

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On May 27, 2022, pursuant to 807 KAR 5:011, Lexington-Fayette Urban County Government (LFUCG) filed a revised tariff proposing to increase its existing rate for wholesale wastewater service to Jessamine-South Elkhorn Water District (Jessamine-South Elkhorn District).<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 June 24, 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 November 30, 2022. LFUCG responded to Commission Staff's First Request for Information on July 29, 2022, and Commission Staff's Supplemental Request for Information on August 26, 2022. LFUCG then filed a motion on October 17, 2022, requesting an Order to accept its proposed wholesale rate and close this proceeding.

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<sup>1</sup> KRS 278.190(3) requires that the Commission render a final decision on LFUCG's proposed rate no later than ten months after the filing of the schedule. This ten-month period ends on March 24, 2023.

## LEGAL STANDARD

Pursuant to KRS 278.200, the Commission has jurisdiction over LFUCG's rates for wholesale wastewater service to Jessamine-South Elkhorn District. The Supreme Court's decision in *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 LFUCG's proposed rate increase is fair, just and reasonable based upon the evidentiary record. LFUCG's wholesale wastewater rate charged to Jessamine-South Elkhorn 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.

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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).

BACKGROUND

LFUCG’s Code of Ordinances Section 16–57.1, 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. The table below is a comparison of LFUCG’s current and proposed volumetric wholesale rates for Jessamine-South Elkhorn District.

<u>Current Rate</u>	<u>Proposed Rate</u>	<u>\$ Change</u>	<u>% Change</u>
\$7.03 per 100 cubic feet	\$7.61 per 100 cubic feet	\$0.58 Increase	8.3% Increase

LFUCG is an urban-county government organized under KRS Chapter 67A. LFUCG owns and operates a wastewater collection and transmission system in Fayette County, Kentucky.<sup>5</sup> LFUCG also treats sewage. Pursuant to an agreement entered into by LFUCG and Jessamine-South Elkhorn District on January 3, 2003 (Agreement), LFUCG treats wastewater generated by Jessamine-South Elkhorn District’s customers. Jessamine-South Elkhorn District collects the wastewater and transmits it to LFUCG’s treatment facilities. Jessamine-South Elkhorn District agreed to pay LFUCG the fees and charges pursuant to LFUCG’s Code of Ordinances.<sup>6</sup>

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<sup>5</sup> U.S. and Commonwealth of Ky. v. Lexington-Fayette Urban County Government, Civil Action No. 5:06-cv-386, Consent Decree (E.D. Ky., Jan. 3, 2011) at 1.

<sup>6</sup> Agreement, paragraph 7 and 14.

## DISCUSSION

### CPI-u Issue

LFUCG based its proposed increases on the U.S. City Average CPI for All Urban Customers (CPI-u) in accordance with Section 16-57.1 of the Code of Ordinances, Lexington-Fayette Urban County Government (the Code), which states:

All rates and fees set forth in sections 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 Customers, the U.S. City Average (“CPI-u”) published monthly by the Bureau of Labor Statistics. These rates shall be adjusted up if so indicated by a factor determined by averaging the monthly CPI-u published for the twelve-month period ending, and including, April of the year before the July 1 adjustment.

LFUCG explained that while some of the components of the CPI-u do not align with their actual costs, it is a reasonable means to assist a municipal utility to receive necessary revenues without spending significant resources on an annual rate analysis. LFUCG also argued that a 2011 federal consent decree between LFUCG, the United States Environmental Protection Agency and the Kentucky Environmental and Public Protection Cabinet, which requires LFUCG to make timely infrastructure upgrades, served as the catalyst to implement annual increases based on CPI-u. Finally, LFUCG stated that the Construction Cost Index (CCI), which was higher than CPI-u in April 2022 and after the first quarter 2022, has more correlation to its actual costs than CPI-u.<sup>7</sup>

While the Commission acknowledges that the 2011 federal consent decree requires LFUCG to make timely infrastructure upgrades to its system, it should be noted

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<sup>7</sup> LFUCG’s Response to Commission Staff’s First Request for Information (Staff’s First Request) (filed July 29, 2022), Item 11.

that nothing in the consent decree requires that LFUCG use CPI-u to revise its rates. While the Commission does not have the right to make LFUCG revise its ordinance to not rely on CPI-u, the Commission does have the right to ask reasonable questions to support a proposed increase based on CPI-u. The Commission is not convinced that using CPI-u is an appropriate way to increase a utility's rates and thus would not approve an increase solely based on CPI-u. However, based on additional information LFUCG provided that did support its proposed rate increase, the Commission finds that the proposed rate increase should be accepted as its level of revenues and expenses demonstrate a necessary increase in revenue requirement in excess of the proposed increase, as shown below. The Commission also finds that in future filings LFUCG should provide additional justification other than just CPI-u to support its proposed revisions to its rates. A summary of the revenue requirement based on the additional information LFUCG provided is shown below.

Operating Expenses	\$ 65,686,880
Add: Average Annual Debt Principal and Interest	16,254,133
Additional Working Capital	<u>3,250,827</u>
Overall Revenue Requirement	85,191,840
Less: Other Operating Revenue	(9,302,651)
Interest Income	<u>(700,993)</u>
Revenue Requirement - Sewer Rates	75,188,196
Less: Normalized Revenue from Service	<u>(67,946,984)</u>
Required Revenue Increase	<u>\$ 7,241,212</u>
Percentage Increase	<u>10.66%</u>

### Tap-On/Connection Fee

LFUCG's sanitary sewer tap-on or connection fees are set forth in Section 16-60(a) of the Code of Ordinances, which states that the fees "...shall be solely for the privilege of connecting to the system and which shall be in addition to the requirement, as prescribed in Section 16-38, that connections to the system be made at the sole expense of the connecting property owner." The fees are based upon various land use designations which are intended to fairly and reasonably differentiate between various intended uses of properties and the projected impact of those uses on the system. LFUCG argued that the fees are intended to reasonably compensate LFUCG for the total overall costs associated with using its sewer system without unduly penalizing existing ratepayers for the additional burdens placed on the system through the inclusion of the additional users and that the fees do not simply reflect the equipment and facilities necessary to physically connect a property to the system.<sup>8</sup> Although LFUCG identifies this fee as a tap-on or connection fee, the fee is an actually an Assessment charged in addition to the actual costs incurred in connecting to the sewer system. As the Commission found above that that LFUCG justified its proposed 8.3 percent increase to the monthly rate, the Commission finds that the proposed 8.3 percent increase to the tap-on/connection fees should be approved.

For the reasons discussed above, the Commission finds that LFUCG's proposed rate increase is fair, just and reasonable and based on the city's cost to provide wastewater.

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<sup>8</sup> LFUCG's Response to Staff's First Request for Information (filed July 29, 2022), Item 6.


IT IS THEREFORE ORDERED that:

1. LFUCG's October 17, 2022 motion is granted.
2. The rates proposed by LFUCG are approved. The rates as set forth in the Appendix to this Order are approved for services rendered by LFUCG on and after December 1, 2022.
3. For future filings revising LFUCG's rates, LFUCG shall provide additional justification other than just CPI-u to support the revisions.
4. Within 20 days of the date of service of this Order, LFUCG shall file with the Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates and charges approved in this order and reflecting their effective date and that they were authorized by this Order.
5. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

  
Chairman

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Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director



APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2022-00186 DATED NOV 29 2022

Monthly Sewer User Fee

Jessamine-South Elkhorn Water District                      \$7.61 per 100 cubic feet

Tap-on or Connection Fees

(1) Single-family residences, town homes and duplexes (per unit) occupying lots:

Of ¼ acre or less	\$1,475.41
From ¼ acre to ½ acre	\$2,739.77
From ½ acre to ¾ acre	\$4,007.63
From ¾ acre to 1 acre	\$5,483.03
Larger than 1 acre	\$6,958.42

(2) Apartments, condominiums, hospitals, and nursing homes:

Each efficiency unit	\$590.84
Each 1-bedroom unit	\$1,095.52
Each 2-bedroom unit	\$1,433.17
3- or 4-bedroom unit	\$1,772.55
Minimum for each building	\$2,950.76

(3) Motels:

Each living unit	\$1,095.52
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(4) Trailer Parks:

Each trailer or space	\$1,475.41
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(5) Service stations:

Each station	\$8,433.80
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(6) Restaurants, business, professional, commercial and industrial buildings,  
including such facilities in hospitals or nursing homes:

A fee to be per square foot of floor space \$1.689

Minimum fee for each urban county

government sewer connection \$1,475.41

(7) Storage areas, warehouses, and distribution centers:

A fee to be per square foot of floor space \$0.352

Minimum fee for each urban county

government sewer connection \$1,475.41

(8) Swimming Pools:

For the erection of each swimming pool,

a fee per 100 cubic feet \$2.532

(9) Non-profit school establishments:

The fee for each urban county government

sewer connection, per square foot of floor space \$0.842

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