

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF	)	CASE NO.
HENDERSON WATER UTILITY REVISING ITS	)	2021-00067
WHOLESALE WATER SERVICE RATES	)	

ORDER

On January 26, 2021, Henderson Water Utility (Henderson Water) filed with the Commission a revised tariff sheet setting forth a proposed adjustment to its existing rates for wholesale water service to Henderson County Water District (Henderson District) and Beech Grove Water System (Beech Grove), effective March 1, 2021. The Commission suspended the proposed tariff revision on February 23, 2021, for five months, up to and including August 1, 2021. Commission Staff's First Request for Information (Staff's First Request) was issued on March 25, 2021, and Henderson Water responded on April 8, 2021. Henderson District filed a motion to intervene in this matter on February 25, 2021, and was granted intervention by order dated April 8, 2021. The April 8, 2021 Order also made Beech Grove a party to this proceeding. An informal conference was held with Commission Staff on April 12, 2021. Commission Staff's Second Request for Information (Staff's Second Request) was issued on May 3, 2021, and Henderson Water responded on May 19, 2021. Henderson District and Beech Grove also issued requests for information on April 30, 2021, and Henderson Water responded on May 19, 2021.

On June 10, 2021, Henderson Water filed a motion for the parties to submit briefs and submit the case for final decision. The Commission granted Henderson Water's

motion by Order dated July 30, 2021, which required that the proposed rates by Henderson Water not be put into effect until the Commission is fully briefed and reaches a final decision on the tariff and proposed rates.

### LEGAL STANDARD

Pursuant to KRS 278.200, the Commission has jurisdiction over Henderson Water's rates for wholesale water service to Henderson District and Beech Grove. The Supreme Court's decision in *Simpson County Water District v. City of Franklin*<sup>1</sup> specifically stated 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 the PSC rates and service regulation." Following the Court's decision in *Simpson County*, the Commission has allowed city-owned utilities to file rate adjustments by a tariff filing, and if a hearing is requested and the Commission suspends the proposed rate, the requirements and procedures set forth in KRS Chapter 278, and the Commission's regulations, apply equally to filings by a city-owned utility or a jurisdictional utility.<sup>2</sup>

Henderson Water's wholesale water rate charged to Henderson District and Beech Grove is subject to KRS 278.030, which provides that a utility may collect fair, just and reasonable rates. KRS 278.260 explains the Commission on its own motion may investigate whether "any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable."

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<sup>1</sup> *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994).

<sup>2</sup> *Id.*; *City of Danville v. Public Service Comm'n, et al.*, Civil Action No. 15-CI-00989, *Opinion and Order* (Franklin Circuit Court Division II, June 14, 2016).

Thus, in accordance with KRS 27.030, 278.200 and KRS 278.260, the Commission must determine whether Henderson Water's proposed rate increase is fair, just and reasonable based upon the evidentiary record.

### BACKGROUND

Henderson Water produces water from two treatment plants, a north and a south water treatment plant. Henderson District purchases water from both treatment plants, while Beech Grove only purchases its water from the southern plant. Henderson Water proposed different rate increases for water purchased from its South Water plant and water purchased from its North Water plant. According to Henderson Water, a cost of service study (COSS) was not performed to determine the costs allocated to each customer classification, but instead, the rates are adjusted annually based on audited costs.<sup>3</sup>

Henderson Water's current monthly wholesale water rates to Henderson District consist of a usage charge for the North System of \$3.0029 per 1,000 gallons and for the South System \$2.6818 per 1,000 gallons. Henderson Water's proposal increases the usage charge to Henderson District for the North System by \$0.50 per 1,000 gallons, or 16.65 percent, to \$3.5029 per 1,000 gallons and for the South System by \$0.5731 per 1,000 gallons, or 21.37 percent, to \$3.2549 per 1,000 gallons. Henderson Water's current monthly wholesale water rate to Beech Grove consists of a usage charge of \$2.7470 per 1,000 gallons. Henderson Water's proposal increases the usage charge to Beech Grove by \$0.6449 per 1,000 gallons, or 23.48 percent, to \$3.3919 per 1,000 gallons.

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<sup>3</sup> Henderson Water's Response to Commission Order (filed Feb. 23, 2021), Appendix B, Item 26.

Below are the calculations of Henderson Water's proposed wholesale rates:<sup>4</sup>

	Water Rate Calculations		
	South Water Plant		North Water Plant
	Beech Grove Water	HCWD	HCWD
Operating Expenses	\$ 2,493,588	\$ 2,493,588	\$ 6,075,926
Add: Interest Expense	47,037	47,037	101,925
Total Cost of Water Production	2,540,625	2,540,625	6,177,851
Less: City Overhead Allocation		(65,000)	(227,500)
Net Expenses applicable to Wholesale Customers	<u>\$ 2,540,625</u>	<u>\$ 2,475,625</u>	<u>\$ 5,950,351</u>
<u>Wholesale Rate Calculations:</u>			
Net Expenses applicable to Wholesale Customers	\$ 2,540,625	\$ 2,475,625	\$ 5,950,351
Divided by: Billable Volumes in Gallons	<u>861,372,839</u>	<u>950,741,456</u>	<u>2,123,351,260</u>
Rate per Gallon	0.0029495	0.0026039	0.0028023
Multiplied by: Contract Factors	<u>1.15</u>	<u>1.25</u>	<u>1.25</u>
Calculated Wholesale Rates per Gallon	<u>\$ 0.0033919</u>	<u>\$ 0.0032549</u>	<u>\$ 0.0035029</u>

### DISCUSSION

According to Henderson Water, a large component of the cost increase for its South Water plan has been the billing for power costs from the circulating water pumps at the Big Rivers Electric Corporation (BREC) river intake. When Henderson Water initially constructed the South Water Plant, BREC and Henderson Water entered into an agreement allowing Henderson Water to use BREC's water intake with no cost, and in exchange, Henderson Water would provide up to 20,000 gallons per day of water and wastewater service to BREC at no charge.<sup>5</sup> In 2019, BREC informed Henderson Water that BREC was shutting down the power plant. Because of the change in operations at

<sup>4</sup> Henderson Water Utility Filing Wholesale Rate Notification Letter and Revised Tariff (filed Feb. 10, 2021).

<sup>5</sup> Henderson Water's Response to Staff's Second Request for information (filed May 19, 2021), Item 1.

BREC Henderson Water's monthly electricity expense at its South Water Plant increased in fiscal year 2020 from \$0.00 to between \$58,000 and \$62,000.<sup>6</sup>

Henderson Water explained that the markup percentages contained in the October 10, 2014 agreement between Henderson Water and Beech Grove and the June 1, 1989 contract between Henderson Water and Henderson District, were the result of contract negotiations and were agreed to by both parties.<sup>7</sup> Notably, the rates for Beech Grove are calculated on a different basis than the rates for Henderson District. Beech Grove's rates are calculated based upon water consumption in the gallons billed, less BREC sales, while Henderson District rates are calculated based upon the daily gallons distributed at each plant.<sup>8</sup> This difference in rates is reflective of the parties' respective negotiations.

In their joint brief to the Commission, Henderson District and Beech Grove explain that they do not have water treatment facilities and rely on Henderson Water for their sole source of potable water.<sup>9</sup> Further, Henderson Water, Henderson District, and Beech Grove have traditionally interacted with each other in a non-adversarial manner. Henderson District and Beech Grove state they desire to remain on good terms with Henderson Water and have negotiated the proposed increased rates with Henderson Water.<sup>10</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> Henderson Water's Response to Commission Order (filed Feb. 23, 2021), Appendix B, Item 35.

<sup>8</sup> Henderson Water's Response to Staff's First Request for Information (filed April 8, 2021), Item 13.

<sup>9</sup> Brief of Henderson County District and Beech Grove (filed Aug. 19, 2021) at 1.

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

In its brief to the Commission, Henderson Water stated the proposed rate increases are in accordance with the agreements executed and agreed upon between the parties to this action.<sup>11</sup> Henderson Water argued that the processes and procedures that resulted in the current rate increase request were calculated in accordance with long-standing contractual arrangements between all of the parties, and were done openly and after audits by both Henderson Water and Henderson District's accountants to verify the accuracy of the proposed increases.<sup>12</sup>

Based upon the evidence of record, including statements from Henderson District and Beech Grove, the Commission concludes that the parties negotiated Henderson Water's proposed rate increases in good faith and in an arm's length transaction. For this reason, the Commission will defer to the parties that the rate increase proposed by Henderson Water to Henderson District and Beech Grove are in accordance with the negotiated contracts and are reasonable. However, the Commission has concern over the different cost allocations and rates for its South Water plant and North Water plant, and the lack of a COSS to support the differences. The Commission is likewise concerned regarding the different timing of negotiations between the parties, and the lack of documentary support for the charged expenses. Therefore, the Commission directs Henderson Water to obtain the services of a reputable engineering firm to perform an acceptable COSS supporting rate adjustments within one year or within two months after the resolution of electric costs at the South Plant, whichever should occur first. This case will remain open until the COSS is filed with the Commission. Henderson Water's

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<sup>11</sup> Amended Brief of Henderson Water (filed Aug. 20, 2021) at 1.

<sup>12</sup> *Id.* at 1-2.

wholesale customers will be better served through the establishment of rates supported by a COSS. The Commission reserves the right to review the COSS to determine whether further orders need to be entered in this matter.

IT IS THEREFORE ORDERED that:

1. The wholesale rates proposed by Henderson Water are granted.
2. Henderson Water shall file a COSS using an industry acceptable method in support of rate adjustments within one year or within two months after the resolution of electric costs at the South Plant, whichever should occur first.
3. This case shall remain open until the COSS is filed with the Commission and it has had time to adequately review the COSS for determination whether further orders are necessary.

By the Commission



ATTEST:

  
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