

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF)	
LEXINGTON-FAYETTE URBAN COUNTY)	
GOVERNMENT REVISING ITS MONTHLY)	CASE NO.
SEWER USER FEE AND MONTHLY TAP-ON)	2022-00186
CONNECTION FEES TO JESSAMINE-SOUTH)	
ELKHORN WATER DISTRICT)	

ORDER

On May 27, 2022, Lexington-Fayette Urban County Government (LFUCG) filed with the Commission revised tariff sheets setting forth a proposed increase to its existing monthly sewer user fee and tap-on connection fees charged to Jessamine-South Elkhorn Water District (Jessamine-South Elkhorn District) effective July 1, 2022, in accordance with LFUCG’s Code of Ordinances Section 16–57.1, which states “All rates and fees set forth in section 16-48, 16-59, and 16-60 shall be adjustable each July 1 beginning on July 1, 2010, by an amount based upon the Consumer Price Index for All Urban Consumers, the U.S. City Average (“CPI-u”) published monthly by the Bureau of Labor Statistics.” LFUCG’s proposal increases the monthly sewer user fee 8.3 percent, or \$0.58 per 100 cubic feet, from \$7.03 per 100 cubic feet to \$7.61 per 100 cubic feet. In addition, LFUCG has proposed to increase each tap-on connection fee by 8.3 percent. LFUCG responded to two requests for information. Those responses have been included as Appendix B to this Order and will be included in the evidentiary record on this matter.

KRS 278.030 provides that a utility may collect fair, just and reasonable rates and that the service it provides must be adequate, efficient and reasonable. Having

considered the proposed rate adjustments and being otherwise sufficiently advised, the Commission finds that an investigation will be necessary to determine the reasonableness of the proposed rate adjustments and that such an investigation cannot be completed by July 1, 2022. Pursuant to KRS 278.190(2), the Commission will, therefore, suspend the effective date of the proposed rates for five months, up to and including November 30, 2022.

The Commission finds that Jessamine-South Elkhorn District, as a wholesale purchaser of LFUCG, has a significant interest in this proceeding and should be served with a copy of this Order and presented an opportunity to intervene in this proceeding.

The Commission directs LFUCG to the Commission's July 22, 2021 Order in Case No. 2020-00085¹ in which the Commission mandated the use of electronic filing procedures listed in 807 KAR 5:001, Section 8. The Commission finds that electronic filing procedures should be used, consistent with the filing procedures set forth in Case No. 2020-00085. The Commission further finds that a procedural schedule is established to review the reasonableness of the proposed tariff. The procedural schedule is attached hereto as Appendix A to this Order and is incorporated herein.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the reasonableness of LFUCG's proposed increase to its existing monthly sewer user fee and tap-on connection fees charged to Jessamine-South Elkhorn District.

¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file original physical copies of the filings required by 807 KAR 5:001, Section 8).

2. The proposed tariff is suspended for five months from July 1, 2022, up to and including November 30, 2022.

3. LFUCG shall, by counsel, enter an appearance in this proceeding within seven days of the date of entry of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.

4. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, LFUCG shall file by electronic means a written statement that they waive any right to service of Commission Orders by United States mail and that they or their authorized agents possess the facilities to receive electronic submissions.

6. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of entry of an Order of the Commission granting intervention, file with the Commission a written statement that:

(1) It or its authorized agent possesses the facilities to receive electronic transmissions; and

(2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

7. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

8. The procedural schedule set forth in Appendix A to this Order shall be followed.

9. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding which is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding the potential impact of possible modification of rates will not be deemed sufficient to establish a special interest. In addition, any motion to intervene after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

10. LFUCG shall give notice of the hearing in accordance with the provision set forth in 807 KAR 5:001, Section 9(2). In addition, the notice of the hearing shall include

the following statements: “This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov”; and “Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do by following the instructions listed on the PSC website, psc.ky.gov.” At the time publication is requested, LFUCG shall forward a duplicate of the notice and request to the Commission.

11. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

12. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video recording shall be made of the hearing.

13. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of times with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

14. The Executive Director shall serve a copy of this Order on Jessamine-South Elkhorn District.

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

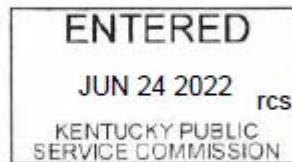
PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner



ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00186 DATED JUN 24 2022

Requests for intervention shall be filed no later than 07/08/2022

Initial requests for information to LFUCG
shall be filed no later than 07/15/2022

LFUCG shall file responses to
initial requests for information no later than.....07/29/2022

All supplemental requests for information to LFUCG
shall be filed no later than 08/12/2022

LFUCG shall file responses to supplemental requests
for information no later than08/26/2022

Intervenor Testimony, if any, in verified prepared
form shall be filed no later than.... 09/02/2022

All requests for information to Intervenors shall
be filed no later than..... 09/16/2022

Intervenors shall file responses to requests for
information no later than..... 09/30/2022

LFUCG shall file, in verified form, its rebuttal
testimony no later than..... 10/07/2022

LFUCG or any Intervenor shall request either a
hearing or that the case be submitted for decision
based on the record no later than.....10/14/2022

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00186 DATED JUN 24 2022

THREE PAGES TO FOLLOW

Hinton, Daniel E (PSC)

From: David Barberie <dbarberi@lexingtonky.gov>
Sent: Wednesday, June 1, 2022 1:06 PM
To: Hinton, Daniel E (PSC)
Cc: Rogness, Benjamin (PSC); Charles Martin
Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2022-00267

Mr. Hinton –

Below is a basic summary. We are happy to provide more information (or provide a more formal response) if needed.

1. LFUCG, as a government, can't legally charge a user fee that it makes a profit on. The fees we assess pursuant to our contract with JSEWD (the ones we have filed with the PSC) call for its customers to pay the same rates as Fayette County's. There is no mark up.
2. LFUCG is under a consent decree and the expectation of the federal government is that we will assess fees and charges that are sufficient to pay for the cost of installing the necessary infrastructure. The fees are intended to do that.
3. The original recommendation when LFUCG implemented the fees was to assess an annual increase of at least 5%. However, LFUCG decided it would be more prudent to instead implement an annual CPI adjustment while only occasionally increasing the rates above this amount. Historically this annual CPI increase has been less than 5% each year. In other words, in most years, the actual costs experienced by LFUCG would justify it seeking an increase above the amount actually sought and implemented.
4. LFUCG uses the U.S. City Average CPI for All Urban Consumers for the last twelve months ending each April as its CPI.
5. With respect to this year, both LFUCG's overall historical costs, and the costs experienced this last fiscal year justify the rate increases at least in the amount filed with the PSC. If the PSC were to only authorize rate increases in a lower amount LFUCG would likely be put in a position of having to seek a higher increase(s) in future fiscal year(s) or be forced to come up with sufficient revenue from another source, which frankly is particularly problematic when the service is being provided to customers who don't even reside within Fayette County. It would also result in JSEWD paying less than Fayette County customers.
6. Finally, perhaps it should be noted that this arrangement with JSWED only exists as a result of requirements placed upon LFUCG and JSEWD by the state.

From: David Barberie
Sent: Friday, May 27, 2022 11:26 AM
To: Hinton, Daniel E (PSC) <dehinton@ky.gov>
Cc: Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>; Hilori Morgan <hmorgan@lexingtonky.gov>
Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2022-00267

We will do so. Our Director of Water Quality is out next week so it may be a few weeks.

From: Hinton, Daniel E (PSC) <dehinton@ky.gov>
Sent: Friday, May 27, 2022 11:15 AM
To: David Barberie <dbarberi@lexingtonky.gov>
Cc: Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>; Hilori Morgan <hmorgan@lexingtonky.gov>
Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2022-00267

[EXTERNAL] Use caution before clicking links and/or opening attachments.

I've been reviewing the 2014 LFUCG case (2014-00204) and one of the data responses indicated that the use of an automatic cost escalator was driven by the consent decree and that LFUCG have enough funding to cover the cost of compliance.

It may help our review of this filing if you could provide a summary for why use of CPI is reasonable and/or required (by the consent decree).

If you have any questions, please let me know.

Thanks.

Daniel

From: Hinton, Daniel E (PSC)
Sent: Friday, May 27, 2022 10:25 AM
To: David Barberie <dbarberi@lexingtonky.gov>
Cc: Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>; Hilori Morgan <hmorgan@lexingtonky.gov>
Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2022-00267

If you could send me that information, that would be great.

I will point out that the Commission has been taking a closer look at wholesale rate increases the past couple of years. I am aware that the past LFUCG increases have gone through, but historically, the Commission has rejected the use of CPI in increasing wholesale rates. I've included a link to an Order for a recent City of Jackson case in which they were increasing their rate based on an ordinance that allowed for a revision of rates based on CPI.

If you have any questions, please let me know.

Thanks.

Daniel

https://psc.ky.gov/pscscf/2021%20Cases/2021-00244//20211124_PSC_ORDER.pdf

From: David Barberie <dbarberi@lexingtonky.gov>
Sent: Friday, May 27, 2022 9:47 AM
To: Hinton, Daniel E (PSC) <dehinton@ky.gov>

Cc: Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>; Hilori Morgan <hmorgan@lexingtonky.gov>

Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2022-00267

Mr. Hinton –

LFUCG's ordinance includes an automatic cost of living adjustment (CPI). It is simply based upon that number and these are the same rates that will apply to Fayette County customers as well, who are not regulated by the PSC. I can send you more information on the ordinance and which price index is referred to in the calculation if you need it. Thanks

From: Hinton, Daniel E (PSC) <dehinton@ky.gov>

Sent: Friday, May 27, 2022 9:11 AM

To: David Barberie <dbarberi@lexingtonky.gov>

Cc: Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>

Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2022-00267

You don't often get email from dehinton@ky.gov. [Learn why this is important](#)

[EXTERNAL] Use caution before clicking links and/or opening attachments.

Mr. Barberie:

Does LFUCG have any support, such as a rate study, it can provide justifying the proposed increased rate to the JSEWD monthly sewer user fee and tap-on connection fees? If so, please email the information to me. If not, please explain how the proposed increase was determined.

If you have any questions, please let me know.

Thanks.

Daniel

From: KY Public Service Commission <psc.tariffs@ky.gov>

Sent: Friday, May 27, 2022 9:02:52 AM (UTC-05:00) Eastern Time (US & Canada)

To: dbarberi@lexingtonky.gov <dbarberi@lexingtonky.gov>

Cc: PSC Tariffs <psc.tariffs@ky.gov>

Subject: KY-PSC Electronic Filing Center NotificationTFS2022-00267

This notification has been sent to you regarding your recent Tariff filing : TFS2022-00267 file(s) have been transmitted successfully.

Documents received for Tariff filing: TFS2022-00267 for Lexington-Fayette Urban County Government 5/27/2022 9:02:47 AM

File Summary:

File Name: LFUCG_Letter.pdf

Description: Cover Letter

File Name: LFUCG_Notice.pdf

Description: Support Document

File Name: LFUCG_Tariff.pdf

Description: Tariff

Thank you.

*Honorable David J. Barberie
Managing Attorney
Lexington-Fayette Urban County Government
Department Of Law
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Lexington, KENTUCKY 40507

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