

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PROPOSED ADJUSTMENT OF	)	CASE NO.
THE WHOLESALE WATER SERVICE RATES OF	)	2019-00260
CENTRAL CITY MUNICIPAL WATER & SEWER	)	

ORDER

This matter arises from the motion for reconsideration (Motion) filed by Central City Municipal Water & Sewer (Central City) in which it requests that the Commission reconsider its July 30, 2019, Order suspending Central City's proposed wholesale rate increase and establishing a procedural schedule to investigate the proposed increase. Muhlenberg County Water District and Muhlenberg County Water District #3 (collectively the Muhlenberg Districts) jointly filed an objection to Central City's Motion (Objection) in response to Central City's Motion on August 29, 2019, and Central City filed a reply to that Objection on September 3, 2019. Central City's Motion is now before the Commission for a decision.

BACKGROUND

On June 24, 2019, Central City filed a revised tariff sheet setting forth proposed adjustments to its existing rates for wholesale water service to the Muhlenberg Districts to be effective on July 31, 2019. On July 30, 2019, after receiving protests from the Muhlenberg Districts, the Commission suspended Central City's proposed tariff to conduct further proceedings regarding whether Central City is in compliance with its wholesale water contracts and whether its proposed tariff is reasonable.

On August 23, 2019, Central City filed the Motion at issue herein requesting that the Commission reconsider its July 30, 2019 Order. Central City argued that it substantially complied with the terms and conditions of its wholesale contracts with the Muhlenberg Districts and that, in the event that it did not comply with the contracts, its noncompliance would not prevent the Commission from permitting its proposed rates from being placed in effect.<sup>1</sup> Central City also argued that its proposed wholesale rates are reasonable because Central City's ability to receive grant and low-interest financing from the U.S. Department of Agriculture, acting through Rural Development (RD), and is contingent on approval of the proposed rates. Although Central City acknowledged that KRS 278.023 does not explicitly apply to cities, it argued that in Case No. 2003-00358<sup>2</sup> the Commission previously found that "approval of the minimum rate required by RD for a city to receive funding is supported by the policy of that statute" and that "[a]ny other result would impair or impede a city's ability to receive funding."<sup>3</sup> Central City also provided descriptions of the projects that will be funded by the RD grant and loan and argued that those descriptions establish that the projects will benefit the Muhlenberg Districts. Thus, Central City argues that the Commission should approve the proposed rate without further proceedings.<sup>4</sup>

The Muhlenberg Districts responded to the Motion on August 29, 2019, and first argued that Central City's Motion was untimely pursuant to KRS 278.400, stating that "a

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<sup>1</sup> Central City's Motion for Reconsideration at 5–9.

<sup>2</sup> *Proposed Adjustment of the Wholesale Water Service Rates of the Harlan Municipal Water Works*, Case No. 2003-00358 (Ky. PSC. Oct. 24, 2003).

<sup>3</sup> Central City's Motion for Reconsideration at 1–5.

<sup>4</sup> *Id.* at 10.

Motion for Reconsideration of a Commission Order must be filed within 23 days of the Order date . . . Central City filed its Motion 24 days later.”<sup>5</sup> The Muhlenberg Districts next asserted that even if Central City’s Motion was timely that it should be denied because KRS 278.023 does not apply to cities and, therefore, would not prohibit the Commission from reviewing Central City’s proposed rates even if the rates were a condition established by RD.<sup>6</sup>

### DISCUSSION

KRS 278.400 permits any party to a proceeding before the Commission, “[a]fter a determination has been made by the commission in any hearing,” to apply for a rehearing with respect to any of the matters determined within 23 days from the date the order is served. There is no dispute among the parties or in the record that Central City filed its Motion 24 days after the Commission entered the July 30, 2019 Order. However, it is not clear whether KRS 278.400 would apply to the July 30, 2019, Order or would prevent the Commission from modifying the procedural order if Central City established a basis for doing so regardless of whether its Motion was filed within 23 days of the date the July 30, 2019, Order was served.<sup>7</sup> Further, for the reasons discussed below, the Commission finds that Central City has failed to establish a basis for vacating, modifying or amending the July 30, 2019 Order. Thus, it is unnecessary for the Commission to determine the applicability of KRS 278.400 to resolve this Motion.

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<sup>5</sup> Muhlenberg Districts’ Objection to Central City’s Motion for Reconsideration at 1–2.

<sup>6</sup> *Id.* at 2–3.

<sup>7</sup> See July 30, 2019 Order at 7 (indicating that the procedural schedule can be extended for good cause); see also KRS 278.400 (indicating that the statute applies after a determination “in any hearing”); *Young v. Pub. Serv. Comm’n of Kentucky*, No. 2009-CA-000292-MR, 2010 WL 4739964, at \*2 (Ky. App. Nov. 24, 2010) (noting that an interlocutory order is not an order that may be appealed pursuant to KRS 278.410).

As noted above, the primary argument in this matter centers around the applicability of KRS 278.023 to city utilities. KRS 278.023 limits that Commission's authority to deny certain rates established pursuant to conditions established by the United States Department of Agriculture, but it states:

The provisions of this section shall apply to any construction project undertaken by a water association, commission, district, or combined water, gas or sewer district formed under KRS Chapter 74 or 273.<sup>8</sup>

There is no question that a city water utility, like Central City, is not a "water association, commission, district, or combined water, gas or sewer district formed under KRS Chapter 74 or 273."<sup>9</sup> Thus, KRS 278.023, by its plain language, does not apply to the Commission's regulation of wholesale water rates charged by Central City to the Muhlenberg Districts.

In fact, Central City does not appear to argue that KRS 278.023 is applicable to Central City on its face. Rather, relying on the Commission's decision in Case No. 2003-00358, Central City argues only that the General Assembly expressed a policy in KRS 278.023 that the Commission should defer to the rates established as a condition by RD. However, Kentucky courts have repeatedly held that "[d]iscerning and effectuating the

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<sup>8</sup> KRS 278.023(1).

<sup>9</sup> Water districts and combined water, gas, and sewer districts are formed pursuant to KRS Chapter 74. See KRS 74.010; KRS 74.408. Because a combined district may not be formed pursuant to KRS Chapter 273, the phrase "formed under KRS Chapter 74 or 273" at the end of the sentence after the reference to the combined districts must modify all of the preceding terms i.e. "water association, commission, district, or combined water, gas or sewer district." See *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 91 (Ky. 2005) (indicating that statutes should be construed in such a way that they do not become ineffectual or meaningless). City utilities, like Central City, are not formed pursuant to KRS Chapter 74 or KRS Chapter 273. Thus, KRS 278.023 could not be construed as applying to Central City or similar city utilities. Rather, it would apply to water districts and combined districts formed pursuant to KRS 74.010 through KRS 74.416; commissions formed pursuant to KRS 74.420 through KRS 74.520; and associations formed pursuant to KRS Chapter 273. See KRS 278.020(1)(a)3. (referencing a water district created under KRS Chapter 74 and a water association formed under KRS Chapter 273 when discussing Certificates of Public Convenience and Necessity).

legislative intent is the first and cardinal rule of statutory construction”<sup>10</sup> and that “[l]egislative intent is derived from the plain reading of a statute’s language unless there is ambiguity.”<sup>11</sup> As noted above, KRS 278.023, pursuant to its plain language, does not apply to city utilities like Central City. Thus, the General Assembly has not established a policy that the Commission must defer to conditions set by RD establishing rates for city utilities.

Rather, the Commission has broad authority to regulate rates pursuant to KRS 278.040, including the wholesale rates city utilities charge water districts, to ensure that they are fair, just, and reasonable as required by KRS 278.030.<sup>12</sup> The Commission could defer to the conditions imposed on a city utility by RD if it found that doing so would be reasonable. Further, there are likely circumstances in which deferring to those conditions would be reasonable to ensure that the city utility does not miss out on favorable financing terms that would benefit all customers, including the city utility’s wholesale customers. However, in deferring to the conditions imposed on a city utility by RD, the Commission would not be enforcing a policy established by the legislature, but would be exercising the authority granted to it by KRS 278.030, KRS 278.040, and KRS 278.200 in a manner consistent with the legislature’s policy in KRS 278.023 as to water districts, associations, and commissions.

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<sup>10</sup> *Kentucky Department of Corrections v. Dixon*, 572 S.W.3d 46, 48 (Ky. 2019) quoting *Saxton v. Commonwealth*, 315 S.W.3d 293, 300 (Ky. 2010).

<sup>11</sup> *Id.* at 48-9 citing *MPM Fin. Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky. 2009).

<sup>12</sup> *Kentucky Public Service Com’n v. Com. Ex. Rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); see also KRS 278.200 (extending the Commission’s jurisdiction to wholesale rates charged by city utilities to regulated utilities).

However, the record in this case does not yet support a finding that the proposed wholesale rates are reasonable. Among other things, there are questions regarding exactly what rates RD is requiring Central City to charge to obtain the grant and loan and whether costs are being reasonably allocated.<sup>13</sup> Further, Central City has not established that the Commission's review of this matter, based on the objections of the Muhlenberg Districts, will prevent it from obtaining the grant and loan from RD.<sup>14</sup> Thus, the Commission finds that the record in this matter does not currently support vacating, modifying, or amending the July 30, 2019, Order suspending Central City's proposed wholesale rates and establishing a procedural schedule to review them.

IT IS THEREFORE ORDERED that Central City's Motion filed on August 23, 2019, is hereby denied.

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<sup>13</sup> Central City filed a letter dated March 23, 2018, that ostensibly contains the rates RD is requiring it to charge in order to obtain the grant and loan at issue. That letter contains different rates to be charged to customers inside the city, customers outside the city, and wholesale customers. However, in response to Item 25 of the requests for information served with the July 30, 2019 Order, Central City provided an ordinance, dated August 14, 2019, implementing the rates, but those rates are substantially lower than the rates in RD's letter for customers in Central City and are higher for customers of Central City outside of the city. While the rates in the ordinance are the same for wholesale customers as those in the March 23, 2018 letter, the discrepancies in the other rates and the conditions allegedly imposed by RD, along with the age of the condition letter, raises questions about what conditions RD has imposed on Central City, and what and how costs were allocated between customers in the city, customers outside the city, and the Muhlenberg Districts.

<sup>14</sup> Central City filed a letter dated March 23, 2018, containing conditions ostensibly imposed by RD at that time. However, that letter indicated that Central City had to fulfill those conditions within 210 days, which would have been in the middle of October 2018. Assuming the conditions imposed by RD have not been updated since March 23, 2018, which seems unlikely given differences in the rates contained in the March 23, 2018 letter and the August 14, 2019 ordinance, it appears that Central City is operating under an extension from RD. However, Central City has not identified any date by which it must place the rates into effect to avoid losing the RD grant and loan.

By the Commission

ENTERED  
SEP 12 2019  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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