to ask for a hearing on this matter pursuant to KRS 278.200.

On November 11, 2017, pursuant to KRS 278.190(2), the Commission issued an Order to suspend the effective date of the proposed rates for five months, up to and including April 14, 2018. Marion District was made a party to this proceeding. On December 19, 2017, the Commission filed an Order granting Marion District’s request for electronic filing. Lebanon Water moved for an order establishing a procedural schedule and assigning burden of proof on January 31, 2018, and filed a memorandum in support of its motion as well as the testimony of Daren Thompson, operations and management superintendent of Lebanon Water. On February 7, 2018, Marion District

filed its response, objecting to Lebanon's motion to assign burden of proof. Both parties have requested a scheduling order.

The Commission finds that it should establish a procedural schedule to ensure a complete record and an orderly review of Lebanon Water's proposal. The information needed in this case will be obtained through the Application, responsive filings in the record, and Commission Staff's Requests for Information, attached hereto in Appendix B. Marion District has cited KRS 278.200 and *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky.1994) to assert that a rate set forth in a contract between a non-regulated entity (i.e. a municipality-owned water company) and a utility may not be charged until the Commission holds a hearing on the proposed change. Therefore, the Commission further finds that a request for a hearing has been submitted in this proceeding, and reserves the right to require Marion District to state the reasons why a hearing or informal conference is necessary.

Further, Lebanon Water has asked for an Order assigning the burden of proof in this matter. Lebanon Water has argued that Marion District should be assigned the burden of proof because, by filing a protest to the rate adjustment, Marion District is essentially requesting to rewrite an agreement first made between Lebanon Water and Marion District in 1988 ("Master Agreement").¹ Marion District argues that the Commission's jurisdiction and power allow it to review any rate or service standard of any utility contract pursuant to KRS 278.040 and KRS 278.200.² Lebanon Water, in its reply, claims that Marion District "mischaracterizes" its filing as proposed rate

¹ Lebanon Water's Memorandum in Support of Motion for an Order Establishing a Procedural Schedule and Assigning Burden of Proof (filed Jan. 31, 2018)

² Marion District's Response to Motion for an Order Establishing A Procedural Schedule and Assigning Burden of Proof (filed Feb. 7, 2018).

adjustment that triggers the requirement for a hearing pursuant to KRS 278.200, and therefore imposes the burden of proof upon Lebanon as the party seeking the adjustment pursuant to KRS 278.190(2).³

Marion District filed for leave to file a sur-reply on February 16, 2018. Marion District disputes that Lebanon met the requirements of 807 KAR 5:001 Section 5(3) by confining its reply to points in the responses, and asks for deviation from the motion practice set forth in 807 KAR 5:001 Section 5(3) to file a sur-reply and respond to the new arguments made by Lebanon Water. Under 807 KAR 5:076, Section 17, the Commission may, upon showing of good cause, permit deviations from the administrative regulations. The Commission finds that Marion District has shown good cause for deviating from motion practice in 807 KAR 5:001 Section 5(3), and should be granted a deviation. Marion District's sur-reply should be deemed filed as of the date of entry of this order. Marion District argued that Lebanon Water had not previously argued that the formulaic rate of the Master Agreement was at issue, and Lebanon Water was not proposing an increase in rates that would trigger a hearing pursuant to KRS 278.190 or KRS 278.200. Marion District objects to this characterization and asserts that the proposed amendments trigger the Commission's power of review pursuant to KRS 278.020.

Having reviewed the record, the Commission finds that pursuant to KRS 278.200, KRS 278.190(3), and the Kentucky Supreme Court's decision in *Simpson County Water District v. City of Franklin*, 827 S.W.2d 460 (Ky.1994), Lebanon Water

³ Lebanon Water Works Company's Reply to Response to Motion (filed Feb. 12, 2018)

has the burden of proof to show that its proposed adjustments to its existing rates for wholesale water service to Marion District are fair, just, and reasonable.

IT IS THEREFORE ORDERED that:

1. The procedural schedule set forth in Appendix A, attached hereto and incorporated herein, shall be followed in this proceeding.

2. Marion District has filed a timely request for a hearing in its protest letter of September 19, 2017, which will be scheduled no later than April 02, 2018.

3. a. The information requested in Appendix B to this order shall be filed by the date set forth in Appendix A. Responses to requests for information shall be appropriately bound, tabbed, and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record, and the original and ten copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Any party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. A party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

6. Marion District's Motion for Leave to File a sur-reply in Opposition to Motion for an Order Establishing a Procedural Schedule and Assigning Burden of Proof is granted.

7. Marion District's sur-reply in Opposition to Motion for an Order Establishing a Procedural Schedule and Assigning Burden of Proof is deemed filed as of the date of entry of this Order.

8. Lebanon Water is assigned the burden of proof in this matter pursuant to KRS 278.190(2).

9. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission

ENTERED
FEB 28 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2017-00417

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2017-00417 DATED FEB 28 2018

Lebanon Water shall file responses to requests for
information contained in Appendix B no later than.....03/07/2018

Requests for information to Lebanon Water shall be
filed no later than.....03/14/2018

Lebanon Water shall file responses to requests for
information no later than..... 03/28/2018

Requests for information to Marion District shall be
filed no later than.....03/14/2018

Marion District shall file responses to requests for
information no later than..... 03/28/2018

Any hearing or informal conference
shall be scheduled no later than..... 04/02/2018

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2017-00417 DATED FEB 28 2018

1. Refer to Lebanon Water's "Memorandum in Support of Motion for an Order Establishing a Procedural Schedule and Assigning Burden of Proof," (filed Jan. 31, 2018). In Exhibits 1-14, Lebanon Water has referenced a formula from the Master Agreement.
 - A. Provide that formula.
 - B. Provide the calculations used to determine the proposed rates, including all documents supporting the inputs applied to the referenced formula.
2. Refer to Marion County Water District's Protest Letter (filed Sept. 25, 2017).
 - A. Respond to the concerns contained on page two of that letter.
 - B. Provide all documents that support Lebanon Water's responses.
3. Refer to the proposed tariff sheet "Rate Case Expense Surcharge".
 - A. Provide the legal basis for this charge.
 - B. Provide the rationale to include this charge in the tariff and not have it be determined by the Commission in a rate case.
 - C. Provide the basis for recovery of rate case expenses over a 36-month period.

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Marion County Water District
1835 Campbellsville Road
P. O. Box 528
Lebanon, KY 40033

*Honorable Damon R Talley
Attorney at Law
Stoll Keenon Ogden PLLC
P.O. Box 150
Hodgenville, KENTUCKY 42748

*Lebanon Water Works
120 S Proctor Knott Avenue
Lebanon, KY 40033

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Gerald E Wuetcher
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Kaelin G Reed
Mattingly & Nally-Martin, PLLC
104 W. Main Street
P.O. Box 678
Lebanon, KENTUCKY 40033

*Mary Ellen Wimberly
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801