

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BULLOCK )  
PEN WATER DISTRICT FOR A )  
CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY )  
TO CONSTRUCT PROPOSED ) CASE NO. 2008-00170  
WATERWORKS IMPROVEMENT )  
PROJECT AND FOR APPROVAL )  
OF PROPOSED PLAN OF FINANCING, )  
INCREASE IN RATES, NONRECURRING )  
CHARGES, AND TARIFF REVISIONS )

O R D E R

On December 10, 2009, the Commission issued an Order approving certain water rates, nonrecurring charges, and a surcharge for Bullock Pen Water District ("Bullock Pen"). The Commission ordered Bullock Pen to file its tariff setting out the water rates, nonrecurring charges, and revisions approved therein. On December 15, 2009, Bullock Pen filed its tariff in response to the Commission's Order.

In reviewing Bullock Pen's tariff filing, the Commission recognized the inclusion of two nonrecurring charges that were included in Bullock Pen's application or an amendment to the application but were not addressed in the Commission's Order of December 10, 2009.

Within the recently filed tariff, Bullock Pen included a 10-percent penalty for late payment by customers.<sup>1</sup> The Commission acknowledges that dozens of water utilities have similar late payment penalties in their tariffs, and the Commission intended to include the 10-percent late payment penalty in its Order of December 10, 2009. The Commission's omission was a mere oversight and should be corrected *nunc pro tunc*.

Bullock Pen also filed its tariff with a \$2.00 fee that would be added to a customer's bill when the customer pays with a credit or debit card. In its initial application that was accepted for filing on February 18, 2009, Bullock Pen proposed a nonrecurring charge for credit and debit card payments that was listed as 1.7 percent of the bill plus \$0.20 per transaction. On May 8, 2009, it sought to amend its application to change the initially proposed credit and debit card fee to a \$2.00 charge. The Staff Report issued on November 20, 2009 did not mention the credit or debit card fee, and the Commission failed to address the fee in its final Order. Unlike the late payment penalty, the Commission is unable to approve the credit or debit card fee because the record of the case is void of any reference that notice of either credit or debit card charge was provided to customers as required by 807 KAR 5:001, Section 10(3), and 807 KAR 5:011, Section 8.

An administrative agency must adhere to its properly promulgated regulations.<sup>2</sup> The Kentucky Court of Appeals has also held that a utility must comply with all statutory

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<sup>1</sup> The charge was listed in its application, as amended, and proper notice was provided customers pursuant to 807 KAR 5:001, Section 10(3), and 807 KAR 5:011, Section 8.

<sup>2</sup> See *Shearer v. Dailey*, 226 S.W.2d 955, 957 (Ky. 1950).

and regulatory obligations in order for a rate to become effective.<sup>3</sup> In 2001, the city of Russellville (“Russellville”) attempted to increase its rate for water sold to several water districts. After the Commission returned a copy of a cost-of-service study to Russellville, which was stamped with language indicating that a rate increase had been approved, the water districts filed a complaint alleging that Russellville failed to comply with Commission regulations for rate increases. The Commission ultimately ruled that Russellville’s rate was void because Russellville failed to enact an ordinance pursuant to KRS 96.355(1)(a).<sup>4</sup>

Russellville appealed the Commission’s decision to the Franklin Circuit Court, which agreed with the Commission that Russellville’s rate increase was void, but it reached that conclusion on different grounds. The Circuit Court found that Russellville failed to comply with the notice provisions of KRS 278.180 and 807 KAR 5:011, Section 8, and, accordingly, held the rate increase to be void.<sup>5</sup> The Court of Appeals upheld the Franklin Circuit Court action.<sup>6</sup>

Because Bullock Pen failed to comply with 807 KAR 5:001, Section 10(3), and 807 KAR 5:011, Section 8, Bullock Pen’s proposed rate related to credit and debit card

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<sup>3</sup> See *City of Russellville v. Pub. Serv. Comm’n*, Case No. 2003-CA-002132-MR, 2005 WL 385077, at \*4 (Ky. Ct. App. Feb. 18, 2005).

<sup>4</sup> Case No. 2001-00212, *East Logan Water Dist. v. City of Russellville*, at 6 (Ky. PSC July 3, 2001).

<sup>5</sup> *City of Russellville v. Pub. Serv. Comm’n*, Case No. 02-CI-01177, slip op. at 6 (Franklin Cir. Ct. Sept. 11, 2003).

<sup>6</sup> *City of Russellville v. Pub. Serv. Comm’n*, Case No. 2003-CA-002132-MR, 2005 WL 385077, at \*5 (Ky. Ct. App. Feb. 18, 2005).

charges is void.<sup>7</sup> Even if the Commission had not erroneously omitted any discussion of the credit and debit card charge in its Order of December 10, 2009, the *Russellville* case dictates that the rate would be invalid. Because Bullock Pen included the credit and debit card charge in its application for rate increase, as amended, the Commission will reopen this case to consider the charge once Bullock Pen has complied with our regulations.

IT IS THEREFORE ORDERED that:

1. The Appendix to our Order of December 10, 2009 in this case is stricken and replaced, *nunc pro tunc*, with the Appendix attached to this Order.
2. Bullock Pen's proposed credit and debit card charge is void and shall not be collected by Bullock Pen until the rate is properly established pursuant to statutes and regulations.
3. This case shall be reopened to consider Bullock Pen's credit and debit card charge.
4. Within 30 days of the date of this Order, Bullock Pen shall file a statement with the Commission attesting to compliance with the regulations as they relate to customer notice of a proposed increase in the credit and debit card rate. If no statement is filed within the set time frame, the Commission shall deem Bullock Pen to have withdrawn its proposed credit and debit card rate.

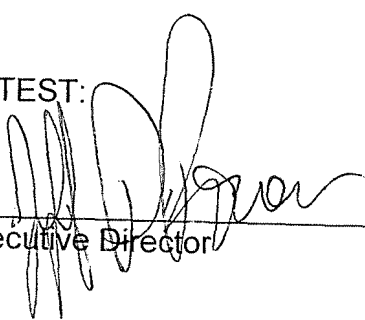
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<sup>7</sup> Bullock Pen's proposed tariff sheet that lists the credit and debit card nonrecurring charge also includes provisions related to the collection of delinquent accounts. The Commission approves the provisions related to the collection of delinquent accounts.

By the Commission

ENTERED  
FEB -2 2010  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2008-00170 DATED FEB - 2 2010

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

#### RATES AND CHARGES

##### 5/8" x 3/4" Meter:

|          |                |          |                   |
|----------|----------------|----------|-------------------|
| First    | 2,000 gallons  | \$ 26.59 | Minimum bill      |
| Next     | 3,000 gallons  | \$ 8.80  | per 1,000 gallons |
| Next     | 5,000 gallons  | \$ 7.96  | per 1,000 gallons |
| Next     | 10,000 gallons | \$ 7.11  | per 1,000 gallons |
| All Over | 20,000 gallons | \$ 6.26  | per 1,000 gallons |

##### 1" Meter:

|          |                |          |                   |
|----------|----------------|----------|-------------------|
| First    | 5,000 gallons  | \$ 52.99 | Minimum bill      |
| Next     | 5,000 gallons  | \$ 7.96  | per 1,000 gallons |
| Next     | 10,000 gallons | \$ 7.11  | per 1,000 gallons |
| All Over | 20,000 gallons | \$ 6.26  | per 1,000 gallons |

##### 1 1/2" Meter:

|          |                |          |                   |
|----------|----------------|----------|-------------------|
| First    | 10,000 gallons | \$ 92.79 | Minimum bill      |
| Next     | 10,000 gallons | \$ 7.11  | per 1,000 gallons |
| All Over | 20,000 gallons | \$ 6.26  | per 1,000 gallons |

##### 2" Meter:

|          |                |          |                   |
|----------|----------------|----------|-------------------|
| First    | 20,000 gallons | \$163.89 | Minimum bill      |
| All Over | 20,000 gallons | \$ 6.26  | per 1,000 gallons |

Bulk Loading Station \$ 6.98 per 1,000 gallons

Phase 6 Surcharge \$ 15.00

**NONRECURRING CHARGES**

|                              |             |
|------------------------------|-------------|
| Meter Reread                 | \$ 35.00    |
| Meter Test                   | \$ 50.00    |
| Reconnection                 | \$ 50.00    |
| Service Call - Investigation | \$ 35.00    |
| Meter Relocation             | Actual Cost |
| Late Payment Penalty         | 10%         |

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