

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF THE UTILITY	)	
COMMISSION OF THE CITY OF LONDON	)	CASE NO.
REVISING ITS WHOLESALE WASTEWATER	)	2022-00126
SERVICE RATES	)	

ORDER

On April 21, 2022, pursuant to 807 KAR 5:011, the Utility Commission of the city of London (London) filed a revised tariff proposing to increase its existing wholesale wastewater rates to Wood Creek Water District (Wood Creek District) effective May 1, 2022.<sup>1</sup> 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 April 25, 2022, 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 September 30, 2022. London responded to two requests for information from Commission Staff. London filed a motion on September 15, 2022, requesting this matter be submitted for a decision on the record.

LEGAL STANDARD

Pursuant to KRS 278.200, the Commission has jurisdiction over London's rates for wholesale wastewater service to Wood Creek District. The Supreme Court's decision in

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<sup>1</sup> KRS 278.190(3) requires that the Commission render a final decision on London's proposed rate no later than ten months after the filing of the schedule. This ten-month period ends on January 20, 2023.

*Simpson County Water District v. City of Franklin*<sup>2</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.”<sup>3</sup> 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, then the requirements and procedures set forth in KRS Chapter 278 and in Commission regulations in 807 KAR Chapter 5 apply equally to filings by a city-owned utility or a jurisdictional utility.<sup>4</sup>

The Commission must determine whether London’s proposed rate increase is fair, just and reasonable based upon the evidentiary record. London’s wholesale wastewater rate charged to Wood Creek District is subject to KRS 278.030, which provides that a utility may collect fair, just and reasonable rates. KRS 278.260 provides that the Commission, on its own motion, has jurisdiction to determine whether the measurement, practice, or act affecting or relating to the service of the utility is unreasonable.

#### BACKGROUND

The Utility Commission is an agency created by the city of London and is authorized by Ordinance No. 2009-06 to adjust wholesale sewer rates. The city owns both water treatment and distribution facilities, and wastewater collection and treatment

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

<sup>3</sup> *Simpson County Water District*, 872 S.W.2d at 463.

<sup>4</sup> *Simpson County Water District*, 872 S.W.2d at 463; *City of Danville v. Public Service Comm’n*, Civil Action No. 15-CI-00989, *Opinion and Order* (Franklin Circuit Court Division II, June 14, 2016).

facilities that are operated as a commission of the city, pursuant to KRS 96.320.<sup>5</sup> In addition to retail wastewater service, London provides wholesale water and wastewater service to Wood Creek District.<sup>6</sup> London’s current monthly wholesale wastewater rate to Wood Creek District is \$2.94 per 1,000 gallons. London proposed to increase the wholesale wastewater rate by \$1.46 per 1,000 gallons, or 49.66 percent, to \$4.40 per 1,000 gallons of treated waste.<sup>7</sup> The proposed rate appears to be a middle ground between two differing calculations that London submitted.<sup>8</sup> The suspension period ended on September 30, 2022; London did not notify the Commission that they intended to implement their proposed rate upon the suspension date expiration. The case now stands submitted upon the written record.

Wood Creek 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 5,310 retail customers in Laurel County, Kentucky.<sup>9</sup> Wood Creek District also owns and operates wastewater collection and treatment facilities through which it serves approximately 1,449 retail customers in Laurel County, Kentucky.<sup>10</sup> Wood Creek

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<sup>5</sup> KRS 96.320 states that cities that own a waterworks may operate such waterworks as a department of the city or may appoint a commission to operate such waterworks.

<sup>6</sup> London’s Response to Commission Staff’s First Request for Information (Staff’s First Request) (filed May 31, 2022), Item 2.

	Rate		Increase	
	Dollars	Percent	Dollars	Percent
<sup>7</sup> Wholesale Rate Per Thousand Gallons of Treated Waste	\$ 2.94	\$ 4.40	\$ 1.46	49.66%

<sup>8</sup> London’s Response to Commission Staff’s First Request, Item 2, LUC\_Annual C\_Cost\_Calculations.xlsx.

<sup>9</sup> *Annual Report of Wood Creek Water District to the Public Service Commission for the Calendar Year Ended December 31, 2021* at 12 and 49.

<sup>10</sup> *Annual Report of Wood Creek Water District Wastewater Division to the Public Service Commission for the Calendar Year Ended December 31, 2021* at 25.

District last sought a general rate adjustment in 2021 pursuant to 807 KAR 5:076, which was denied by the Commission and Wood Creek District was instead ordered to file a general rate adjustment pursuant to 807 KAR 5:001 Section 16.<sup>11</sup> Wood Creek District accordingly filed its application for a general adjustment of rates on June 20, 2022.<sup>12</sup> London responded to two discovery requests from Commission Staff in which it provided audited financial statements, proposed rate calculations, and descriptions of planned capital projects that London stated would eventually impact wastewater treatment rates.

### DISCUSSION

London's Ordinance 2009-06 specifies the rate calculation methodology. However, the ordinance does not specify whether the calculation should be entirely based on historical amounts or should contain prospective components. London provided both historical and prospective calculations. London's proposed rate of \$4.40 per thousand gallons is a middle ground between their calculated 2022 historical rate of \$3.992 and a prospective rate of \$4.576 which includes debt service on capital projects that are in the planning stages.<sup>13</sup> The Commission reviewed the calculations provided by London under the two scenarios noted above and made adjustments similar to what would be made in a regular rate case. Specifically, adjustments were made to (1) reduce expenses for amounts in excess of contributions for pension and post-employment benefits other than pensions (OPEB); (2) eliminate anticipated debt service on projects that are not near

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<sup>11</sup> Case No. 2021-00427, *Electronic Application of Wood Creek Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Dec.20, 2021)

<sup>12</sup> Case No. 2022-00145, *Electronic Application of Wood Creek Water District for a General Adjustment of Rates* (Ky. PSC June 20, 2022)

<sup>13</sup> London's Response to Commission Staff's Second Request for Information, Item 1b.

completion; and (3) provide working capital of 20 percent of the current debt service amounts. The net effect of these adjustments results in a calculated rate of \$3.98 per thousand gallons. The net result of these adjustments is sufficiently close to the revenue requirement and rate calculation based on London’s 2021 audited financial statements. The comparison between the two calculations provided by London and those of the Commission are shown below:

Description	2021 (Audited)	Applicant Proposed Expenses	Commission Staff Adjustments	Commission Calculation
Total Operating Expenses Yr Ended Jun 30, 2021	3,844,425	3,844,425	(166,500)	3,677,925
Debt Service (2022) KIA A02-09	549,423	548,370		548,370
Debt Service (2022) KIA A14-010	222,475	222,136		222,136
Pending WWTP Expansion Debt Service	0	647,700	(647,700)	0
Pending Pump Station Project Operating Cost	0	29,191	(29,191)	0
Working Capital Adjustment (debt service)			154,101	154,101
Total Expenditures	<u>4,616,323</u>	<u>5,291,822</u>	<u>(689,290)</u>	<u>4,602,532</u>
Total Treated Wastewater Gallons	<u>1,156,426</u>	<u>1,156,426</u>	<u>1,156,427</u>	<u>1,156,426</u>
<b>Cost Per Thousand</b>	<u>\$ 3.992</u>	<u>\$ 4.576</u>	<u>\$ (0.596)</u>	<u>\$ 3.980</u>
Wood Creek Wastewater Gallons	<u>108,580,600</u>	<u>108,580,600</u>		<u>108,580,600</u>
Pro Forma Billing Amount	<u>\$ 433,442</u>	<u>\$ 496,866</u>	<u>\$ (1,295)</u>	<u>\$ 432,147</u>

In proceedings involving small water and wastewater utilities that utilize a historical test period to calculate their rates in an alternative rate filing proceeding, the Commission has historically followed the guidance set in 807 KAR 5:076, Section 9, which sets the standard for the determination of the reasonableness of proposed rates and states, in pertinent part, that the test period shall be “adjusted for known and measurable changes.”<sup>14</sup> While this case relates to a wholesale rate, the same ratemaking criteria


<sup>14</sup> See Case No. 2001-00211, *The Application of Hardin County Utilities District No. 1 for (1) Issuance of Certificate of Public Convenience and Necessity; (2) Authorization to Borrow Funds and to Issue its Evidence of Indebtedness therefore; (3) Authority to Adjust Rates; and (4) Approval to Revise and Adjust Tariff* (Ky. PSC Mar. 1, 2002); Case No. 2002-00105, *Application of Northern Kentucky Utilities District for (A) an Adjustment of Rates; (B) a Certificate of Public Convenience and Necessity for Improvements to Water Facilities if Necessary; and (C) Issuance of Bonds* (Ky. PSC June 25, 2003); Case No. 2017-00417, *Electronic Proposed Adjustment of the Wholesale Water Service Rates of Lebanon Water Works* (Ky. PSC July 12, 2018).

applied in alternative rate filings is applicable. Therefore, the Commission finds that London's proposed wholesale wastewater rate is unreasonable because the calculated rate includes, in part, capital expenditures that do not have concrete plans in place. Prospective adjustments fail to meet the criteria for known and measurable. For these reasons, the Commission finds that London's proposed increase to the wholesale wastewater rate should be modified based on the 2021 audited financials which support a wholesale wastewater rate of \$3.98 per 1,000 gallons.

IT IS THEREFORE ORDERED that:

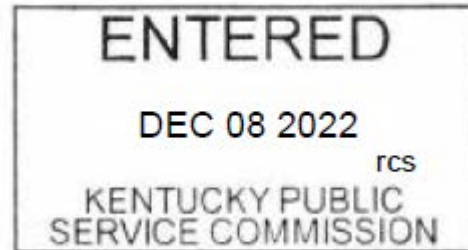
1. London's September 15, 2022 motion for a decision based upon the written record is granted.
2. The wholesale wastewater rate of \$4.40 per 1,000 gallons proposed by London is denied.
3. The wholesale rate of \$3.98 is approved for wastewater service that is provided on or after the date of service this Order.
4. Within 20 days of the date of service of this Order, London shall file with the Commission, using the Commission's electronic Tariff Filing System, revised tariff sheets setting forth the rates approved herein and reflecting their effective date and that they were authorized by the Order.
5. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

\*Jason Pennell  
Kentucky Rural Water Association  
Post Office Box 1424  
1151 Old Porter Pike  
Bowling Green, KENTUCKY 42102-1424

\*Honorable Larry G Bryson  
318 West Dixie Street  
London, KENTUCKY 40741

\*Utility Commission of the City of London  
801 North Main Street  
P. O. Box 918  
London, KY 40743-0918

\*Zach Creech  
Utility Commission of the City of London  
801 North Main Street  
P. O. Box 918  
London, KY 40743-0918