

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF THE CITY OF	)	
FALMOUTH TO INCREASE THE WHOLESALE	)	CASE NO.
WATER RATES CHARGED TO EAST	)	2024-00244
PENDLETON WATER DISTRICT AND	)	
PENDLETON COUNTY WATER DISTRICT	)	

ORDER

On July 17, 2024, the city of Falmouth (Falmouth) filed a tariff to increase the wholesale water rates charged to East Pendleton Water District (East Pendleton District) and Pendleton County Water District (Pendleton District) (collectively, the Districts). By Order<sup>1</sup> issued August 12, 2024, the Commission suspended the proposed tariff for five months, up to and including January 15, 2025, and established a procedural schedule to review the reasonableness of the proposed tariff. The Districts were granted intervention with the full rights of a party by Order<sup>2</sup> issued on September 3, 2024, and the Districts timely submitted a Request for Information<sup>3</sup> to Falmouth on September 13, 2024.

After Falmouth failed to file a response to Commission Staff's First Request for Information (Staff's First Request) due on or before August 30, 2024, the Commission issued an Order on September 27, 2024, that required Falmouth to show cause as to why it had not timely filed its responses to Staff's First Request. As noted in an Order issued

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<sup>1</sup> Order (Ky. PSC Aug. 12, 2024).

<sup>2</sup> Order (Ky. PSC Sept. 3, 2024).

<sup>3</sup> Initial Request for Information to the City of Falmouth of Pendleton County Water District and East Pendleton County Water District (filed Sept. 13, 2024) (Districts' Initial Request).

October 10, 2024, Falmouth informed Commission Staff that it had inadvertently emailed its responses to Staff's First Request to a Kentucky Public Service Commission email address instead of e-filing its responses into the case record.<sup>4</sup> Because Falmouth's responses to Staff's First Request were not timely e-filed into the case record in accordance with the procedural schedule, both the Kentucky Public Service Commission and the Districts were unaware Falmouth had filed responses and could not examine the responses.

Thereafter, Falmouth correctly e-filed its responses to Staff's First Request on September 30, 2024; however, Falmouth failed to file its responses to the Districts' Initial Request on or before September 27, 2024, as required by the procedural schedule. On October 1, 2024, the Districts filed a motion that requested the Commission amend the procedural schedule established in the August 12, 2024 Order to allow Falmouth sufficient time to file its responses to the Districts' request for information, to allow the Districts enough time to review Falmouth's responses and formulate any further requests for information they may have. The Commission granted the Districts' motion and required Falmouth to file its responses to all initial requests for information by October 18, 2024.<sup>5</sup>

As of November 12, 2024, Falmouth has failed to file any responses to the Districts' initial request. Following Falmouth's failure to file a response to the Districts' request, on October 21, 2024, the Districts filed a motion to dismiss this matter or, in the alternative, to Order an informal conference to discuss a resolution to the matter.<sup>6</sup> On October 30,

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<sup>4</sup> Order (Ky. PSC Oct. 10, 2024) at 2 and Appendix B.

<sup>5</sup> Order (Ky. PSC Oct. 10, 2024) at 2 and Appendix A.

<sup>6</sup> Districts' Motion to Dismiss or for Informal Conference (filed Oct. 21, 2024).

2024, Falmouth filed a motion for an extension of time to respond to the requests. As grounds for relief, Falmouth stated that it had very few employees, and the requests were voluminous.<sup>7</sup> Both motions remain pending.

### LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.<sup>8</sup> A city-owned utility is generally exempt from the Commission's exclusive jurisdiction over utility rates and services.<sup>9</sup> However, pursuant to KRS 278.200, the Commission may, under the provisions of KRS Chapter 278

[o]riginate, establish, change, promulgate and enforce any rate of service standard of any utility that has been or may be fixed by any contract, franchise, or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission.<sup>10</sup>

Moreover, the Kentucky Supreme Court held that a city providing utility service loses its exemption and "is rendered subject to the PSC rates and service regulation" when it enters into a contract to provide wholesale utility service to a public utility subject to the Commission's jurisdiction.<sup>11</sup>

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<sup>7</sup> Falmouth's Motion for Extension (filed Oct. 30, 2024).

<sup>8</sup> See KRS 278.040.

<sup>9</sup> See KRS 278.030(3) (excluding city utilities from the definition of utilities subject to Commission jurisdiction).

<sup>10</sup> KRS 278.200.

<sup>11</sup> *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994); see also *City of Russellville v. Public Service Com'n of Kentucky*, No. 2003-CA-002132-MR, 2005 WL 385077 (Ky. App. Feb. 18, 2005) (unpublished) (in which the court found that a city's failure to provide water districts notice and file a proposed wholesale rate increase for water districts pursuant to the provisions of KRS Chapter 278 and 807 KAR 5:011 prevented the city from charging the rate).

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. “Whenever any utility files with the commission any schedule stating new rates, the commission may, upon its own motion, and upon reasonable notice, hold a hearing concerning the reasonableness of the new rates.”<sup>12</sup> Pending the final decision on a proposed schedule or rate,

“ . . . the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, for a period of up to five months beyond the time when it would otherwise go into effect if a historical test period is used, and up to six months if a forward-looking test period is used . . . .”<sup>13</sup>

Pursuant to KRS 278.190(3), the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.

### DISCUSSION AND FINDINGS

Having considered the motions of the parties and the application, the Commission denies the wholesale rate tariff filed by Falmouth. As noted above, Falmouth has the burden to demonstrate that the proposed wholesale rate is fair, just and reasonable. However, the Commission finds that Falmouth has not presented sufficient evidence to support its proposed increase. The Commission granted the Districts full rights of a party in this proceeding. As such, Falmouth was under an obligation to, not just respond to the Commission’s requests for information, but also respond to the requests submitted by the Districts. In this case, Falmouth failed to do so even after being granted an extension by

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<sup>12</sup> KRS 278.190(1).

<sup>13</sup> KRS 278.190(2).

Order dated October 10, 2024. Falmouth subsequently requested an extension, but that request was filed 13 days after the deadline set in Order on October 10, 2024.

When the Commission granted intervention status to the Districts,<sup>14</sup> the Order included language noting that the Districts were allowed to submit questions to Falmouth in accordance with the procedural schedule.<sup>15</sup> When granted intervention, the Districts became a party with full rights and remedies<sup>16</sup> the same as Falmouth, itself, is entitled to as an applicant before the Commission. The Commission must ensure due process for both parties, and the Commission notes that the Districts are entitled to review information in support of the tariff and rebut any of the facts, assumptions or presumptions contained therein.

Falmouth's failure to timely respond to the Commission's requests and failure to respond entirely to the Districts' requests, requires the Commission to deny the proposed tariff. As a result of Falmouth's inaction, the Commission does not have sufficient evidence to evaluate the wholesale rate and as a result, thus can not reach a finding that the rate is fair, just and reasonable.

Based on the denial of Falmouth's proposed wholesale rate increase, the pending motion of the Districts and the motion of Falmouth are moot. Although moot, the Commission encourages the parties to attempt to resolve the disagreements related to the wholesale rate. Finally, Falmouth can re-file for a wholesale rate increase at any time; however, the Commission cautions Falmouth that it should be mindful of its ability to

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<sup>14</sup> Order (Ky. PSC Sept. 3, 2024).

<sup>15</sup> Order (Ky. PSC Sept. 3, 2024) at 5.

<sup>16</sup> Including the right to file for rehearing, KRS 278.400.

provide sufficient evidence to support its proposed rate, in a timely fashion, in compliance with all Commission regulations<sup>17</sup> and Chapter 278.

IT IS THEREFORE ORDERED that:

1. Falmouth's proposed wholesale rate is denied.
2. The Districts' motion for a dismissal or an informal conference is denied as moot.
3. Falmouth's motion for an extension is denied as moot.
4. The case is closed and removed from the Commission's docket.

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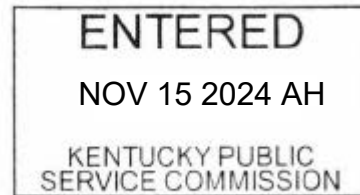
<sup>17</sup> 807 KAR Chapter 5.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Commissioner

  
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Commissioner



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