

CHAPTER 55: COMBINED UTILITIES SYSTEM

Section

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§ 55.01 AFFIRMATION OF PREAMBLE RECITALS.

It is hereby found, determined and declared that the facts and recitals set forth in the preamble of Ordinance B2010-09 are true and correct and are hereby affirmed. Such facts and recitals, including the terms defined therein, are adopted and incorporated as a part of this chapter.

(Ord. B2010-09, passed 6-15-10)

§ 55.02 COLLECTION AND APPLICATION OF REVENUES OF SYSTEM.

The gross income and revenues of the system shall be set aside into a separate and special fund designated the Combined Utilities System Revenue Fund ("Revenue Fund") to be used and apportioned as follows:

(A) (1) There shall be set aside from the Revenue Fund such portion thereof as will be sufficient to pay the interest on and the principal of any bonds of the city issued to finance improvements to the system ("bonds"). Such portion shall be deposited in a Utilities System Bond Payment Account of the city ("Bond Fund"), which shall be used for the payment, or reimbursement to the city for payment, when due of interest on and principal of the bonds ("Bond Fund obligations").

(2) Such payments into the Bond Fund for the Bond Fund obligations shall be made in equal monthly installments on or before the tenth day of each month, and it is hereby determined that the minimum amounts to be paid into the Bond Fund each month for the Bond Fund obligations shall be as follows:

(a) An amount which together with other funds available for such purpose will be equal to one-sixth of the interest falling due on the bond fund obligations on the next succeeding interest payment date shall be deposited in the Bond Fund; provided that no later than the tenth day of the month before the first interest payment date following the issuance of the any bonds, there shall be paid into the Bond Fund the amount of any deficiency in the amount of interest to be due on such first interest payment date.

(b) An amount which together with other funds available for such purpose will be equal to one-twelfth of the principal amount of the Bond Fund obligations coming due on the next principal payment date shall be deposited in the principal account.

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(3) No further payments need be made into the Bond Fund when the amount then held in the Bond Fund is at least equal to the entire amount required for retiring all outstanding bonds and paying all interest that will accrue at the time of such retirement.

(4) If for any reason there should be a failure to pay into the Bond Fund the full amount above stipulated, then an amount equivalent to such deficiency shall be set apart and paid into the Bond Fund from the first available income and revenues.

(5) All moneys held in the Bond Fund, shall be deposited in a bank or banks which are members of the Federal Deposit Insurance Corporation ("FDIC") or one of its agencies and all such deposits which cause the aggregate deposits of the city in any one bank to be in excess of the amount insured by the FDIC or one of its agencies shall be continuously secured by a valid pledge of direct obligations of the United States of America having an equivalent market value. All or any part of the Bond Fund may, be invested in investment obligations, as defined in this chapter, maturing or being subject to retirement at the option of the holder on such dates as the same may be needed for meeting interest and/or principal payments and all such investments shall be carried to the credit of the Bond Fund.

(6) It is specifically acknowledged and ordered that the revenue of the system and amounts in the Bond Fund are not pledged to or hereby for the benefit of the holders of any bonds and that the provisions of this division (B) are enacted solely for the administration, convenience and benefit of city government.

(B) (1) There shall be continued an account of the city known as the Depreciation Fund, and from the balance of the income and revenues remaining after the aforesaid payments into the Bond Fund there shall be set aside on or before the tenth day of each month into the Depreciation Fund at least 10% of the balance remaining in the Revenue Fund or at least \$10,000, whichever is greater, until there is accumulated and there is being maintained in the Depreciation Fund a balance of at least \$500,000, being the required minimum balance for the Depreciation Fund. Whenever withdrawals are made from the Depreciation Fund reducing the balance therein to less than such minimum balance, the prescribed payments shall continue to be made therein so as to restore the amount to at least such minimum balance. The Depreciation Fund shall be used to provide reasonable reserves for renewals, replacements, improvements, extensions, extraordinary major repairs and contingencies in the operation of the system, provided also that withdrawals may be made from the Depreciation Fund to fund any deficiency in the Bond Fund.

(2) All funds in the Depreciation Fund shall be kept apart from all other municipal funds and shall be deposited and secured in the same manner as herein provided for the deposit and security of the Bond

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Fund, or all or any part of the Depreciation Fund may be invested in the same manner as herein provided for the investment of moneys in the Bond Fund, and all such investments shall be carried to the credit of the Depreciation Fund and the income from such investments shall be credited to the Depreciation Fund.

(C) There shall be continued an account of the city known as the Operation and Maintenance Fund, and from the balance of the income and revenues remaining after the aforesaid payments into the Bond Fund and the Depreciation Fund there shall be set aside on or before the tenth day of each month into the Operation and Maintenance Fund such amount as may be determined, pursuant to an annual budget for the system which shall be adopted annually by the City Council (and which the Council may amend from time to time), to be necessary and sufficient to pay the reasonable and current expenses of operating, maintaining and insuring the system for the current and the next ensuing months. After the tenth day of each month further transfers may be made in like manner only if and to the extent it may be found to be necessary to pay such expenses actually accrued and payable. All funds in the Operating and Maintenance Fund shall be kept apart from all other municipal funds and shall be deposited and secured in the same manner as herein provided for the deposit and security of the Bond Fund, or all or any part of the Operation and Maintenance Fund may be invested in the same manner as herein provided for the investment of moneys in the Bond Fund, and all such investments shall be carried to the credit of the Operation and Maintenance Fund and the income from such investments shall be credited to the Operation and Maintenance Fund.

(D) Whenever, at the end of any fiscal year, all specified and required transfers and payments into the special funds hereinbefore provided have been made and there is a balance in the Revenue Fund in excess of the amounts required to be transferred during the first two months of the ensuing fiscal year into said special funds, all or any part of such excess may be used as follows:

(1) To retire or redeem any debt obligation of the city issued to finance improvements to the system, as may be determined by the City Council;

(2) To transfer additional amounts to the Operation and Maintenance Fund;

(3) To transfer additional amounts to the Depreciation Fund;
or

(4) For any other lawful corporate purpose of the city.
(Ord. B2010-09, passed 6-15-10)

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§ 55.03 INVESTMENTS.

As used in this chapter, “INVESTMENT OBLIGATIONS” shall mean any of the following, if and to the extent the following are legal investments for the moneys held in the Bond Fund established pursuant to this chapter:

(A) Obligations of the United States and of its agencies and instrumentalities, including obligations subject to repurchase agreements, if delivery of these obligations subject to repurchase agreements is taken either directly or through an authorized custodian, which investments may be accomplished through repurchase agreements reached with sources including, but not limited to, national or state banks chartered in Kentucky;

(B) Obligations and contracts for future delivery or purchase of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:

- (1) United States Treasury;
- (2) Export-Import Bank of the United States;
- (3) Government National Mortgage Corporation; and
- (4) Merchant Marine;

(C) Obligations of any corporation of the United States government, including but not limited to:

- (1) Federal Home Loan Mortgage Corporation;
- (2) Federal Farm Credit Banks;
- (3) Bank for Cooperatives;
- (4) Federal Intermediate Credit Banks;
- (5) Federal Land Banks;
- (6) Federal Home Loan Banks;
- (7) Federal National Mortgage Association; and
- (8) Tennessee Valley Authority;

(D) Certificates of deposit issued by or other interest bearing accounts of any bank or savings and loan institution, including the paying agent and bond registrar or any of its affiliates, which are insured by the Federal Deposit Insurance Corporation or similar entity or which

are collateralized, to the extent uninsured, by any obligations, including surety bonds, permitted by KRS 41.240(4);

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(E) Uncollateralized certificates of deposit, time deposits, trust accounts, trust deposits and demand deposits, including interest bearing money market accounts, of any bank or savings and loan institution, including any paying agent and bond registrar of any Bonds or any of its affiliates, rated in one of the three highest categories by a nationally recognized rating agency;

(F) Bankers' acceptances for banks, including any paying agent and bond registrar of any bonds or any of its affiliates, rated in one of the three highest categories by a nationally recognized rating agency;

(G) Commercial paper rated in the highest category by a nationally recognized rating agency, including commercial paper issued by any paying agent and bond registrar of any bonds or any of its affiliates, if so rated;

(H) Bonds or certificates of indebtedness of the Commonwealth of Kentucky and of its agencies and instrumentalities;

(I) Securities issued by a state or local government, or any instrumentality or agency thereof, in the United States, and rated in one of the three highest categories by a nationally recognized rating agency; and

(J) Shares of mutual funds, each of which shall have the following characteristics:

(1) The mutual fund shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended;

(2) The management company of the investment company shall have been in operation for at least five years;

(3) All of the securities in the mutual fund shall be investments in any one or more of the investments described in divisions (A) through (I) above; and

(4) The mutual funds may include, without limitation, any mutual fund for which any paying agent and bond registrar of any bonds or any of its affiliates, serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that:

(a) Any paying agent and bond registrar of any bonds or any of its affiliates, receives fees from such funds for services rendered;

(b) Any paying agent and bond registrar of any bonds or any of its affiliates, charges and collects fees for services rendered

pursuant to this chapter, which fees are separate from the fees received from such funds; and

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(c) Services performed for such funds and pursuant to this chapter may at times duplicate those provided to such funds by any paying agent and bond registrar of any bonds or any of its affiliates.
(Ord. B2010-09, passed 6-15-10)

§ 55.04 RATE PROVISIONS.

(A) While the Bond Fund obligations remain outstanding and unpaid, the rates for all services rendered by the system to the city, its citizens, corporations and other consumers shall be reasonable and just, taking into account and consideration the cost and value of the properties constituting the system and the cost of maintaining and operating the same, and the proper and necessary allowances for depreciation thereof, and the amounts necessary for the retirement of all bonds and notes and the accruing of interest on all such obligations as may be issued and outstanding. There shall be charged against all users of the services and facilities of the system, including the city, such rates and amounts as shall be adequate to meet the requirements of this section. Compensation for services rendered to the city shall be charged against the city and payment for same from the corporate funds of the city shall be apportioned as other income and revenues.

(B) The city will not reduce the rates and charges for services rendered by the system without first filing with the City Clerk a written certification prepared by the Chief Financial Officer and verified by an independent third party having a recognized level of expertise in the costing and pricing of utility services and being a certified public accountant or firm of certified public accountants licensed in Kentucky, a consulting engineer or firm of consulting engineers licensed in Kentucky, or an independent agency, such as the Kentucky Rural Water Association (each, an "independent third party"), to the effect that the annual net revenues of the then existing system for the fiscal year preceding the date on which such reduction is proposed, as such annual net revenues are adjusted after taking into account the projected reduction in revenues anticipated to result from such proposed rate decrease, are equal to not less than 140% of the maximum amount of the Bond Fund obligations in any year ("maximum annual debt service").

(C) The city will also cause a report to be filed with the City Clerk within six months after the end of each fiscal year by the Chief Financial Officer and verified by an independent third party, setting forth the percentage ("coverage") of the maximum annual debt service produced or provided by the net revenues of the system in that fiscal year; and if and whenever such report so filed shall establish that such coverage of net revenues for such fiscal year was less than 120% of the maximum annual debt service, the city shall increase the rates charged the users of the system by an amount sufficient, in the opinion of the Chief Financial Officer, to establish the existence of or immediate accomplishment of such minimum 120% coverage.

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(D) For purposes of this section, ''NET REVENUES'' shall mean gross income and revenues of the system less operating expenses, which shall include salaries, wages, costs of maintenance and operation, materials and supplies, cost of electricity purchased, pumping costs and insurance, as well as all other items that are normally and regularly so included under recognized accounting practices, exclusive of allowance for depreciation. The net revenues may be adjusted for the purpose of the foregoing computations to reflect any revision in the schedule of rates or charges being imposed at the time of calculation, and also to reflect any increase in such net income and revenues by reason of the extensions, additions and improvements to the system the cost of which (in whole or in part) is to be paid through the issuance of additional bonds; but such latter adjustments shall only be made if contracts for the immediate construction or acquisition of such extensions, additions and improvements have been or will be entered into before the issuance of such additional bonds. All such adjustments shall be based upon a written certification of the Chief Financial Officer and verified by an independent third party.

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