

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG SANDY WATER DISTRICT )  
FOR AN ADJUSTMENT IN RATES PURSUANT TO ) CASE NO. 2012-00152  
THE ALTERNATIVE RATE FILING PROCEDURE )  
FOR SMALL UTILITIES )

ORDER

Pursuant to KRS 278.400, Overland Development, Inc. (“Overland Development”) has moved for rehearing of both the Commission’s Order of August 22, 2012 denying Overland Development’s motion for full intervention and the Commission’s Order of August 24, 2012 approving increased rates for Big Sandy Water District (“Big Sandy District”), including increased rates for wholesale water service to Overland Development. Big Sandy District has not responded to the Motion.

In support of its Motion, Overland Development argues that Big Sandy District was not properly notified of the proposed adjustment to the wholesale rate. Overland argues that, as Big Sandy District provides water service under the terms of a special contract, publication of the proposed change to the special contract rate in a newspaper of general circulation is not appropriate. Without proper notice, it further argues, Big Sandy District’s “action constitutes a unilateral violation of the terms of the contract.”<sup>1</sup>

Overland Development further contends that Big Sandy District may not disregard the terms of its contract with Overland Development and established a new rate without a mutual revision of the existing contract or without a Commission

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<sup>1</sup> Motion at 1.

determination that the contract is unlawful or unreasonable. It notes that the Order of August 24, 2012 makes no finding regarding the lawfulness or reasonableness of the contract. Overland Development further argues that, because it was not given notice that modification of the contract was being considered, it was deprived of its ability to present evidence in support of the existing contract rate and thus of its right to due process.<sup>2</sup>

Neither the record nor the law supports Overland Development's arguments. A contract between a utility and a customer does not limit the Commission's authority to review and adjust the rate contained in that contract. See *Bd. of Education of Jefferson County v. William Dohrman, Inc.*, 620 S.W.2d 328 (Ky. App. 1981) ("the Commission had the right and duty to regulate rates and services, no matter what a contract provided"). See also Case No. 2003-00137, *Kentucky Utilities Company Revised Special Contract With North American Stainless L.P.* (Ky. PSC Oct. 19, 2005) (rejecting arguments that special contracts can be treated differently from generally available rate tariffs).

Neither KRS Chapter 278 nor our regulations make any distinction between the notice to be given for a modification in a rate schedule or a rate set forth in a special contract. KRS 278.180(1) does not prescribe any particular form of notice to customers, but merely provides that the Commission "may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations." Commission Regulation 807 KAR 5:076, Section 5, which addresses the notice requirements for applications for rate adjustment filed pursuant to the Commission's Alternative Rate Filing Procedures, makes no distinction between special

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<sup>2</sup> *Id.* at 3.

contract rates and those set forth in an existing rate schedule.<sup>3</sup> The present contract between Overland Development and Big Sandy District contains no provisions related to notice.

The record is clear that Big Sandy District complied with the notice provisions of 807 KAR 5:076, Section 5. It published notice of the proposed rate adjustment in a newspaper of general circulation for three consecutive weeks, the first publication occurring the day before the filing of Big Sandy District's application.<sup>4</sup> The published notices listed the proposed adjustment to the wholesale rate to Overland Development. We have found no authority, nor has Overland Development provided any, for the proposition that notice by newspaper publication is inadequate or insufficient for a special contract customer.

As to the contention that specific findings must be made regarding the lawfulness or reasonableness of a special contract's provisions, again Overland Development has failed to provide any supporting authority. Assuming that such authority existed, the Commission made specific findings regarding the wholesale water service rate to be assessed to Overland Development and, by implication, the special contract rate that Big Sandy previously charged.<sup>5</sup>

Based upon the Motion for Rehearing and being otherwise sufficiently advised, the Commission finds no merit in any of Overland Development's arguments. However, we recognize that a substantial increase in the wholesale rate to Overland Development

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<sup>3</sup> 807 KAR 5:001, Section 10, and 807 KAR 5:011, Section 8, also make no such distinction.

<sup>4</sup> Letter from Teresa Brown, Big Sandy Water District, to Daniel Hinton, Tariffs Branch, Public Service Commission (June 8, 2012) (providing copies of newspaper advertisements and an affidavit of publication).

<sup>5</sup> Order of August 24, 2012 at 4-5.

was approved and that Big Sandy District has not objected to the request for rehearing.<sup>6</sup> For these reasons, the Commission finds that Overland Development should be afforded an opportunity to present evidence and argument challenging the reasonableness of the wholesale rate approved in our Order of August 24, 2012, and to address whether a contract rate can be changed absent a renegotiation by the parties and whether changing the contract rate violated the term and conditions of the contract.

IT IS THEREFORE ORDERED that:

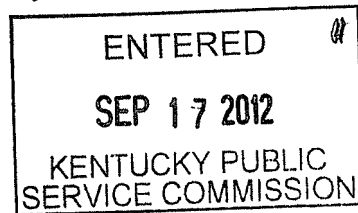
1. Overland Development's Motion for Rehearing is granted.
2. Overland Development shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
3. Should Overland Development file documents of any kind with the Commission in the course of these proceedings, Overland Development shall also serve a copy of said documents on all other parties of record.
4. Overland shall file with the Commission and serve on all other parties of record no later than September 28, 2012 a position statement setting forth its reasons why the present wholesale rate is unreasonable and why the contract rate that existed prior to August 24, 2012 should be reinstated.
5. An informal conference shall be held in this matter on October 5, 2012, beginning at 10:30 a.m., Eastern Daylight Time, in Conference Room 2 of the

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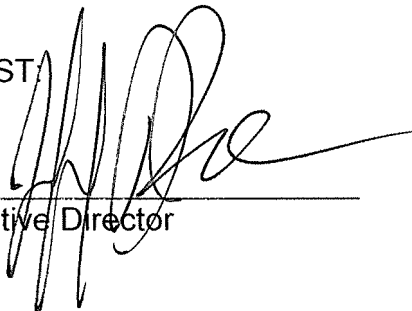
<sup>6</sup> Based upon test-period purchases, Overland Development's annual water cost will increase from \$25,167.88 to \$33,819.45, or 34.38 percent.

Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of discussing Overland Development's objections to the present wholesale rate. Any party that wishes to participate in the conference by telephone shall advise the Executive Director in writing no later than October 3, 2012.

By the Commission



ATTEST:

  
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Executive Director

Mr. Jimmy Blanton  
Superintendent  
Big Sandy Water District  
18200 Kentucky Route #3  
Catlettsburg, KY 41129