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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 1st day of December 2021.

CASE NO. 21-0372-S-WI

CITY OF BENWOOD SANITARY BOARD,
a municipal corporation,

Complainant,

v.

CITY OF WHEELING,
a municipal corporation,

Defendant.

COMMISSION ORDER

The Commission denies a petition for reconsideration and motion for stay.

BACKGROUND

The City of Benwood Sanitary Board (Benwood) operates a system of pipelines and pump stations to collect and transport sanitary sewage and purchases sewer treatment services from the City of Wheeling (Wheeling) for the volumes that Benwood delivers to Wheeling.

On April 6, 2021, Wheeling passed an ordinance revising the rate charged to Benwood to \$3.68 per thousand gallons, a 45 percent increase, to become effective on May 21, 2021. On April 14, 2021, Wheeling filed the new ordinance with the Commission. ORDUS Wheeling 21B.

On May 3, 2021, Benwood, a political subdivision of the state, filed a complaint, pursuant to W. Va. Code §24-2-1(b)(6), against Wheeling, asserting that the rate increase was needed to fund \$25,550,000 in Wheeling improvements and the vast majority of the work is unrelated to facilities used to provide service to Benwood. Benwood asserted that the rate increase is unfair, unreasonable, discriminatory and not based on the proportionate share envisioned by a 1998 contract. Benwood stated that if Wheeling's new rates go into effect, Benwood citizens would pay \$61.98 per month based on average

usage of 3,400 gallons per month, while Wheeling citizens would pay \$35.50 per month on average. Benwood asked the Commission to set aside Wheeling's new rate and calculate in its place a proportionate rate. Benwood Formal Complaint at 1-5 (May 3, 2021).

On June 2, 2021, the Commission issued an Order requiring Wheeling to provide a class cost of service study (CCOSS) and other information in support of Wheeling's rate increase, restyled this proceeding to a wholesale investigation requested by a political subdivision, and referred the matter to the Division of Administrative Law Judges (ALJ) for a decision to be rendered on or before September 5, 2021. The Commission tolled the statutory period for 45 days, resulting in a statutory deadline of October 15, 2021.

On July 2, 2021, Wheeling filed its CCOSS and other information as required by the Commission's June 2, 2021 Order.

On July 15, 2021, Wheeling filed a revised CCOSS (Revised Study) in response to discussions with Staff regarding errors in Wheeling's July 2, 2021 CCOSS.

On July 19, 2021, Commission Staff filed a Motion Seeking a 13-Day Tolling of the statutory deadline to allow it adequate time to review Wheeling's Revised Study.

On July 22, 2021, the Commission issued an Order tolling the statutory deadline until October 28, 2021, as requested by Commission Staff.

On September 13, 2021, the ALJ issued a Recommended Decision adopting the volumetric resale sewer treatment rate Wheeling passed of \$3.68 per thousand gallons used for all resale customers.

On September 24, 2021, Benwood filed Exceptions to the Recommended Decision.

On September 28, 2021, Commission Staff filed Exceptions to the Recommended Decision.

On October 7, 2021, the West Virginia Water Development Authority (WDA), as *amicus curiae*¹, replied to Staff's Exceptions.

In its Reply filed October 12, 2021², Wheeling addressed Commission Staff's exceptions.

¹ On August 30, 2021, the WDA moved for *amicus curiae* status and requested leave to file briefs. The ALJ granted the WDA's motion in the Recommended Decision.

On October 26, 2021, the Commission issued an Order (i) tolling the statutory period of 120 days in this case from July 15, 2021, the date that Wheeling filed the necessary information showing the basis of the rates, fees, and charges and other information required by the Commission and (ii) establishing a statutory decision due date of Friday, November 12, 2021.

On November 12, 2021, the Commission issued a Final Order (i) granting in part and denying in part Benwood's Exceptions, (ii) granting in part and denying in part Staff's Exceptions, and (iii) approving rates for all wholesale customers of Wheeling.

On November 22, 2021, Wheeling filed a Petition for Reconsideration of Final Commission Order (Petition) and Motion for Stay (Motion).

DISCUSSION

Petition for Reconsideration

In its November 22, 2021, Petition, Wheeling argued that the Commission exceeded its jurisdiction by tolling the statutory decision due date in the October 26, 2021 Order and, therefore, the Commission lacked subject matter jurisdiction when it entered the November 12, 2021, Final Order. W. Va. Code § 24-2-1(b)(6) requires that the Commission resolve rate disputes between a political subdivision of the state providing wholesale wastewater treatment and its customer within 120 days of filing of any request for an investigation. The statute authorizes the Commission to toll the 120-day period for resolution of a rate dispute as follows:

The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other information as the commission considers necessary is filed.

If the Commission had before it at the time the complaint was filed on May 3, 2021, the "necessary information showing the basis of the rates, fees, and charges," the Final Commission Order would have been due 120 days from that date, or August 31, 2021. The May 27, 2021, Response by Wheeling did not provide sufficient information to resolve the revenue requirement and cost allocation issues in the Benwood complaint.

On June 2, 2021, the Commission issued an Order stating that additional information from Wheeling was necessary before the Commission could resolve the

² Wheeling filed its Reply on October 8, 2021, however, the Public Service Commission was unable to access the docket submission until October 12, 2021. Letter, October 12, 2021.

dispute. In that Order, the Commission required additional information and tolled the 120 days from the effective date by only 45 days from August 31, 2021, the original 120 day statutory due date, until October 15, 2021.

If Wheeling had provided the “necessary information showing the basis of the rates, fees, and charges” on July 2, 2021, when it filed its CCOSS, the statutory due date in this case could have been tolled until October 29, 2021³. However, Wheeling’s July 2, 2021 CCOSS contained errors. The Commission, in its July 22, 2021 Order, did not invoke its full authority to toll the decision due date by 120 days from the date Wheeling filed its Revised Study. Instead, the Commission granted Staff’s request to toll the decision due date only 13 days from the then-established statutory decision due date of October 15, 2021. The Commission recognized and corrected this oversight when it issued its October 26, 2021, Order that tolled the decision due date of this dispute 120 days from July 15, 2021.

Wheeling argued that the Commission did not have jurisdiction to issue a decision in this case after October 28, 2021. Petition at 6. Wheeling does not challenge the July 2, 2021 and July 22, 2021 Commission Orders because “the Commission exercised its authority under W. Va. Code § 24-2-1(b)(6) to toll the 120-day time period in which the Commission may act in connection with a request for additional information that was deemed necessary for Commission review.” *Id.* However, Wheeling does challenge the October 26, 2021 Order that corrected the 120-day time period in which the Commission may act in connection with a request for additional information deemed necessary for Commission review, beginning July 15, 2021, and ending November 12, 2021.

Wheeling’s argument that the Commission could not decide this case after October 28, 2021, implies that the Commission had the “necessary information showing the basis of the rates, fees, and charges” on 120 days prior to October 28, 2021, or June 30, 2021. This is simply not the case. Wheeling failed to provide the “necessary information showing the basis of the rates, fees, and charges” for 73 days after Benwood filed its complaint, until July 15, 2021, when Wheeling filed a Revised Study.

Because Wheeling did not provide the necessary information to support its rates until July 15, 2021, W. Va. Code § 24-2-1(b)(6) authorizes the Commission to toll the 120-day period for resolution of this dispute from July 15, 2021. The Commission correctly tolled the statutory decision due date for resolution of this dispute in its October 26, 2021 Order. For the reasons stated above, the Commission denies Wheeling’s Petition.

³ 120 days from July 2, 2021 was Saturday, October 30, 2021.

Motion for Stay

Wheeling requested that the Commission enter an Order granting a stay of the November 12, 2021, Order pending appeal to the Supreme Court of Appeals on the grounds that the Order was entered beyond the statutory time period. Wheeling stated that a stay of the Order would prevent Wheeling from incurring unnecessary costs associated with the revision of its rates. The Commission declines to stay the effect of its own Order pending appeal because doing so would allow Wheeling to continue to overcharge its wholesale customers.

FINDINGS OF FACT

1. Wheeling provided the necessary information to support its rates on July 15, 2021. Revised Study, July 15, 2021.
2. The Commission tolled the 120-day period for resolution of this dispute from July 15, 2021. October 26, 2021, Order.

CONCLUSIONS OF LAW

1. W. Va. Code § 24-2-1(b)(6) authorizes the Commission to toll the 120-day period for resolution of rate disputes between a political subdivision of the state providing wholesale wastewater treatment and its customer until the necessary information showing the basis of the rates, fees, and charges or other information the Commission deems necessary is filed.
2. Wheeling did not file the necessary information showing the basis of the rates, fees, and charges or other information the Commission deemed necessary until it filed a Revised Study on July 15, 2021.
3. The Commission should deny Wheeling's Petition for Reconsideration because the Commission properly tolled the statutory period of 120 days in this case from July 15, 2021, the date that Wheeling filed the necessary information showing the basis of the rates, fees, and charges and other information required by the Commission.
4. The Commission should deny Wheeling's Motion for Stay pending appeal because doing so would allow Wheeling to continue to overcharge its wholesale customers.

ORDER

IT IS THEREFORE ORDERED that the Petition for Reconsideration of Final Commission Order filed by the City of Wheeling on November 22, 2021, is denied.

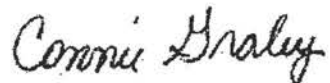
IT IS FURTHER ORDERED that the Motion for Stay filed by the City of Wheeling on November 22, 2021, is denied.

IT IS FURTHER ORDERED that the Commission Final Order entered on November 12, 2021, remains in full force and effect.

IT IS FURTHER ORDERED that on entry of this Order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste,

A handwritten signature in cursive script that reads "Connie Graley".

Connie Graley, Executive Secretary

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