

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). Falmouth proposed to increase the wholesale rate to East Pendleton District from \$1.98 per 1,000 gallons to \$2.92 per 1,000 gallons, an increase of \$0.94 per 1,000 gallons, or 47.5 percent. Falmouth proposed to increase the wholesale rate to Pendleton District from \$1.98 per 1,000 gallons to \$2.96 per 1,000 gallons, an increase of \$0.98 per 1,000 gallons, or 49.5 percent. Falmouth proposed an effective date of August 16, 2024.

On July 19, 2024, East Pendleton District and Pendleton District submitted a joint letter requesting the Commission open an investigation to review the proposed wholesale rates as well as a request for full intervention in the matter. On July 26, 2024, East Pendleton District and Pendleton District submitted another joint letter in which they requested that the Commission suspend the effective date of Falmouth's proposed increase for five months as allowed by KRS 278.190(2) and that the districts be allowed to participate in the proceeding as full intervenors. Both letters were signed by the

individual managers of each water district. A copy of the joint letters is included as Appendix C to this Order.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.¹ A city-owned utility is generally exempt from the Commission's exclusive jurisdiction over utility rates and services.² 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.³

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.⁴

¹ See KRS 278.040.

² See KRS 278.030(3) (excluding city utilities from the definition of utilities subject to Commission jurisdiction).

³ KRS 278.200.

⁴ *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.”⁵ 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 . . .”⁶

DISCUSSION

Having reviewed the proposed tariff and being otherwise sufficiently advised, the Commission finds that an investigation is necessary to determine the reasonableness of the proposed tariff and that such investigation cannot be completed by August 16, 2024. Pursuant to KRS 278.190(2), the Commission will, therefore, suspend the effective date of the proposed tariff for five months, up to and including January 15, 2025.

The Commission directs Falmouth to the Commission’s July 22, 2021 Order in Case No. 2020-00085⁷ in which the Commission mandated the use of electronic filing procedures listed in 807 KAR 5:001, Section 8. Consistent with the filing procedures set

⁵ KRS 278.190(1).

⁶ KRS 278.190(2).

⁷ 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 the original physical copies of the filings required by 807 KAR 5:001, Section 8).

forth in Case No. 2020-00085, the Commission finds that electronic filing procedures should be used.

The Commission further finds that a procedural schedule should be established to review the reasonableness of the proposed tariff. The procedural schedule is attached as Appendix A to this Order.

In addition, the Commission requests that the Executive Director serve both East Pendleton District as well as Pendleton District with a copy of this Order. The Commission notes that the letters filed in the tariff filing were not signed by an attorney and cannot be viewed as a motion or request for intervention in this case. In order to participate as an intervenor in this proceeding, the intervenor must comply with 807 KAR 5:001 Section 4(4) as well as all other administrative regulations as outlined below in the ordering paragraphs related to intervention.⁸

Additionally, any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing may be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing. Hearings are held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky. Witnesses who

⁸ 807 KAR 5:001 Section 4(4) "A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission."

sponsor schedules, testimony, or responses to requests for information are expected to participate in person at a hearing.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the reasonableness of the proposed tariff.

2. Falmouth's proposed tariff is suspended for five months from August 16, 2024, up to and including January 15, 2025.

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

4. Falmouth shall file responses to the request for information attached as Appendix B to this Order no later than August 30, 2024.

5. 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.

6. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of the date of service of this Order, Falmouth shall file by electronic means a written statement that it waives any right to service of Commission Orders by United States mail and that it or its authorized agent possess the facilities to receive electronic submissions.

7. 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 service 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 shall be served.

8. 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).

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

10. Falmouth shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

11. 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.

12. 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.

13. Falmouth shall give notice of the hearing in accordance with the provisions 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 so by following the instructions listed on the PSC website, psc.ky.gov." At the time publication is requested, Falmouth shall forward a duplicate of the notice and request to the Commission.

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

15. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal

announcement made by the presiding officer shall be proper notice of the continued hearing.

16. Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.


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

18. 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.

19. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.


20. The Executive Director shall serve a copy of this Order upon East Pendleton District and Pendleton District.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Mary Pat Regan  *by ATT with permission*

Commissioner

ENTERED
AUG 12 2024
rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2024-00244 DATED AUG 12 2024

- Requests for intervention shall be filed no later than 08/23/2024
- Falmouth shall file responses to the request for information attached
as Appendix B to this Order no later than.....08/30/2024
- Initial requests for information to Falmouth
shall be filed no later than 09/13/2024
- Falmouth shall file responses to
initial requests for information no later than..... 09/27/2024
- All supplemental requests for information to Falmouth
shall be filed no later than 10/11/2024
- Falmouth shall file responses to supplemental requests
for information no later than 10/25/2024
- Intervenor testimony, if any, in verified prepared
form shall be filed no later than.... 11/01/2024
- All requests for information to Intervenors shall
be filed no later than 11/15/2024
- Intervenors shall file responses to requests for
information no later than..... 11/27/2024
- Falmouth shall file, in verified form, its rebuttal
testimony no later than 12/04/2024
- Falmouth or any Intervenor shall request either a
hearing or that the case be submitted for decision
based on the record no later than 12/11/2024

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2024-00244 DATED AUG 12 2024

COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION TO THE CITY OF FALMOUTH

The city of Falmouth (Falmouth), pursuant to 807 KAR 5:001, shall file with the Commission an electronic version of the following information. The information requested is due on August 30, 2024. The Commission directs Falmouth to the Commission's July 22, 2021 Order in Case No. 2020-00085¹ regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

Each response shall include the question to which the response is made and shall include the name of the witness responsible for responding to the questions related to the information provided. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

Falmouth shall make timely amendment to any prior response if Falmouth obtains information that indicates the response was incorrect or incomplete when made or,

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 the original physical copies of the filings required by 807 KAR 5:001, Section 8).

though correct or complete when made, is now incorrect or incomplete in any material respect.

For any request to which Falmouth fails or refuses to furnish all or part of the requested information, Falmouth shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Careful attention shall be given to copied and scanned material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations. When filing a paper containing personal information, Falmouth shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

1. Provide Falmouth's audited financial statements for 2022.
2. Provide Falmouth's audited financial statements for 2023.
3. Refer to the document titled "Proposed Adjustment Wholesale Water Service Rates of the City of Falmouth, Kentucky" dated March 2024. Provide a reconciliation of any differences between the amounts used in the rate calculation and the 2023 audited financial statements.
4. Provide a copy of the document titled "Proposed Adjustment Wholesale Water Service Rates of the City of Falmouth, Kentucky" dated March 2024 in Excel spreadsheet format with all formulas, columns, and rows unprotected and fully accessible.

5. Provide a copy of Falmouth's current retail rate ordinance and the date it became effective, if it is not in the document.

6. State whether Falmouth's retail rates are also being increased, and if so, provide a copy of the ordinance reflecting the increase. If not, explain why not.

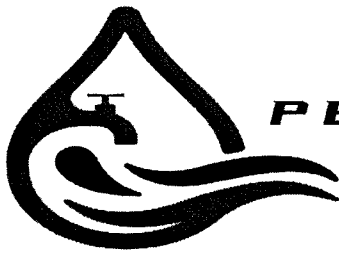
7. Provide the amount of pension and other post-retirement benefit cost in excess (or less than) of the statutory contribution rate amount for the water fund for 2022.

8. Provide the amount of pension and other post-retirement benefit cost in excess (or less than) of the statutory contribution rate amount for the water fund for 2023.

APPENDIX C

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2024-00244 DATED AUG 12 2024

TWO PAGES TO FOLLOW



**PENDLETON COUNTY
WATER DISTRICT**

P.O. BOX 232, FALMOUTH, KY 41040 (859) 654-6964 FAX (859) 654-7032
Deaf, Hard-of-Hearing or Speech Impaired, call 711

July 19, 2024

Linda C. Bridwell
Public Service Commission
P.O. Box 615
Frankfort, Ky 40602

Dear Ms. Bridwell,

Pendleton County Water and East Pendleton Water would like to open a case through the Public Service Commission to investigate the wholesale rate that the City of Falmouth has filed with the commission and that will soon be charging both districts.

Both Pendleton County Water and East Pendleton Water respectfully request a full investigation into these new rates.

If any additional information is required please contact Austin Monroe at 859-654-6964 or Wayne Lonaker at 859-654-2100.

Sincerely,

Austin Monroe, Manager
Pendleton County Water District

Wayne Lonaker, Manager
East Pendleton Water District



**PENDLETON COUNTY
WATER DISTRICT**

P.O. BOX 232, FALMOUTH, KY 41040 (859) 654-6964 FAX (859) 654-7032
Deaf, Hard-of-Hearing or Speech Impaired, call 711

July 24, 2024

Linda C. Bridwell
Public Service Commission
P.O. Box 615
Frankfort, Ky 40602

Dear Ms. Bridwell,

The City of Falmouth has submitted to the Kentucky Public Service Commission proposed wholesale tariffs to become effective August 16, 2024.

Pendleton County Water and East Pendleton Water respectfully request that the Kentucky Public Service Commission suspend the effective date of the new tariff for five months as allowed by KRS 278.190(2) and open a proceeding to investigate the reasonableness of the proposed wholesale tariff. The districts further request to each be allowed to participate in the proceeding as full intervenors.

Due to such an increase in the wholesale rate of nearly 50 percent from the City of Falmouth the water districts would be required to increase rates to pay for the increased purchased water expense. Such a large increase would undoubtedly create a financial hardship on the water districts retail customers.

Thank you for your consideration of these matters.

Sincerely,

Austin Monroe, Manager
Pendleton County Water District

Wayne Lonaker, Manager
East Pendleton Water District

*City of Falmouth
230 Main Street
Falmouth, KY 41040

*Luke Price
City of Falmouth
230 Main Street
Falmouth, KY 41040

*Ramona Williams
City of Falmouth
230 Main Street
Falmouth, KY 41040