

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF CITY OF)	CASE NO.
JACKSON REVISING ITS WHOLESALE)	2021-00244
WATER SERVICE RATES)	

ORDER

On June 1, 2021, pursuant to 807 KAR 5:011, the city of Jackson (Jackson) filed a revised tariff proposing to increase its existing rate for wholesale water service to Breathitt County Water District (Breathitt District).¹ On its own motion the Commission opened a formal proceeding to investigate the reasonableness of the proposed rate and establish a procedural schedule. By Order dated June 21, 2021, pursuant to KRS 278.190(2), the Commission determined that further proceedings were necessary and suspended the rates for five months, up to and including November 30, 2021.

LEGAL STANDARD

Pursuant to KRS 278.200, the Commission has jurisdiction over Jackson’s rates for wholesale water service to Breathitt District. The Supreme Court’s decision in *Simpson County Water District v. City of Franklin*² 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

¹ KRS 278.190(3) requires that the Commission render a final decision on Jackson’s proposed rate no later than ten months after the filing of the schedule. This ten-month period ends on March 31, 2022.

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

subject to the PSC rates and service regulation.”³ 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.⁴ The parties in this case present whether Jackson’s proposed rate increase is fair, just and reasonable based upon the evidentiary record.

Jackson’s wholesale water rate charged to Breathitt District is subject to KRS 278.030 that 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.”

BACKGROUND

Jackson currently charges Breathitt District \$3.92 per 1,000 gallons purchased.⁵ Jackson’s proposal increases the wholesale water rate by \$0.12 per 1,000 gallons, or 3 percent, to \$4.04 per 1,000 gallons. The table below is a comparison of Jackson’s current and proposed volumetric wholesale rates for Breathitt District.

	Existing Rate	Proposed Rate	Increase	
			\$	%
Wholesale Rate per Gallon	\$ 3.92	\$ 4.04	\$ 0.12	3.061%

³ *Id.*

⁴ *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).

⁵ TFS 2021-00219, *Electronic Proposed Adjustment of the Wholesale Water Service Rates of the city of Jackson to Breathitt District* (filed June.1, 2021).

Jackson is a city that owns water treatment and distribution facilities that are operated as a department of the city, pursuant to KRS 96.320.⁶ In addition to retail water service, Jackson provides wholesale water service to Breathitt District.⁷

Breathitt District is a water district organized pursuant to KRS Chapter 74 that owns and operates a water distribution system through which it provides water service to approximately 1,897 retail customers in Breathitt County, Kentucky.⁸ Breathitt District's last general rate adjustment occurred in 2017.⁹ Jackson produced the city water ordinance (Ordinance) it relied upon to increase the wholesale water rate to Breathitt District on June 7, 2021, and it was attached to the Commission's June 21, 2021 Order. The Ordinance indicated that it had been amended in 2012 by dated hand notation which changed "may" to "will" on page 41 of the document. Jackson responded to multiple rounds of requests for information from Commission Staff; however, Jackson notified the Commission that it had difficulty responding fully because it only had two employees on staff to provide responses.¹⁰ In its August 20, 2021 filing, Jackson provided a copy of the water contract between it and Breathitt District (Water Purchase Contract).¹¹

⁶ Jackson's Responses to the Commission's June 21, 2021 Order, (filed Aug. 20, 2021).

⁷ *Id.*

⁸ *Annual Report of Breathitt County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2020* at 12 and 49.

⁹ Case No. 2017-00140, *Electronic Application of Breathitt County Water District for an Alternative Rate Adjustment* (Ky. PSC Sept. 15, 2017).

¹⁰ Jackson's Motion for Extension of Time, (filed July 13, 2021). Jackson's mayor contacted Staff on multiple occasions to explain the difficulty that Jackson had in responding to the information requests and this matter.

¹¹ Jackson's Responses to the Commission's June 21, 2021 Order, (filed Aug. 20, 2021), Attachment Breathitt_Co_Water-Purchase_Contract,_Amendments_Notice.pdf.

DISCUSSION

Jackson and Breathitt District entered into a wholesale water purchase agreement. The Water Purchase Contract allows for an automatic adjustment of water rates annually, based on the Consumer Price Index as published by the Federal Reserve Bank of Cleveland, Ohio (CPI).¹² The same contract, states that the initial rates will be adjusted based upon a cost of service study (COSS) initiated by the Seller (Jackson).¹³ This provision states that the rate shall be adjusted based on the results of the COSS, whether it be an increase or decrease in the rate.¹⁴

The Ordinance Jackson submitted in support of its proposed wholesale rate increase makes no distinction between Jackson adjusting its retail water rates by use of the CPI and adjusting its wholesale water rates by use of the same indexing mechanism. The Commission only has jurisdiction to determine whether the wholesale water rates between Jackson and Breathitt District are reasonable. The Commission has no jurisdiction or concern regarding the retail water rates. The Commission finds that it is unreasonable to tie the wholesale water rates to an automatic indexing mechanism that increases the wholesale rate that Jackson charges Breathitt District without relation to the actual cost of producing water.

Jackson's proposed wholesale water rate increase charged to Breathitt District is subject to KRS 278.030 which provides that a utility may collect fair, just and reasonable rates. KRS 278.260 explains the Commission has jurisdiction to determine whether the

¹² *Id.*, paragraph C, Item 4.

¹³ *Id.*, paragraph C, Item 11.

¹⁴ *Id.*

measurement, practice, or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable. The review of Jackson's proposed rate increase indicates that the measurement of the rate increase is not based upon the actual cost of producing water, but instead it is the result of an indexing mechanism that is automatic and tied to the CPI. This rate indexing has historically been rejected by the Commission as it removes the nexus that should exist between the actual costs involved and the reasonable rates charged. Further, rate indexing circumvents the Commission's review for reasonable cost justification. For example, in Case No. 2007-00218, the Commission dismissed the case when the parties removed "the automatic adjustment mechanism" deeming it non-effective and void.¹⁵ Because the rate increase proposed by Jackson is an increase in rates that is tied to the CPI that does not reflect the actual cost of producing water, the Commission finds that Jackson has failed to meet its burden to show that the rate increase is reasonable.

After consideration of the evidence of record and being sufficiently advised, the Commission finds that:

1. The rate proposed by Jackson is solely based upon an automatic increase tied to the CPI and therefore should be denied.
2. Jackson should file a revised tariff that does not rely on the CPI or any other index to increase its wholesale rate.

¹⁵ Case No. 2007-00218, *Prestonsburg City Utilities Commission's Emergency Water Supply Agreement with Southern Water and Sewer District* (Ky. PSC Apr. 11, 2008).

IT IS THEREFORE ORDERED that:

1. The wholesale rate proposed by Jackson is denied.
2. This case is hereby closed and removed from the Commission's docket.

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By the Commission

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2021-00244

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