

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|  |            |
|--|------------|
| APPLICATION OF KNOTT COUNTY WATER AND )  | CASE NO.   |
| SEWER DISTRICT FOR AN ALTERNATIVE RATE ) | 2019-00268 |
| ADJUSTMENT )                             |            |

ORDER

On July 31, 2019, Knott County Water and Sewer District (Knott District) filed an application (Application) with the Commission, pursuant to 807 KAR 5:076, requesting to adjust its rates for water service. In its Application, Knott District requests rates that would increase annual water sales revenues by \$1,002,832, a 47.56 percent increase to its customers.<sup>1</sup> Knott District further requests to divide its proposed rates into three phases with the second phase taking effect one year after the first phase, and the third phase to take effect one year after the second phase.<sup>2</sup>

BACKGROUND

Knott District is a water district organized pursuant to KRS Chapter 74. It owns and operates a water distribution system through which it provides water service to approximately 2,969 retail customers and five wholesale customers<sup>3</sup> in Knott County, Kentucky.<sup>4</sup> Knott District produces its own water, but purchases some of its water from

---

<sup>1</sup> Application at 3.

<sup>2</sup> *Id.*

<sup>3</sup> *Annual Report of Knott County Water and Sewer District to the Public Service Commission for the Calendar Year Ended December 31, 2018 (Annual Report)* at 49.

<sup>4</sup> *Id.* at 12.

Southern Water and Sewer District.<sup>5</sup> The pending case is Knott District's first alternative rate adjustment since May 20, 2003.<sup>6</sup>

#### TEST PERIOD

The calendar year ended December 31, 2018, was used as the test year to determine the reasonableness of Knott District's existing and proposed water rates, as required by 807 KAR 5:076, Section 9.

#### PROCEDURE

Knott District filed its Application on July 31, 2019. To ensure the orderly review of the Application, the Commission established a procedural schedule by Order dated August 14, 2019, which among other things, required Commission Staff (Staff) to file a report containing its findings regarding Knott District's Application by November 13, 2019. By Order dated November 5, 2019, the Commission amended the existing procedural schedule and extended the deadline for Staff to issue its report to November 20, 2019.

The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) was granted full intervention on August 21, 2019. Letcher County Water and Sewer District (Letcher District) filed a motion to intervene on August 20, 2019, and the city of Hindman (Hindman) filed a motion to intervene on August 23, 2019. Letcher District and Hindman were granted intervention by the Commission on a joint basis on September 5, 2019. Knott District responded to several rounds of requests for information from both Staff and the intervening parties.

---

<sup>5</sup> *Id.* at 54.

<sup>6</sup> See Case No. 2002-00292, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC May 20, 2003).

On November 20, 2019, Staff issued a Staff Report finding that Knott District's adjusted test-year operations supported an overall revenue requirement of \$2,995,278 and that an annual revenue increase of \$698,176, or 70.31 percent, is necessary to generate the overall revenue requirement.

On December 4, 2019, Knott District, Letcher District, and the Attorney General separately filed their written comments to the Staff Report. On December 5, 2019, Hindman filed its comments to the Staff Report and, thereby, adopted Letcher District's comments that were filed on December 4, 2019. With their comments, Knott District<sup>7</sup> and the intervenors did not request to hold a conference or a hearing.

Per Commission Order issued on January 10, 2020, a public hearing was held on January 22, 2020. Knott District submitted the following witnesses from its Board of Commissioners for cross-examination: Chairman David Smith, Commissioner Spencer D. Hamilton, Commissioner Ricky L. McDaniel, and Commissioner Terry Jacobs. Knott District also submitted the following witnesses for cross-examination: Knott District's Chief Financial Officer, Kyle R. Smith, and Knott District's General Manager, Jared O. Salmons. Neither the Attorney General nor Letcher District provided any witnesses to take the stand at the hearing. Counsel for Hindman was not present at the hearing; however, counsel for Letcher District advised the Commission that he had been authorized to assert that the concerns Letcher District would be presenting at the hearing were the same as Hindman's concerns.<sup>8</sup>

---

<sup>7</sup> Knott District's Comments to Staff Report at paragraph 6.

<sup>8</sup> Case No. 2019-00268, January 22, 2020 Hearing, H.V.T. at 09:08:12.

## ANALYSIS AND DISCUSSION OF ISSUES

What follows is the Commission's analysis and discussion of those issues addressed at the January 22, 2020 hearing, and for which the hearing was called.

### Pending Purchased Water Contract with the United States Army Corps of Engineers

In Attachment 5 of its Application, Knott District made a \$69,556 adjustment to Contractual Services under Operating Expenses of the Schedule of Adjusted Operations.<sup>9</sup>

Staff noted in its Staff Report that the adjustment made by Knott District was meant to reflect an increase in water withdrawal fees subsequent to the test year.<sup>10</sup> Staff went on to state that Knott District has contacted the United States Army Corps of Engineers (Corp of Engineers) with the intention of increasing its water withdrawal limit from two million gallons per day, to four million gallons per day from Carr Creek Lake.<sup>11</sup> Staff recommended disallowing this adjustment in its Staff Report because Staff determined that the revised contract was still in the preliminary stages of development and, therefore, was not known and measurable.<sup>12</sup> However, Staff did calculate the five-year average of the amounts charged by the Corps of Engineers from the years 2015 to 2019, and proposed to increase pro forma expenses by \$7,042.<sup>13</sup>

---

<sup>9</sup> Application, Attachment 5 at unmarked pg. 13.

<sup>10</sup> Staff Report at 13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

In its December 4, 2019 Comments to the Staff Report, Knott District requested that the Commission reconsider Staff's finding contained in paragraph (2)(K) Contractual Services - Purchased Power Contract.<sup>14</sup> In its Comments, Knott District, again, requested to increase Contractual Services by \$69,556 to reflect the anticipated increase in water withdrawal fees to be incurred for withdrawing four million gallons from Carr Creek Lake.<sup>15</sup>

Knott District stated the following in support of its request:

Based on KCWSD's correspondence with Kenneth Meffert from the Corps of Engineers, KCWSD believes that approval of the new contract for 4 MGD usage is imminent. According to conversations KCWSD has had with the Corps of Engineers, the contract has already been reviewed and approved by the Louisville office and has been sent up the chain of command and will eventually be signed in Washington DC by the commanding officer. . . .The future payment is expected to be double from what it has been in the past. Unfortunately, the Corps of Engineers cannot provide a precise dollar number as to the increased rate because it is computed on Operation & Maintenance fees incurred by the Corps of Engineers which fluctuates every year. Thus KCWSD can only estimate the amount based upon historical averages.<sup>16</sup>

During cross-examination at the hearing, Knott District's Chief Financial Officer, Kyle Smith, testified that the Corps of Engineers has not approved the proposed contract,<sup>17</sup> and that the proposed contract remains pending before the Corps of Engineers.<sup>18</sup> Mr. Smith acknowledged that he has corresponded with Kenneth Meffert<sup>19</sup>

---

<sup>14</sup> Knott District's Comments at 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2.

<sup>17</sup> Case No. 2019-00268, January 22, 2020 Hearing, H.V.T. at 13:41:31.

<sup>18</sup> *Id.* at 13:39:43.

<sup>19</sup> *Id.* at 13:42:04.

of the Louisville District of the Corps of Engineers.<sup>20</sup> Mr. Smith further testified that the last communication he had with Mr. Meffert was towards the end of 2019, either November or December 2019.<sup>21</sup> Mr. Smith testified that Knott District has been allowed to withdraw up to the four million gallons from Carr Creek Lake at the same rate as the current contract with the Corps of Engineers.<sup>22</sup> Mr. Smith stated that the amount Knott District will be charged will always fluctuate because it is based on the Corps of Engineers' operating and maintenance expenses, and it is always estimated for the year to come.<sup>23</sup> Mr. Smith confirmed that Knott District has not paid any fines or penalties to the Corps of Engineers for this additional withdrawal of water beyond the two million gallons that is authorized by the existing contract.<sup>24</sup>

The Commission finds that because Knott District has not received documented approval from the Corps of Engineers to withdraw four million gallons from Carr Creek Lake and is not currently being charged at the projected four million gallons per day withdrawal rate, the proposed adjustment is not known and measureable. Knott District ratepayers should not be expected to pay for an expense that has not been incurred by the water district and will not be incurred until such time as Knott District receives approval from the Corps of Engineers. Therefore, the Commission finds that the proposed

---

<sup>20</sup> *Id.* at 13:43:58.

<sup>21</sup> *Id.* at 13:42:36.

<sup>22</sup> *Id.* at 13:45:23.

<sup>23</sup> *Id.* at 13:46:46.

<sup>24</sup> *Id.* at 13:45:37.

adjustment requested in Knott District's Comments cannot be included in the final pro forma calculation.

### Health Insurance Credit

In its responses to requests for information, Knott District stated that the benefits package that full-time employees receive includes health insurance, and that Knott District contributes 100 percent of the premiums for employee only coverage plans.<sup>25</sup> Knott District also stated that the benefits package for full-time employees of Knott District included an insurance credit.<sup>26</sup> Specifically, Knott District stated that “[i]f employees have proof of coverage then they are given the option to receive an insurance credit equivalent to the cost of an employee only plan.”<sup>27</sup> Knott District also provided a table detailing the cost of 2018 benefits provided to each Knott District employee.<sup>28</sup> The table indicated that there were three Knott District employees who received an “Ins. Credit” of \$8,193.60.<sup>29</sup> According to Knott District, “[i]f an employee waives coverage and provides proof that they have other coverage, they will receive a credit on their weekly paycheck that is equivalent to the cost of an employee only plan.”<sup>30</sup>

Staff did not include a discussion of the health insurance credit in the Staff Report.

---

<sup>25</sup> Knott District's Response to Letcher District and Hindman's First Request for Information, Item 13.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* Item 14.

<sup>29</sup> *Id.*

<sup>30</sup> Knott District's Response to Letcher District and Hindman's Second Request for Information, Item 16.

In its December 4, 2019 Comments, Letcher District argues that the Commission should permit Knott District to recover only 79 percent of the insurance credit through its rates, which would be in line with the national average found in the Bureau of Labor Statistics (BLS).<sup>31</sup>

During cross-examination at the hearing, Knott District's Chief Financial Officer, Kyle Smith, testified that the value of the health insurance credit is equivalent to the annual premium for the lowest cost employee-only plan<sup>32</sup> offered by the Kentucky Employees Health Plan (KEHP).<sup>33</sup> Mr. Smith testified that the only proof that an employee needed to show coverage was an insurance card.<sup>34</sup> As to how the credit was received by Knott District's employees, Mr. Smith testified that the credit was calculated by multiplying the monthly premium amount of the lowest employee-only plan by 12 months and then dividing that number by 52 because Knott District has a weekly payroll.<sup>35</sup> Mr. Smith testified that the credit is paid to Knott District's employees through their paychecks.<sup>36</sup>

The Commission finds that an adjustment to disallow some of the expenses associated with the health insurance credit is warranted. Because of the nature of the contracted rates with KEHP, the Commission finds that it should limit the disallowance of

---

<sup>31</sup> Letcher District's and Hindman's Comments to Staff Report at 4–5.

<sup>32</sup> Case No. 2019-00268, January 22, 2020 Hearing, H.V.T. at 13:48:03.

<sup>33</sup> *Id.* at 13:48:00.

<sup>34</sup> *Id.* at 13:48:14.

<sup>35</sup> *Id.* at 13:49:03.

<sup>36</sup> *Id.* at 13:49:39.



the benefit to the stated percentage rate for the plan the credit was based on, which would be the Living Well CDHP Single rate. As shown in the calculation below, the Commission finds that it should reduce the final revenue requirement by \$1,713.

|   |                 |
|---|-----------------|
| Insurance Credits Paid in 2018                | \$ 24,582       |
| Times: Lowest Cost Health Insurance Plan Rate | <u>6.97%</u>    |
| Decrease                                      | <u>\$ 1,713</u> |

Health Insurance Benefits to Commissioners

In Knott District’s responses to Staff’s requests for information, Knott District advised that each Commissioner on its Board of Commissioners currently receive \$6,000 annually.<sup>37</sup> The monthly salary of each Commissioner, therefore, is \$500 per month. Knott District also advised that all the Commissioners are also offered health, dental, vision, and life insurance benefits, unless they were appointed on or after May 17, 2019.<sup>38</sup> Knott District detailed what benefits each Commissioner received and the total amount of said benefits. According to information provided by Knott District during Staff’s limited financial review, in 2017 the total amount of Commissioners’ compensation was \$71,023.84. In 2018, the total amount of Commissioners’ compensation was \$80,714.42.<sup>39</sup> In 2019, the total amount of Commissioners’ compensation was \$68,740.44.<sup>40</sup>

---

<sup>37</sup> Knott District’s Response to Commission Staff’s First Request for Information, Item 2.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, Item 3.

<sup>40</sup> *Id.*

## 2017

| Employee Name  | Wages       | Benefits    | Total Compensation | Total Meeting Hours Worked | Hourly Rate |
|----------------|-------------|-------------|--------------------|----------------------------|-------------|
| Hamilton, Dale | \$6,000.00  | \$8,955.12  | \$14,955.12        | 23h 32m                    | \$635.49    |
| Jacobs, Terry  | 6,000.00    | 8,653.68    | \$14,653.68        | 21h 12m                    | 691.21      |
| King, Larry    | 6,200.00    | 8,425.20    | \$14,625.20        | 23h 2m                     | 695.33      |
| Mullins, Greg  | 6,000.00    | 0.00        | \$6,000.00         | 23h 39m                    | 253.70      |
| Smith, David   | 6,000.00    | 14,789.84   | \$20,789.84        | 23h 39m                    | 879.06      |
| Total          | \$30,200.00 | \$40,823.84 | \$71,023.84        |                            |             |

## 2018

| Employee Name  | Wages       | Benefits    | Total Compensation | Total Meeting Hours Worked | Hourly Rate |
|----------------|-------------|-------------|--------------------|----------------------------|-------------|
| Hamilton, Dale | \$6,000.00  | \$9,151.43  | \$15,151.43        | 24h 49m                    | \$614.66    |
| Jacobs, Terry  | 6,000.00    | 16,040.18   | \$22,040.18        | 17h 40m                    | 1,247.56    |
| King, Larry    | 6,200.00    | 8,887.75    | \$15,087.75        | 26h 51m                    | 561.93      |
| Mullins, Greg  | 6,000.00    | 724.46      | \$6,724.46         | 26h 51m                    | 250.45      |
| Smith, David   | 6,000.00    | 15,710.60   | \$21,710.60        | 26h 51m                    | 808.59      |
| Total          | \$30,200.00 | \$50,514.42 | \$80,714.42        |                            |             |

## 2019

| Employee Name   | Wages       | Total Benefits | Total Compensation | Total Meeting Hours Worked | Hourly Rate |
|-----------------|-------------|----------------|--------------------|----------------------------|-------------|
| Hamilton, Dale  | \$6,000.00  | \$9,179.64     | \$15,179.64        | 11h 33m                    | \$856.80    |
| Jacobs, Terry   | 6,000.00    | 16,098.24      | 22,098.24          | 8h 17m                     | 2,667.80    |
| McDaniel, Ricky | 2,700.00    | 0.00           | 2,700.00           | 11h 53m                    | 227.21      |
| Mullins, Greg   | 6,000.00    | 830.88         | 6,830.88           | 12h 45m                    | 361.10      |
| Smith, David    | 6,000.00    | 15,931.68      | 21,931.68          | 12h 45m                    | 1,159.38    |
| Total           | \$26,700.00 | \$42,040.44    | \$68,740.44        |                            |             |

The hourly rates computed in the table above were calculated by dividing the total yearly compensation, including salaries, provided to the Knott District Board of Commissioners by the total board meeting hours for each respective year as reflected by the recorded meeting minutes of the Knott District Board of Commissioners, which were provided by Knott District in its responses to requests for information.<sup>41</sup>

In Knott District's responses to requests for information, Knott District also provided the May 20, 2019 Resolution of the Knott County Fiscal Court.<sup>42</sup> Pursuant to the Resolution, "[Knott District] Board Members that are newly appointed on or after May 17,

<sup>41</sup> *Id.*, Item 1.

<sup>42</sup> Knott District's Response to Commission Staff's First Request for Information, Item 1.

2019 will be entitled to choose between an annual salary of \$6,000.00 with completion of required training OR health insurance offered by [Knott District] as compensation for their service as a board member.”<sup>43</sup> The Resolution was signed by the following members of the Knott County Fiscal Court: Kenny Dyer, Calvin Waddles, and the Knott County Judge-Executive, Jeff Dobson.<sup>44</sup>

In the Staff Report, Staff found that the Knott District Board of Commissioners consists of five members to whom Knott District provides health, dental, vision, and life insurance coverage during the test year totaling \$50,514.<sup>45</sup> In the Staff Report, Staff recommended removing the cost of each Commissioner’s health, dental, vision, and life insurance from Knott District’s test-year operations. Accordingly, Staff decreased Employee Pensions and Benefits by \$50,514.<sup>46</sup>

During the course of the instant matter, Knott District filed three motions for confidential treatment (Motions). Two of the Motions, filed by Knott District on September 20, 2019, and November 5, 2019, specifically sought to prevent public disclosure of the names of the Commissioners on the Knott District Board of Commissioners as they related to salary or benefits.<sup>47</sup> The September 20, 2019 motion for confidential treatment sought to prevent public disclosure of the Commissioners’ monthly salaries.<sup>48</sup> In the two

---

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.*

<sup>45</sup> Staff Report at 9.

<sup>46</sup> *Id.* at 10.

<sup>47</sup> Knott District’s Motion for Confidential Treatment (filed Sept. 20, 2019) at 2, Knott District’s Motion for Confidential Treatment (filed Nov. 5, 2019) at 1–2.

<sup>48</sup> Knott District’s Motion for Confidential Treatment (filed Sept. 20, 2019) at 2.

Orders filed on December 9, 2019, the Commission denied the Motions as they pertained to Knott District's Commissioners' names and salaries.<sup>49</sup> In the December 9, 2019 Order relating to the September 20, 2019 motion for confidential treatment, the Commission found that employees of Knott District are public employees for the purposes of applying KRS 61.870 *et seq.* to information designated by a request for confidentiality.<sup>50</sup> The Commission went on to note that the Attorney General has long held that, as to public employees, "[t]he public is entitled to know the name, position, work station and salary of state employees."<sup>51</sup> These are matters in which the public has an interest since state employees are carrying on the public's business at public expense."<sup>52</sup> The Commission went on to state that it has generally held that executive officer salary and compensation does not meet the criteria for confidential treatment because salaries are included as an expense in base rate calculations and because certain executive salary information must be disclosed to the public in any case in other regulatory filings.<sup>53</sup>

At the January 22, 2020 hearing, Staff called four of the five Commissioners of the Knott District Board of Commissioners to testify. What follows is a summary of the testimony provided by each witness.

---

<sup>49</sup> PSC\_Order at 3 and 4; PSC\_Order01 at 1–2.

<sup>50</sup> Order at 2–3.

<sup>51</sup> *Id.*

<sup>52</sup> Ky. Op. Atty. Gen. 76-717; *See*, Order at 2–3.

<sup>53</sup> Order at 3; *E.g.*, Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC May 17, 2018) at 1-2; *See also*, Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013) at 1 (denying a request to treat executive salary and benefits as confidential for those reasons).

During cross-examination at the hearing, Chairman David Smith of the Knott District Board of Commissioners testified that Commissioners were first offered health insurance benefits in January 2017.<sup>54</sup> When asked by Staff how the offer of health insurance benefits to Commissioners arose, Mr. Smith testified that in 2016 he lost his health insurance benefits at the company he was working for in West Virginia.<sup>55</sup> Mr. Smith testified that this prompted him to approach Knott District's General Manager to ask if Knott District could provide health insurance benefits to the Commissioners.<sup>56</sup> Mr. Smith identified the General Manager at the time to be L.J. Turner.<sup>57</sup> Mr. Smith testified that Mr. Turner relayed to him that there was the possibility to offer health insurance benefits to Commissioners and that there was a Commission Staff opinion that appeared to allow water district commissioners to receive benefits.<sup>58</sup> Mr. Smith confirmed that the staff opinion he was referring to was PSC Opinion 2013-012, which was filed into the record by Knott District on January 17, 2020.<sup>59</sup> Mr. Smith testified that in late 2016, he brought the matter of offering health insurance benefits to Commissioners to the Board during an executive session of a Board meeting.<sup>60</sup> Mr. Smith noted that the Board did not put either the discussion about offering health insurance benefits to Commissioners or the vote

---

<sup>54</sup> Case No. 2019-00268, January 22, 2020 Hearing, H.V.T. at 09:21:22.

<sup>55</sup> *Id.* at 09:21:42.

<sup>56</sup> *Id.* at 09:22:21.

<sup>57</sup> *Id.* at 09:24:19.

<sup>58</sup> *Id.* at 09:22:49.

<sup>59</sup> *Id.* at 09:24:48.

<sup>60</sup> *Id.* at 09:23:20.

approving the same into the record of the Board minutes or in a formal resolution.<sup>61</sup> Mr. Smith testified that all members were present at the Board meeting,<sup>62</sup> which included himself, Larry King, Greg Mullins, Dale Hamilton, and Terry Jacobs.<sup>63</sup> Mr. Smith noted that, at the time, Larry King was also the Deputy Judge of the Knott County Fiscal Court.<sup>64</sup> When asked by Staff whether the Board discussed the matter with legal counsel, Mr. Smith testified that the Board's attorney was always present at the Board meetings, including executive sessions.<sup>65</sup> Mr. Smith identified legal counsel for Knott District as Calvin Tackett.<sup>66</sup>

During cross-examination at the hearing, Knott District Commissioner, Spencer D. Hamilton, testified that he has been a Commissioner on the Knott District Board of Commissioners for 21 years,<sup>67</sup> and that he is the Vice Chairman of the Knott District Board of Commissioners.<sup>68</sup> Mr. Hamilton testified that he receives a \$6,000 salary from Knott District and health insurance benefits.<sup>69</sup> Mr. Hamilton testified that he was involved in the 2016<sup>70</sup> discussions regarding the offer of health insurance benefits to Board members.<sup>71</sup>

---

<sup>61</sup> *Id.* at 09:23:36.

<sup>62</sup> *Id.* at 09:25:06.

<sup>63</sup> *Id.* at 09:25:11.

<sup>64</sup> *Id.* at 09:25:17.

<sup>65</sup> *Id.* at 09:25:54.

<sup>66</sup> *Id.* at 09:26:11.

<sup>67</sup> *Id.* at 11:24:50.

<sup>68</sup> *Id.* at 11:25:26.

<sup>69</sup> *Id.* at 11:25:24.

<sup>70</sup> *Id.* at 11:26:10.

<sup>71</sup> *Id.* at 11:26:05.

Although, Mr. Hamilton denied there was a vote by the Board,<sup>72</sup> he asserted that Mr. Turner provided evidence to the Board, including PSC Staff Opinion 2013-012, documenting that the Board had discussed the issue with, he believed, legal counsel present; and “everybody went along with it.”<sup>73</sup>

During cross-examination at the hearing, Knott District Commissioner, Ricky L. McDaniel, testified that he has been a Commissioner on the Knott District Board of Commissioners since June 2019.<sup>74</sup> Mr. McDaniel testified that he receives a salary of \$6,000 from Knott District<sup>75</sup> but does not receive health insurance benefits.<sup>76</sup> Mr. McDaniel testified that he is currently employed by the Knott County Fiscal Court as a road supervisor.<sup>77</sup> When asked by Staff whether he was involved in any discussions by the Fiscal Court in relation to the May 20, 2019 Resolution, Mr. McDaniel testified that he knew that the Resolution was going to be executed by the Fiscal Court.<sup>78</sup> Mr. McDaniel further testified that he knew it was going to require the board members appointed after the deadline established therein to choose between a salary and health insurance benefits.<sup>79</sup>

---

<sup>72</sup> *Id.* at 11:26:19.

<sup>73</sup> *Id.* at 11:26:32.

<sup>74</sup> *Id.* at 11:42:50.

<sup>75</sup> *Id.* at 11:43:07.

<sup>76</sup> *Id.* at 11:43:12.

<sup>77</sup> *Id.* at 11:42:42 and 11:43:56.

<sup>78</sup> *Id.* at 11:45:14.

<sup>79</sup> *Id.*

During cross-examination at the hearing, Knott District Commissioner, Terry Jacobs, testified that he currently receives a \$6,000 salary.<sup>80</sup> Mr. Jacobs testified that he does not currently receive health insurance benefits,<sup>81</sup> but that he did previously receive health insurance benefits from Knott District.<sup>82</sup> Mr. Jacobs explained that when the Fiscal Court executed the May 20, 2019 Resolution, he formed his own company to provide himself with health insurance<sup>83</sup> and asked to be removed from any and all Knott District benefits other than salary.<sup>84</sup> However, Mr. Jacobs also testified that it took him a “short time” to form a company and obtain his own health insurance benefits.<sup>85</sup> When asked by Staff whether he participated in the Knott District Board of Commissioners’ discussions about granting health insurance benefits to Commissioners, Mr. Jacobs testified that he could not remember the discussions taking place; however, that he was a member of the Knott District Board of Commissioners at the time; that he obviously knew of it and received the benefits; and, even though he doesn’t remember what happened, he was there and acquiesced to it.<sup>86</sup>

The Commission finds that despite the fact that Knott District sustained financial losses during 2014 and 2016, the Knott District Board of Commissioners approved

---

<sup>80</sup> *Id.* at 11:53:37.

<sup>81</sup> *Id.* at 11:53:41.

<sup>82</sup> *Id.* at 11:53:48.

<sup>83</sup> *Id.* at 11:53:48.

<sup>84</sup> *Id.* at 11:54:11.

<sup>85</sup> *Id.* at 12:03:43.

<sup>86</sup> *Id.* at 11:54:23.



providing Commissioners health, dental, vision, and life insurance benefits. Knott District experienced further losses in 2017 and 2018, and yet the Commissioners continued to obtain the benefit of Knott District's insurance offerings. The table below shows the net change in financial position for 2014 through 2018.<sup>87</sup>

| Year  | Change in Net Position      |
|-------|-----------------------------|
| 2018  | \$(1,369,559)               |
| 2017  | (1,212,458)                 |
| 2016  | (1,013,923)                 |
| 2015  | 121,936                     |
| 2014  | <u>(266,184)</u>            |
| Total | <u><u>\$(3,740,188)</u></u> |

Further, when considering the value of the salary and all of the benefits received by each of the Commissioners in relation to the recorded meeting minutes of the Knott District Board of Commissioners, the average hourly rate for the five Commissioners in 2017 was \$630.96, the average hourly rate in 2018 was \$696.64, and the average hourly rate in 2019 was \$1,054.46.

The Commission finds that the record in this case makes it clear that the board members of the Knott District Board of Commissioners intended to withhold public disclosure of the benefits and the value of those benefits. Mr. Smith and Mr. Hamilton both testified at the January 22, 2020 hearing that the discussion and approval occurred during an executive session called during a Knott District Board of Commissioners'

---

<sup>87</sup> The information for the table was obtained from Knott District's audit reports filed with the Commission. The change in Net Position for 2014 and 2015 included income from Federal and State Grants of \$114,549 and \$198,571 respectively.

meeting.<sup>88</sup> Mr. Smith, Mr. Hamilton, and Mr. Jacobs could not provide the date of that meeting nor did they testify with specificity what the discussion was that occurred. Mr. Smith indicated from his testimony that he had called the executive session specifically to discuss health insurance benefits for Commissioners.<sup>89</sup> Further, Mr. Smith, Mr. Hamilton, nor Mr. Jacobs provided a reason as to why the discussion and the approval by the Knott District Board of Commissioners was not recorded for the public by either a Resolution of the Knott District Board of Commissioners or, at the very least, in the minutes of the meeting. The Commissioners' failure to record their actions violated KRS 61.815.

KRS 61.815 provides in relevant part:

[T]he following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:

- (a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;
- (b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;
- (c) No final action may be taken at a closed session; and
- (d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

In *Floyd County Board of Education v. Ratliff*, the Supreme Court of Kentucky found that:

KRS 61.815 provides that prior to going into an executive session, the public body must state the specific exception

---

<sup>88</sup> Case No. 2019-00268, January 22, 2020 Hearing, H.V.T. at 09:23:20 and 11:27:12.

<sup>89</sup> *Id.* at 09:23:13.

contained in the statute which is relied upon in order to permit a secret session. There must be specific and complete notification in the open meeting of any and all topics which are to be discussed during the closed meeting. In this case, the minutes of the Board do not reflect any mention of the 'proposed or pending litigation' exception to the Open Meetings Act. The specific reason given for a closed session must be the only topic of discussion while the Board convenes in such a secret session.<sup>90</sup>

There is no record whatsoever of the Knott District Board of Commissioners approving themselves health insurance benefits. The Knott District Board of Commissioners did not provide notice in the regular open meeting of the business to be discussed in that meeting pursuant to KRS 61.815. Further, the Knott District Board of Commissioners took final action in a closed session in violation of KRS 61.815. It is clear that the Knott District Board of Commissioners made every effort to prevent disclosure of their actions to the public. Further, throughout the proceedings in the instant case, Knott District continued to try and prevent disclosure of their actions and the value of the benefits they were receiving. As aforementioned, Knott District twice attempted to prevent public disclosure of the information by filing motions for confidential treatment specifically in relation to that information. Knott District Board of Commissioners' approval to give themselves health insurance benefits is in violation of the law. Therefore, Commissioners on the Knott District Board of Commissioners are not entitled to health insurance benefits and should immediately cease providing health insurance benefits to all Commissioners.

By approving health insurance benefits for themselves, the Knott District Board of Commissioners also violated the KRS 74.020(3). Each of the board members who

---

<sup>90</sup> *Floyd County Bd. of Educ. v. Ratliff*, 955 S.W.2d 921, 924 (1997).

participated in the executive session clearly undertook an official action resulting in a financial benefit to themselves as contemplated by KRS 74.020(3).

KRS 74.020(3) provides:

A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007 or 74.025.

Therefore, David Smith, Greg Mullins, Dale Hamilton, and Terry Jacobs all violated KRS 74.020(3) and may be removed from their positions as Commissioners on the Knott District Board of Commissioners. The Knott District Board of Commissioners' reliance upon PSC Staff Opinion 2013-012 as proof positive that they were allowed to give themselves health insurance benefits is misguided for several reasons. First, in rendering decisions to issues formally presented to it for resolution, the Public Service Commission is not bound by the opinions of Commission Staff in staff opinions. Staff opinions are only advisory. PSC Staff Opinion 2013-012 states:

This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Public Service Commission should the issues be formally presented for Commission resolution.<sup>91</sup>

Secondly, the Knott District Board of Commissioners completely ignored the portion of PSC Staff Opinion 2013-012, which warns of the possibility of removal of a commissioner from a water district's board under KRS 74.020(3). In fact PSC Staff Opinion 2013-012 states:

Extension of health insurance coverage to the members of Laurel District's Board of Commissioners represents a direct financial benefit to each members of the Board. Any vote to extend coverage to current members, therefore, will subject

---

<sup>91</sup> PSC Staff Opinion 2013-012 at 1.

any commissioner voting in favor of extension subject to possible removal.<sup>92</sup>

As aforementioned, the approval of the Knott District Board of Commissioners to give themselves health insurance benefits represented a direct financial benefit to each member of the Knott District Board of Commissioners. They are, therefore, subject to removal from the Knott District Board of Commissioners by the Public Service Commission pursuant to KRS 74.025. Although Mr. Smith and Mr. Hamilton testified that they relied on PSC Staff Opinion 2013-012 in discussing the approval of health insurance benefits,<sup>93</sup> it is evident that they failed to fully comprehend the opinion in its entirety or simply disregarded the possibility of removal for their actions. However, whether the Knott District Board of Commissioners did, in fact, rely upon PSC Staff Opinion 2013-012 cannot be known for sure as there is no record of the discussion or approval by the Knott District Board of Commissioners beyond its own Commissioners' testimony.

Also of concern is the overlap in employment between Knott District and the Knott County Fiscal Court. At the time the benefits were offered to Knott District's Commissioners, one of the Commissioners was a Deputy Judge of the Fiscal Court. Further, the record reflects that from, at least, 2016 to present, there has been at least one employee of Knott District who has also been an employee of the Knott County Fiscal Court. This relationship between Knott District and the Fiscal Court appears to have proven quite beneficial to the Knott District Board of Commissioners as it has allowed them to be aware of imminent changes to their benefits and allowed them to discuss the matter with the Fiscal Court without there being a record of such discussions.

---

<sup>92</sup> PSC Staff Opinion 2013-012 at 3.

<sup>93</sup> Case No. 2019-00268, January 22, 2020 Hearing, H.V.T. at 09:22:57 and 11:26:40.

The Commission finds that members of a water district's board of commissioners are not entitled to receive any compensation other than that specifically authorized under KRS Chapter 74. KRS 74.020(6) provides that each water district commissioner may receive an annual salary that shall not exceed \$3,600, "which shall be paid out of the water district fund," except that each commissioner who completes six instructional hours of water district management training in each calendar year may receive up to \$6,000 in that calendar year. KRS 74.050, which imposes additional duties on the commissioner who is elected treasurer of a water district's board, then states that:

[i]n addition to the compensation for commissioners as set out in KRS 74.020, as compensation for his or her services the treasurer shall receive an amount ... not to exceed two hundred dollars (\$200) per year.

By specifically authorizing and limiting the "salar[ies]" and "compensation" commissioners are entitled to receive, KRS 74.020(6) and KRS 74.050 appear to indicate that the Legislature intended to limit the total compensation for water district commissioners to the amounts specified therein.<sup>94</sup> Further, as aforementioned, KRS 74.020(3) prohibits any water district commissioner from participating in any official action that results in a "direct financial benefit" to the commissioner.<sup>95</sup> Since water district commissioners are vested

---

<sup>94</sup> See, *Fox v. Grayson*, 317 S.W.3d 1, 8-9 (Ky. 2010) ("It is a familiar and general rule of statutory construction that the mention of one thing implies the exclusion of another.").

<sup>95</sup> See, KRS 74.020(3); see also Ky. OAG 18-001 (Jan. 22, 2018) (where the Attorney General noted that simultaneous service on a fiscal court and water district board was "incompatible as a matter of public policy," because the statutory scheme allowed the county judge executive and fiscal court to appoint the water district's board and set their salary).

with all relevant powers to manage and oversee water districts,<sup>96</sup> except for the power to fix their salary authorized by KRS 74.020(6), which is assigned to the county judge executive and fiscal court,<sup>97</sup> a water district would be unable to provide its commissioners health insurance and other similar benefits without an official action by the water district commissioners.<sup>98</sup> Thus, by prohibiting water district commissioners from participating in official actions that directly benefit themselves financially, the General Assembly effectively prohibited water districts from receiving additional benefits to compensate them for their work on the board, which further indicates the General Assembly's intent to limit the total compensation of water district commissioners to amounts specifically authorized by statute. The Commission finds that the General Assembly intended to limit water districts' total compensation to commissioners for their service on a water district's board to amounts specifically authorized by KRS Chapter 74. Therefore, the Commission finds that Knott District may not offer benefits to the Commissioners on the Knott District Board of Commissioners pursuant to KRS Chapter 74 and should cease doing so immediately.

---

<sup>96</sup> KRS 74.020(1) ("A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district."); KRS 74.070 ("All corporate powers of the water district shall be exercised by, or under the authority of, its commission."); *see also* KRS 65A.080(1) (requiring the governing body of each "special purpose government entity" to adopt a budget and prohibiting any "special purpose government entity" from expending funds in a manner inconsistent with their budget and any amendment thereto).

<sup>97</sup> *See*, KRS 74.020(6)

<sup>98</sup> KRS 74.020(6) presumably gives the county judge executive and fiscal court the authority to fix the salary of the water district commissioners to avoid just this issue. Further, while KRS 74.050 authorizes the water district board to establish the additional compensation, if any, to be paid to the treasurer of the board, the treasurer could avoid violating the prohibition against taking official actions that benefit him financially by properly recusing himself from such an action. Conversely, there would be no viable way for water district commissioners to provide themselves insurance benefits without involving themselves in the decision to do so.

The Commission finds that the Commissioners of the Knott District Board of Commissioners violated KRS 61.815 and KRS 74.020(3) in approving health insurance benefits for themselves. That, pursuant to KRS 74.020(3), David Smith, Greg Mullins, Dale Hamilton, and Terry Jacobs can be removed their positions. That the Knott District Board of Commissioners is not entitled to health insurance benefits now or in the future. Finally, that the Commission disallows any recovery of expenses associated with providing health, dental, vision, and life insurance to Knott District’s Commissioners.

SUMMARY OF REVENUE AND EXPENSES

The Staff Report summarizes Knott District’s pro forma income statement as follows:

|                                   | 2018<br>Annual Report | Pro Forma<br>Adjustments | Staff<br>Pro Forma<br>Operations |
|-----------------------------------|-----------------------|--------------------------|----------------------------------|
| Operating Revenues                | \$2,168,528           | \$ (26,014)              | \$2,142,514                      |
| Operating Expenses                | <u>3,308,022</u>      | <u>(385,626)</u>         | <u>2,922,396</u>                 |
| Net Operating Income              | (1,139,494)           | 359,612                  | (779,882)                        |
| Gain on Disposition of Property   | 7,248                 | (7,248)                  | 0                                |
| Interest Income                   | 975                   | 0                        | 975                              |
| Nonutility Income                 | <u>8,846</u>          | <u>0</u>                 | <u>8,846</u>                     |
| Income Available for Debt Service | <u>\$ (1,122,425)</u> | <u>\$352,364</u>         | <u>\$ (770,061)</u>              |

MODIFICATIONS TO STAFF’S FINDINGS

In its December 4, 2019 comments, Knott District proposed an adjustment to revenues and expenses to reflect current and expected operating conditions in relation to the pending Corps of Engineers contract to withdraw up to four million gallons from Carr Creek Lake.<sup>99</sup> In its December 4, 2019 comments, Letcher District proposed five

---

<sup>99</sup> Case No. 2019-00268, Knott County Water and Sewer District’s Comments on Commission Staff’s Report (filed Dec. 4, 2019) at 1-3.



adjustments and made two additional comments to the Staff Report, which are discussed in the comments below.<sup>100</sup> Additionally, Letcher District requested clarification of the adjustment to Employee Health Insurance Benefits.<sup>101</sup> In its December 4, 2019 comments, the Attorney General proposed implementing a five year phase rate structure instead of a three-year phase-in as proposed by Staff.<sup>102</sup> On December 5, 2019, Hindman adopted the comments filed by Letcher District in regards to the Staff Report.<sup>103</sup>

In the Staff Report, Staff proposed to accept or reject adjustments made by Knott District in its Application and proposed additional adjustments. The Commission accepts the findings contained in the Staff Report, but makes three adjustments with additional comments below.

#### Pro Forma Revenues from Sales for Resale

In its December 4, 2019 comments, Letcher District states that pro forma revenue does not include additional sales of \$33,000.<sup>104</sup> Letcher District believes the \$33,000 should be included in the pro forma figure based on 11,000,000 gallons of water not billed due to a defective meter on Knott District's system as reported in its 2018 Annual Report as 'Other Water Usage.'<sup>105</sup> As the defective meter has subsequently been repaired, an

---

<sup>100</sup> Case No. 2019-00268, Letcher County Water and Sewer District's Comments Regarding the Findings and Recommendations Contained in Commission Staff Report (filed Dec. 4, 2019) at 1-7.

<sup>101</sup> *Id.* at 4.

<sup>102</sup> Case No. 2019-00268, Attorney General's Comments on Staff Report (filed Dec. 4, 2019) at 2-4.

<sup>103</sup> Case No. 2019-00268, City of Hindman, Kentucky's Comments Regarding the Findings and Recommendations Contained in the Commission Staff Report (filed Dec. 5, 2019).

<sup>104</sup> Case No. 2019-00268, Letcher County Water and Sewer District's Comments Regarding the Findings and Recommendations Contained in Commission Staff Report (filed Dec. 4, 2019) at 1.

<sup>105</sup> *Id.* at 1-2.

adjustment would be required to account for the sales that would have been recorded had the meter functioned correctly. The Commission agrees with Letcher District's comment and finds that the sales revenue needs to be increased to account for the defective meter that has been repaired. Therefore, an adjustment increasing Sales from Resale by \$33,000 is appropriate.

#### Provision of Free Water Service to Sewer Division

In its December 4, 2019 comments, Letcher District states that Knott District reported in its 2018 Annual Report that 2,400,000 gallons of water was provided to its Sewer Division at no charge.<sup>106</sup> Letcher District cited to Case No. 2017-00417<sup>107</sup> in which the Commission found that while a water utility may provide free service, "revenue must be imputed for that free service in determining the wholesale rates for sales to commission regulated utilities to ensure that the wholesale customers are not paying for that free service."<sup>108</sup> Letcher District proposed that Knott District's pro forma total Operating Revenues should be increased by \$7,200.<sup>109</sup>

The Commission finds that Case No. 2017-00417 is not applicable in the instant matter. Knott County Water Division and Sewer Division are a commonly held enterprise. Therefore, the treatment of the provision of free water service from one division to the other is different than providing free water service to a separate entity. While the Commission finds that there should be some treatment for the provision of free water to

---

<sup>106</sup> *Id.* at 2.

<sup>107</sup> Case No. 2017-00417, *Electronic Proposed Adjustment of the Wholesale Water Service Rates of Lebanon Water Works* (Ky. PSC July 12, 2018).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

the sewer division for ratemaking purposes, it disagrees with the treatment suggested by Letcher District. Rather than record the revenues at the wholesale rate for the amount of water used by the Sewer Division, the Commission will decrease expenses by \$2,357 to reflect the cost to produce the water used by the Sewer Division as shown in the calculation below.

|   |                        |
|---|------------------------|
| Purchased Power Expense                             | \$ 394,946             |
| Chemical Expense                                    | <u>207,073</u>         |
| Total Expenses Related to Production of Water       | 602,019                |
| Divide by: Total Water Produced (in 1,000s)         | <u>613,067</u>         |
| Cost to Produce per 1,000 Gallons                   | 0.98                   |
| Times: Water Delivered to Sewer Division (in 1000s) | <u>2,400</u>           |
| Adjustment  | <u><u>\$ 2,357</u></u> |

#### Capitalization of Expenses Associated with Tap Fees

Letcher District states that the cost for water taps need to be capitalized and the record contains no evidence to support the assumption that tap fee revenue equals the actual costs to perform taps.<sup>110</sup> Letcher District also disagrees with the amounts proposed by Knott District because the rate was placed into effect 12 years ago and no longer represents current costs.<sup>111</sup> Letcher District believes that Knott District, at a minimum, should be required to review its cost and update its tap fee to reflect current costs.<sup>112</sup> The argument that it is likely that Knott District is not collecting the actual cost

---

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 3.

of service to install new taps is a compelling one. According to Knott District's tariff, the amount charged to install a tap is \$600 for a 5/8-inch meter.<sup>113</sup> The effective date on the tariff sheet is stamped September 5, 2007, which means that Knott District's tap fee has not been reviewed since then, in which it increased from \$200 to the current rate. Because the tap fee has not been reviewed in approximately 13 years, it is extremely unlikely that Knott District is collecting at or near the actual cost to provide the service. For this reason, the Commission finds that Knott District should review its cost to install water taps and update its tariff to reflect the actual cost of service.

#### Allocation of Commissioner Salaries to Sewer Division

Letcher District states that the allocation of Commissioners' Salaries to the sewer division at a rate of 5.35 percent is incorrectly allocated, and that the cost needs to be allocated equally between the Water and Sewer Divisions.<sup>114</sup> Letcher District states that such an approach is more appropriate, as the "Commissioner's duties and responsibilities to each Division and its customers do not vary based upon the number of customers each Division serves."<sup>115</sup> The Commission disagrees with Letcher District's comment about the treatment of the allocation. Recent Commission Orders<sup>116</sup> adopted Staff Reports that

---

<sup>113</sup> Knott County Water and Sewer District Tariff, page 6 of 13.

<sup>114</sup> Case No. 2019-00268, Letcher County Water and Sewer District's Comments Regarding the Findings and Recommendations Contained in Commission Staff Report (filed Dec. 4, 2019) at 3.

<sup>115</sup> *Id.*

<sup>116</sup> In each of the following cited proceedings, the Commission adopted the findings that were contained in each Staff Report as if fully set out in the Final Order. Case No. 2012-00309, *Application of Southern Water and Sewer District for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC: Staff Report issued Feb. 15, 2013; Final Order issued July 12, 2013); Case No. 2013-00350, *Alternative Rate Adjustment Filing Garrison-Quincy-Ky-O-Heights Water District* (Ky. PSC: Staff Report issued Jan. 17, 2014; Final Order issued Feb 19, 2014); Case No. 2017-00074, *Application of Western Lewis Rectorville Water and Gas District for Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076* (Ky. PSC: Staff Report issued July 17, 2017; Final Order issued Oct. 18, 2017); Case No. 2017-00371, *Application of Symsonia Water and Sewer District for Rate Adjustment Pursuant to*

allocated expenses based on the number of customers rather than an equal 50-50 split between divisions. Therefore, the Commission finds that Letcher District's request to allocate expenses equally between the divisions be denied.

#### Employee Health Insurance Benefits

Letcher District states that the Staff Report failed to show the actual calculations used to determine the level of the recommended disallowance of adjustment (H), and, therefore, the reader of the Report is unable to recreate the adjustment.<sup>117</sup> Letcher District also commented that the Commission should require Staff to publish its calculations and, if it failed to use the national averages reported by the Bureau of Labor Statistics, recalculate the disallowance using the national averages.<sup>118</sup>

The Commission agrees with Letcher District's comment that the table used in the Staff Report does not include enough information to allow readers to recalculate the pro forma health insurance expense. Therefore, the Commission finds that in order to create clarity on the issue, additional information and tables will be provided in this Order. The Commission notes that the original health insurance calculation in the Staff Report included nine employees. This inadvertently included the employee solely dedicated to Knott District's wastewater operations. An adjusted table, which excludes the wastewater employee, fully shows the breakdown by policy type and total premium as shown below.

---

807 KAR 5:076 (Ky. PSC: Staff Report issued Jan. 3, 2018; Final Order issued Mar. 30, 2018); and Case No. 2018-00117, *Application of Ledbetter Water District for an Alternative Rate Adjustment* (Ky. PSC: Staff Report issued July 16, 2018; Final Order issued Sep. 10, 2018).

<sup>117</sup> Case No. 2019-00268, Letcher County Water and Sewer District's Comments Regarding the Findings and Recommendations Contained in Commission Staff Report (filed Dec. 4, 2019) at 4.

<sup>118</sup> *Id.*

| Policy Type                      | Total Premium   | Contribution Percentage | Less: Expected Employee Contribution | Pro Forma Monthly Premium |
|----------------------------------|-----------------|-------------------------|--------------------------------------|---------------------------|
| LivingWell CDHP - Single         | \$ 709          | 6.97%                   | \$ (49)                              | \$ 660                    |
| LivingWell PPO - Single          | 729             | 11.30%                  | (82)                                 | 647                       |
| LivingWell CDHP - Couple         | 1,334           | 22.84%                  | (305)                                | 1,029                     |
| LivingWell PPO - Parent Plus     | 1,037           | 22.64%                  | (235)                                | 802                       |
| LivingWell PPO - Cross Reference | 877             | 17.97%                  | (158)                                | 719                       |
| LivingWell PPO - Family          | 1,768           | 37.47%                  | (662)                                | 1,105                     |
| LivingWell CDHP - Family         | 1,490           | 24.04%                  | (358)                                | 1,132                     |
| Living Well Basic CDHP - Family  | 1,615           | 19.32%                  | (312)                                | 1,303                     |
|                                  | <u>\$ 9,559</u> |                         | <u>\$ (2,161)</u>                    | <u>\$ 7,398</u>           |

In addition, the Commission makes the following comments and adjustment to the calculation of the health insurance adjustment that was in the Staff Report. The table below summarizes the revised adjustment. In the calculation of pro forma Health Benefits, Staff inadvertently understated the test year benefits by \$2,560. This has been corrected, and results in a total revised decrease to health benefits of \$19,570.

| Type of Premium                 | Employer Contributions | Times: Average Employee Contribution Rate | Monthly Premium Adjustment | Pro Forma Monthly Premium |
|---------------------------------|------------------------|---|----------------------------|---------------------------|
| Health Insurance                | \$ 9,559               | Various                                   | \$ (2,161)                 | \$ 7,398                  |
| Life Insurance                  | 16                     |   |                            | 16                        |
| Dental Insurance                | 1,309                  | 60%                                       | (785)                      | 523                       |
| Vision Insurance                | 230                    |   |                            | 230                       |
| Total Pro Forma Monthly Premium |                        |   |                            | 8,167                     |
| Times: 12 Months                |                        |   |                            | <u>12</u>                 |
| Total Annual Pro Forma Premium  |                        |   |                            | 98,004                    |
| Less: Test Year                 |                        |   |                            | <u>(117,574)</u>          |
| Adjustment                      |                        |   |                            | <u>\$ (19,570)</u>        |

As a result of the two changes discussed above, the Commission finds that an additional decrease of \$10,312 is required to calculate the final revenue requirement and is reflected in the modifications to pro forma operations at the end of the Commission's comments.

Health Insurance Credit

As was discussed above, the Commission finds that an adjustment to disallow some of the expenses associated with the health insurance credit is warranted. Because of the nature of the contracted rates with KEHP, the Commission finds that it should limit the disallowance of the benefit to the stated percentage rate for the plan the credit was based on, which would be the Living Well CDHP Single rate. As shown in the calculation below, the Commission finds that it should reduce the final revenue requirement by \$1,713.

|   |                 |
|---|-----------------|
| Insurance Credits Paid in 2018                | \$ 24,582       |
| Times: Lowest Cost Health Insurance Plan Rate | <u>6.97%</u>    |
| Decrease                                      | <u>\$ 1,713</u> |

Depreciation Expense

Letcher District states that the 1979 National Association of Utility Regulatory Commissions (NARUC) publication (Depreciation Practices for Small Utilities) that Knott District used to calculate its depreciation does not reflect the advancements in technology, construction, and engineering that have occurred in the last 40 years.<sup>119</sup> Letcher District comments that the Commission should update the depreciation rates, for

---

<sup>119</sup> *Id.* at 6.

certain assets, due to new technologies, and Knott District should, instead, use the upper limit of the NARUC range for transmission and distribution mains and water treatment facilities, resulting in a decrease of \$94,321 to pro forma depreciation expense.<sup>120</sup>

Historically, the Commission has relied upon the NARUC Study to determine the reasonableness of depreciation practices of small water utilities. In the Staff Report, the mid-point of the NARUC ranges were used for all of Knott District's assets.<sup>121</sup> Staff based its decision to use the mid-point of the ranges for all of Knott District's assets because the record did not provide any evidence that contradicted this Commission precedent.<sup>122</sup> Therefore, the Commission finds that it is reasonable to use the mid-point of the NARUC ranges to determine the depreciation expense for Knott District.

#### Calculation of Debt Service Expense and Working Capital

Letcher District maintains that since Knott District has already made the principal and interest payments on its long-term debts for 2019, those payments have been recovered through Knott District's existing rates. Therefore, only debt service payments that will be made after new rates are placed into effect should be considered in determining Knott District's debt service coverage. Otherwise, the rates will not accurately reflect the actual cost of service.<sup>123</sup> Therefore, Letcher District asserts that

---

<sup>120</sup> *Id.*

<sup>121</sup> Staff Report at 14-15.

<sup>122</sup> Case No. 2017-00070, *Electronic Application of Monroe County Water District for Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Jan. 12, 2018) at 10. Case No. 2018-00017, *Electronic Application of Martin County Water District for an Alternative Rate Adjustment* (Ky. PSC Nov. 5, 2018) at 21, which adopted the findings of the Staff Report, which accepted the utility's request to utilize the mid-point of the NARUC ranges.

<sup>123</sup> Case No. 2019-00268, Letcher County Water and Sewer District's Comments Regarding the Findings and Recommendations Contained in Commission Staff Report (filed Dec. 4, 2019) at 6-7.



debt service expense should be based upon the average of debt service payments for the period from 2020 to 2024.<sup>124</sup> The Commission finds that because the 2019 payments have already been made, and, at the time of this Order, the calendar year 2019 has passed, the five-year average between 2020 and 2024 would be more appropriate to calculate Knott District's debt service. However, the Commission disagrees with the Debt Service Coverage that Letcher District calculated. Therefore, the Commission finds that the average Annual Principal and Interest Payments should be reduced to \$47,791 as shown in the calculation below.

| Year  | Annual<br>Payment       |
|---|-------------------------|
| 2020  | \$ 80,003               |
| 2021  | 79,753                  |
| 2022  | 47,987                  |
| 2023  | 15,687                  |
| 2024  | <u>15,526</u>           |
| Total   | 238,954                 |
| Divide by: 5 years                            | <u>5</u>                |
| Average Annual Principal and Interest Payment | <u><u>\$ 47,791</u></u> |

The table below demonstrates the impact of the adjustments made by the Commission, and is further supported by Appendix B to this Order.

---

<sup>124</sup> *Id.*

|                                   | <u>Staff<br/>Pro Forma<br/>Operations</u> | <u>Commission<br/>Adjustments</u> | <u>Final<br/>Pro Forma<br/>Operations</u> |
|-----------------------------------|---|-----------------------------------|---|
| Operating Revenues                | \$ 2,142,514                              | \$ 33,000                         | \$ 2,175,514                              |
| Operating Expenses                | <u>2,922,396</u>                          | <u>(14,382)</u>                   | <u>2,908,014</u>                          |
| Net Operating Income              | (779,882)                                 | 47,382                            | (732,500)                                 |
| Gain on Disposition of Property   | -   |                                   | -   |
| Interest Income                   | 975                                       |                                   | 975                                       |
| Nonutility Income                 | <u>8,846</u>                              |                                   | <u>8,846</u>                              |
| Income Available for Debt Service | <u>\$ (770,061)</u>                       | <u>\$ 47,382</u>                  | <u>\$ (722,679)</u>                       |

#### Pending Purchased Water Contract with the Corps of Engineers

The Commission finds that because Knott District has not received documented approval from the Corps of Engineers to withdraw four million gallons from Carr Creek Lake and is not currently being charged at the projected four million gallon per day withdrawal rate, the proposed adjustment is not known and measureable. As aforementioned, Knott District ratepayers should not be expected to pay for an expense that has not been incurred by the water district and will not be incurred until such time as Knott District receives approval of the Corps of Engineers. Therefore, the Commission finds that the proposed adjustment in Knott District's Comments cannot be included in the final pro forma calculation.

#### Health Insurance Benefits to Commissioners

As discussed above, the Commission disallows any recovery of expenses associated with providing health, dental, vision, and life insurance to Knott District's Commissioners.

## REVENUE REQUIREMENTS

Based upon the Commission's findings and determinations herein, Knott District requires an increase in revenues from its retail water service rates of \$677,818, or 68.26 percent above pro forma present rate retail service revenues, as shown below:

|  |                    |
|--|--------------------|
| Pro Forma Operating Expenses                         | \$ 2,908,014       |
| Plus: Average Annual Principal and Interest Payments | 47,791             |
| Additional Working Capital                           | <u>9,558</u>       |
| Overall Revenue Requirement                          | 2,965,363          |
| Less: Other Operating Revenue                        | (33,930)           |
| Interest Income                                      | (975)              |
| NonUtility Income                                    | (8,846)            |
| Proposed Wholesale Sales Revenue                     | <u>(1,250,850)</u> |
| Revenue Required from Rates                          | 1,670,762          |
| Less: Pro Forma Present Rate Service Revenues        | <u>(992,944)</u>   |
| Required Revenue Increase                            | <u>\$ 677,818</u>  |
| Percentage Increase                                  | <u>68.26%</u>      |

## RATE DESIGN

In the December 4, 2019 comments to the Staff Report, the Attorney General proposed that the Commission approve a five-year phase-in plan utilizing the revenue requirement calculated by Staff.<sup>125</sup> If the Commission were to accept the Attorney General's proposal, Knott District would potentially experience a shortfall from retail revenue of approximately \$1,398,757.<sup>126</sup> This shortfall may result in an impairment to

---

<sup>125</sup> Case No. 2019-00268, Attorney General's Comments on Staff Report (filed Dec. 4, 2019) at 2-4.

<sup>126</sup> Revenue shortfall in years 1-4 based on billing analysis provided by Knott District: Year 1, (\$558,939), Year 2 (\$420,840), Year 3, (\$283,241), Year 4 (\$142,936), Year 5 \$7,199. Total shortfall is (\$1,398,757).

Knott District's operations. Therefore, the Commission finds that it cannot approve a five-year phase in plan.

Although Staff determined that Knott District's proposed three-year phase in of rates was acceptable, the Commission finds that a two-year phase in of rates is more appropriate in this instance. Knott District has not had a rate increase in approximately 17 years, thereby making the need for a rate increase more urgent. The retail water service rates in Year One are calculated in order to recover approximately 66.6 percent of the retail revenue increase for Knott District. The retail water service rates in Year Two are calculated in order to recover the full amount of the retail revenue increase for Knott District. The phase-in approach is utilized in order to reduce rate shock for the retail customers of Knott District.

The monthly bill for the Phase 1 rates of a typical residential customer using 3,500 gallons of water will increase from \$26.70 to \$38.89, an increase of \$12.19, or 45.66 percent. The monthly bill for the Phase 2 rates of a typical residential customer will increase from \$38.89 to \$44.73, an increase of \$5.84, or 15.02 percent.

#### SUMMARY

After consideration of the evidence of record and being otherwise sufficiently advised, the Commission finds that:

#### Staff Report

1. The findings contained in the Staff Report are supported by the evidence of record and are reasonable.

2. The Commission has historically used a Debt Service Coverage (DSC) method to calculate the revenue requirement for water districts or associations with

outstanding long-term debt. Application of the Commission's DSC method to Knott District's pro forma operations results in an Overall Revenue Requirement of \$2,965,363. A revenue increase of \$646,151 from water service rates is necessary to generate the Overall Revenue Requirement.

3. The water service rates proposed by Knott District should be denied.

4. The water service rates set forth in the Appendices to this Order are fair, just, and reasonable and should be approved.

#### Knott District Board of Commissioners

1. The Knott District Board of Commissioners violated KRS 61.815 and KRS 74.020(3) in approving health insurance benefits for themselves.

2. As Commissioners of the Knott District Board of Commissioners who approved health insurance benefits for themselves, David Smith, Greg Mullins, Dale Hamilton, and Terry Jacobs may be removed their positions as Commissioners by the Public Service Commission.

3. The Knott District Board of Commissioners is not entitled to health insurance benefits. The alleged 2016 approval of health insurance benefits for Commissioners is voidable pursuant to KRS 61.848. Further, it is the position of the Commission that the Knott District Board of Commissioners cannot approve health insurance benefits for future Commissioners of the Knott District Board of Commissioners.

IT IS THEREFORE ORDERED that:

1. The findings contained in the Staff Report are adopted and incorporated by reference into this Order as if fully set out herein.

2. The general service rates proposed by Knott District are denied.
3. The Phase 1 rates set forth in the Appendix to this Order are approved for service rendered by Knott District on and after the date of this Order.
4. The Phase 2 rates set forth in the Appendix to this Order are approved for service rendered by Knott District effective on the first anniversary of the date of this Order.
5. Within 20 days of the date of entry of this Order, Knott District shall file with this Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates and charges approved herein and their effective date and stating that the rates and charges were authorized by this Order.
6. One month prior to the effective date of the Phase 2 rates, Knott District shall publish notice with the rate schedule as set forth in the Appendix to this Order.
7. Knott District shall review and update its tariff to reflect the current costs to install new water taps.
8. Knott District shall immediately terminate any benefits beyond the \$6,000 salary to Commissioners on the Knott District Board of Commissioners. Knott District shall provide within 20 days of the date of entry of this Order documentary evidence showing that the provision of benefits to Commissioners has been terminated.
9. Given that the poverty level of Knott County is 34.6 percent,<sup>127</sup> and the unemployment rate of Knott County is 6.2 percent when the national unemployment rate

---

<sup>127</sup> United States Department of Agriculture Economic Research Service, Percent of total population in poverty, 2017: Kentucky (October 23, 2019), <https://data.ers.usda.gov/reports.aspx?ID=17826>.

is 3.3 percent,<sup>128</sup> Knott District should consider seeking restitution from those Commissioners of the Knott District Board of Commissioners who, since 2017, availed themselves of benefits in violation of KRS 74.020(3).

10. This case will remain open for the purpose of ensuring that those requirements specifically ordered herein in Paragraph 8 above are met by Knott District.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

---

<sup>128</sup> October 2019 Preliminary Unemployment Rates by County Local Area Unemployment Statistics (November 20, 2019), [https://kystats.ky.gov/Content/Reports/201910\\_CountyLAUSMaps.pdf](https://kystats.ky.gov/Content/Reports/201910_CountyLAUSMaps.pdf).

By the Commission

ENTERED  
JAN 31 2020  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director *For G. R. Pinson*

Case No. 2019-00268



APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2019-00268 DATED **JAN 31 2020**

The following rates and charges are prescribed for the customers in the area served by Knott County Water and Sewer District. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of the Commission prior to the effective date of this Order.

Monthly Water Rates

Phase 1

5/8-3/4-Inch Meter

|       |        |         |         |                   |
|-------|--------|---------|---------|-------------------|
| First | 2,000  | Gallons | \$25.84 | Minimum bill      |
| Next  | 8,000  | Gallons | 8.70    | per 1,000 Gallons |
| Over  | 10,000 | Gallons | 6.96    | per 1,000 Gallons |

1-Inch Meter

|       |        |         |         |                   |
|-------|--------|---------|---------|-------------------|
| First | 5,000  | Gallons | \$51.94 | Minimum bill      |
| Next  | 5,000  | Gallons | 8.70    | per 1,000 Gallons |
| Over  | 10,000 | Gallons | 6.96    | per 1,000 Gallons |

2-Inch Meter

|       |        |         |          |                   |
|-------|--------|---------|----------|-------------------|
| First | 15,000 | Gallons | \$130.24 | Minimum bill      |
| Over  | 15,000 | Gallons | 6.96     | per 1,000 Gallons |

3-Inch Meter

|       |        |         |          |                   |
|-------|--------|---------|----------|-------------------|
| First | 30,000 | Gallons | \$234.64 | Minimum bill      |
| Over  | 30,000 | Gallons | 6.96     | per 1,000 Gallons |

4-Inch Meter

|       |        |         |          |                   |
|-------|--------|---------|----------|-------------------|
| First | 50,000 | Gallons | \$373.84 | Minimum bill      |
| Over  | 50,000 | Gallons | 6.96     | per 1,000 Gallons |

6-Inch Meter

|       |         |         |          |                   |
|-------|---------|---------|----------|-------------------|
| First | 100,000 | Gallons | \$721.84 | Minimum bill      |
| Over  | 100,000 | Gallons | 6.96     | per 1,000 Gallons |

|                |  |  |        |                   |
|----------------|--|--|--------|-------------------|
| Wholesale Rate |  |  | \$3.27 | per 1,000 Gallons |
|----------------|--|--|--------|-------------------|

## Monthly Water Rates

### Phase 2 – Effective one year after Phase 1

#### 5/8-3/4-Inch Meter

|       |        |         |         |                   |
|-------|--------|---------|---------|-------------------|
| First | 2,000  | Gallons | \$29.50 | Minimum bill      |
| Next  | 8,000  | Gallons | 10.15   | per 1,000 Gallons |
| Over  | 10,000 | Gallons | 7.85    | per 1,000 Gallons |

#### 1-Inch Meter

|       |        |         |         |                   |
|-------|--------|---------|---------|-------------------|
| First | 5,000  | Gallons | \$59.95 | Minimum bill      |
| Next  | 5,000  | Gallons | 10.15   | per 1,000 Gallons |
| Over  | 10,000 | Gallons | 7.85    | per 1,000 Gallons |

#### 2-Inch Meter

|       |        |         |          |                   |
|-------|--------|---------|----------|-------------------|
| First | 15,000 | Gallons | \$149.95 | Minimum bill      |
| Over  | 15,000 | Gallons | 7.85     | per 1,000 Gallons |

#### 3-Inch Meter

|       |        |         |          |                   |
|-------|--------|---------|----------|-------------------|
| First | 30,000 | Gallons | \$267.70 | Minimum bill      |
| Over  | 30,000 | Gallons | 7.85     | per 1,000 Gallons |

#### 4-Inch Meter

|       |        |         |          |                   |
|-------|--------|---------|----------|-------------------|
| First | 50,000 | Gallons | \$424.70 | Minimum bill      |
| Over  | 50,000 | Gallons | 7.85     | per 1,000 Gallons |

#### 6-Inch Meter

|       |         |         |          |                   |
|-------|---------|---------|----------|-------------------|
| First | 100,000 | Gallons | \$817.20 | Minimum bill      |
| Over  | 100,000 | Gallons | 7.85     | per 1,000 Gallons |

#### Wholesale Rate

\$3.27 per 1,000 Gallons

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2019-00268 DATED **JAN 3 1 2020**

|  | Staff<br>Pro-Forma | Commission<br>Adjustments | Final<br>Pro Forma |
|--|--------------------|---------------------------|--------------------|
| Operating Revenues                       |                    |                           |                    |
| Total Metered Retail Sales               | \$ 992,944         |                           | \$ 992,944         |
| Sales for Resale                         | 1,115,640          | 33,000                    | 1,148,640          |
| Other Water Revenues                     |                    |                           |                    |
| Miscellaneous Service Revenues           | 12,894             |                           | 12,894             |
| Forfeited Discounts                      | 21,036             |                           | 21,036             |
|  | <hr/>              | <hr/>                     | <hr/>              |
| Total Operating Revenues                 | 2,142,514          | 33,000                    | 2,175,514          |
| Operating Expenses                       |                    |                           |                    |
| Operation and Maintenance Expenses       |                    |                           |                    |
| Salaries and Wages - Employees           | 486,368            | (1,713)                   | 484,655            |
| Salaries and Wages - Commissioners       | 28,585             |                           | 28,585             |
| Employee Pensions and Benefits           | 216,205            | (10,312)                  | 205,893            |
| Purchased Water                          | 11,869             |                           | 11,869             |
| Purchased Power                          | 394,946            | (2,357)                   | 392,589            |
| Chemicals                                | 207,073            |                           | 207,073            |
| Materials and Supplies                   | 88,215             |                           | 88,215             |
| Contractual Services                     | 238,987            |                           | 238,987            |
| Rental of Equipment                      | 3,507              |                           | 3,507              |
| Transportation Expenses                  | 41,454             |                           | 41,454             |
| Insurance- Gen. Liab. & Workers Comp     | 56,383             |                           | 56,383             |
| Miscellaneous Expense                    | 68,426             |                           | 68,426             |
|  | <hr/>              | <hr/>                     | <hr/>              |
| Total Operation and Maintenance Expenses | 1,842,018          | (14,382)                  | 1,827,636          |
| Taxes Other Than Income                  | 37,867             |                           | 37,867             |
| Depreciation                             | 1,042,511          |                           | 1,042,511          |
|  | <hr/>              | <hr/>                     | <hr/>              |
| Total Operating Expenses                 | 2,922,396          | (14,382)                  | 2,908,014          |
| Net Operating Income                     | (779,882)          | 47,382                    | (732,500)          |
| Gain on Disposition of Property          | -                  |                           | -                  |
| Interest Income                          | 975                |                           | 975                |
| Nonutility Income                        | 8,846              |                           | 8,846              |
|  | <hr/>              | <hr/>                     | <hr/>              |
| Income Available to Service Debt         | \$ (770,061)       | \$ 47,382                 | \$ (722,679)       |

\*L Allyson Honaker  
Goss Samford, PLLC  
2365 Harrodsburg Road, Suite B325  
Lexington, KENTUCKY 40504

\*Larry Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Gerald E Wuetcher  
Attorney at Law  
STOLL KEENON OGDEN PLLC  
300 West Vine Street  
Suite 2100  
Lexington, KENTUCKY 40507-1801

\*Mark Lewis  
General Manager  
Letcher County Water and Sewer District  
3443 US 119 North  
Mayking, KY 41837

\*Jared Salmons  
Knott County Water & Sewer District  
474 Highway 1087 W  
Leburn, KY 41831

\*Mark David Goss  
Goss Samford, PLLC  
2365 Harrodsburg Road, Suite B325  
Lexington, KENTUCKY 40504

\*Jeremy R Morgan  
Attorney at Law  
PO Box 1268  
Hazard, KENTUCKY 41702

\*Calvin R Tackett  
Esquire  
40 Main Street  
Whitesburg, KENTUCKY 41858

\*Justin M. McNeil  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Katelyn L. Brown  
Attorney  
STOLL KEENON OGDEN PLLC  
300 West Vine Street  
Suite 2100  
Lexington, KENTUCKY 40507-1801

\*Knott County Water & Sewer District  
7777 Big Branch Road  
Vicco, KY 41773