

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE)
WATER SERVICE RATES OF FRANKFORT) CASE NO. 2008-00250
ELECTRIC AND WATER PLANT BOARD)

ORDER

Frankfort Electric and Water Plant Board ("Plant Board") has filed an application for rehearing in which it requests that the Commission reconsider and modify the final Order in this case.¹ By this Order, the Commission denies the application for rehearing.

On April 6, 2009, the Commission issued an Order in this case in which we approved a rate increase to the Plant Board's six public utility wholesale customers. The Plant Board initially proposed an increase from \$1.539 per 1,000 gallons to \$1.814 per 1,000 gallons. The Commission disallowed certain expenses to be allocated to the wholesale customers and ultimately approved a rate of \$1.704 per 1,000 gallons.

One of the issues that was raised in this case was the inclusion and allocation of rate case expenses in calculating a reasonable rate for the Plant Board's wholesale customers. The Plant Board initially sought to recover \$68,000 of expenses related to the rate case from its non-water-producing wholesale customers. This figure represented an estimated cost of the cost-of-service study plus other expenses related

¹ Although the document is styled as a Motion to Reconsider and Modify Order, the Plant Board references KRS 278.400, and the Commission has, accordingly, treated the motion as an application for rehearing.

to the rate case. To substantiate this claim, Commission Staff requested at the hearing that the Plant Board provide an itemized list and invoices for the actual expenses related to the rate case.

In its post-hearing response, the Plant Board provided an itemized list of rate case expenses, which included \$25,726.61 for the cost-of-service study and \$25,621.54 for the costs incurred by its consultant to review materials and attend the hearing, but provided only one invoice in the amount of \$13,107.98 as evidence of these itemized costs. The Commission allowed only \$13,107.98 of the total proposed rate case expenses to be allocated to the wholesale customers. We stated:

The Commission does not permit expenses that are inadequately documented. As the proponent of the rate adjustment, the Plant Board bears the burden of demonstrating the reasonableness of the expenses that it seeks to include in the proposed wholesale rate. In failing to submit detailed invoices in support of the claimed expenses, it has failed to meet this burden. Accordingly, we find that only the expenses for which invoices were supplied should be recovered in rates.²

On April 7, 2009, the Plant Board applied for rehearing, pursuant to KRS 278.400, to address the lone issue of the inclusion of rate case expenses. The Plant Board attached additional invoices from its consultant totaling \$52,098.15 and argued that these invoices should be considered in the determination of a fair and reasonable rate. The invoice for \$13,107.98 that was previously submitted to the Commission was dated March 9, 2009, and each of the other invoices attached to the application for rehearing were dated between January 16, 2008 and February 18, 2009.

² Order of April 6, 2009 at 7.

KRS 278.400³ provides that “[u]pon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.” The statute is intended to provide finality to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearing. It requires parties to Commission proceedings to use reasonable diligence in the preparation and presentation of their case and serves to prevent piecemeal litigation of issues.

The invoices attached to the Plant Board’s petition were available to the Plant Board prior to the closing of the record. Commission Staff explicitly requested at hearing that invoices supporting rate case expenses be provided. Only one invoice was provided. The Commission has consistently denied similar applications for rehearing on the basis that evidence the applicant offers was available at the original hearing.⁴

³ KRS 278.400 provides:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders and make and enter such order as it deems necessary.

⁴ See, e.g., Case No. 2001-00423, *Application of Shadow Wood Subdivision Sewer Service*, at 3 (Ky. PSC Oct. 15, 2002); Case No. 1998-00426, *Application of Louisville Gas and Electric*, at 3 (Ky. PSC Feb. 17, 2000); Case No. 1996-00524, *Examination by the Public Service Commission of the Fuel Adjustment Clause of the Louisville Gas and Electric Company*, at 2-3 (Ky. PSC Mar. 11, 1999).

The Plant Board cites several cases in its reply brief to demonstrate that the Commission has considered additional evidence in prior cases on rehearing.⁵ The facts and reasoning of these cases, however, are distinguishable to the case at hand. For example, in Case No. 2000-00120, the Attorney General objected to the utility's introduction of evidence introduced at initial hearing at any rehearing, and he cited Case No. 1996-00524, *Louisville Gas and Electric* (Ky. PSC Mar. 11, 1999), for support.⁶ The Commission ruled against the Attorney General on that issue and stated that the *Louisville Gas and Electric* case involved a different issue. We stated, "In that [*Louisville Gas and Electric*] proceeding, we refused to consider evidence presented in a petition for rehearing that clearly existed at the time of the initial hearing and that the petitioner for rehearing elected not to present at that hearing."⁷ In fact, the Commission also stated in Case No. 2000-00120 that "we did not authorize the introduction of evidence at rehearing that existed at the time of the initial hearing and that the parties failed to introduce at that hearing."⁸ In the present case, we must deny the introduction of evidence at rehearing that existed at the time of the initial hearing and that the parties failed to introduce at that hearing.

The Plant Board also cites Case No. 1998-00497, in which the Commission allowed a utility to present further evidence on rehearing. In that case, the city of Augusta was seeking a wholesale rate increase for Bracken County Water District.

⁵ Reply of the Frankfort Electric and Water Plant Board (filed Apr. 22, 2009).

⁶ See Case No. 2000-00120, *Adjustment of the Rates of Kentucky-American*, at 2-3 (Ky. PSC Feb. 26, 2001).

⁷ *Id.* at 3.

⁸ *Id.*

After Commission Staff issued a report finding that the rate should be \$1.21 per 1,000 gallons, the water district requested that the scheduled hearing be postponed to enable it to review further the filed documents. Shortly thereafter, the parties advised the Commission that they had agreed to a rate of \$1.30 per 1,000 gallons. Due to the lengthy litigation of the case, the Commission was pressed to issue an Order before the statutory deadline set by KRS 278.190. Without the benefit of a hearing, we determined that the water supplier had failed to support its claim of total gallons of water sold. Accordingly, we found the rate of \$1.21 to be reasonable but explicitly encouraged the parties to request a rehearing and present additional evidence on that specific issue.⁹ Recognizing that the parties may have evidence that could not have been provided earlier, the Commission permitted the rehearing.

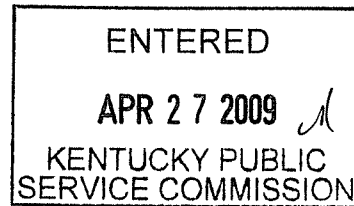
Although the present case and Case No.1998-00497 both were decided on the last day of the statutory period, they have vastly different circumstances on rehearing. In the present case, the Plant Board was specifically requested to provide invoices to substantiate their claimed expenses and had adequate time after the hearing to provide the invoices. The Plant Board simply failed to file the requested information. It cannot now request a rehearing based on evidence that was available at the time of the original hearing but was not provided.

⁹ Case No. 1998-00497, *Proposed Adjustment of the Wholesale Water Service Rate of the City of Augusta, Kentucky*, at 4 (Ky. PSC July 14, 1999) (“The Commission, however, encourages both parties to request rehearing to present additional evidence on the calculation of ‘total gallons of treated water sold’ and its components. The Commission recognizes that, given the late submission of the Settlement Agreement, and the limited time available for Commission review, the parties may possess additional information that addresses the Commission’s concerns but that was not presented to us. We will favorably entertain any petition for rehearing whose purpose is to present that evidence.”).

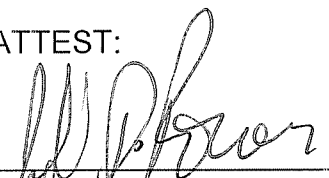
After having reviewed the application for rehearing and the response thereto, the Commission finds that the application for rehearing should be denied.

IT IS THEREFORE ORDERED that the Plant Board's application for rehearing is denied.

By the Commission



ATTEST:



Executive Director

Honorable Thomas A Marshall
Attorney At Law
212 Washington Street
P.O. Box 223
Frankfort, KY 40601

Honorable Donald T Prather
Attorney At Law
Mathis, Riggs & Prather, P.S.C. Attorneys at Law
P. O. Box 1059
500 Main Street, Suite 5
Shelbyville, KY 40066-1059

Honorable Hance Price
Attorney at Law
Frankfort Electric & Water Plant Board
317 W. Second Street
P. O. Box 308
Frankfort, KY 40602