

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-)
AMERICAN WATER COMPANY FOR A) CASE NO.
QUALIFIED INFRASTRUCTURE PROGRAM) 2017-00313
RIDER)

ORDER

On August 4, 2017, Kentucky-American Water Company (“Kentucky-American”) tendered for filing an application that requests approval of a Qualified Infrastructure Program (“QIP”) Rider. The QIP Rider is a surcharge that Kentucky-American proposes to impose on each customer in its Residential, Commercial, Industrial, Other Public Authority, and Sales for Resale water service classifications to collect additional revenue to fund the replacement of aging water mains.¹ Kentucky-American stated that the QIP Rider surcharge would not apply to public or private fire customers.²

Kentucky-American stated in its application that “this is not a general base rate case.”³ Relying upon its position, Kentucky-American did not support its application with the exhibits required by 807 KAR 5:001, Section 16.⁴ Instead, Kentucky-American requested a deviation from the filing requirements of 807 KAR 5:001, Section 16, in the

¹ Direct Testimony of Linda C. Bridwell, P.E., (submitted Aug. 4, 2017) at 16.

² *Id.*

³ Application (submitted Aug. 4, 2017) at 5.

⁴ *Id.*

event that the Commission found the requested surcharge fell within this administrative regulation.

The Attorney General of the Commonwealth of Kentucky (“Attorney General”) filed a motion to intervene, and by Order entered August 4, 2017, the Commission granted the Attorney General’s motion.⁵ On August 11, 2017, the Attorney General filed a pleading that, among other things, requested the establishment of a procedural schedule, including the opportunity for discovery, intervenor testimony, and a hearing.⁶ In support of his request, the Attorney General stated that “the public interest supports a heightened scrutiny such as would be given to a rate case.”⁷

On August 15, 2017, Kentucky-American filed a response to the Attorney General’s motion for a procedural schedule. While Kentucky-American did not object to a procedural schedule, it again asserted that the proposal is not a base rate case.⁸

On August 23, 2017, the Commission entered an Order that, among other things, rejected Kentucky-American’s application.⁹ The Commission found that Kentucky-American’s application requests the establishment of a surcharge for effectively all its customer, that such a surcharge would result in its customers’ paying higher rates for the water they consume, and that such a surcharge constitutes a general adjustment in existing rates.¹⁰ Therefore, the Commission determined that Kentucky-American’s

⁵ Order (Ky. PSC Aug. 4, 2017).

⁶ Attorney General Response and Motion (filed Aug. 11, 2017) at 1–4.

⁷ *Id.* at 3.

⁸ Kentucky-American Response (filed Aug. 15, 2017) at 1.

⁹ Order (Ky. PSC Aug. 23, 2017) at 4.

¹⁰ *Id.* at 3.

application must conform to the filing requirements of 807 KAR 5:001, Section 16, the Commission's administrative regulation that sets forth the filing requirements for an application for general adjustments of existing rates.¹¹ The Commission also found that Kentucky-American failed to demonstrate good cause for a blanket deviation from the requirements of 807 KAR 5:001, Section 16.¹² The Order rejected Kentucky-American's application.¹³

The Commission's August 23, 2017 Order further stated:

The Commission notes that this Order does not prohibit Kentucky-American from requesting deviations from the various individual requirements of 807 KAR 5:001, Section 16. However, each request for a deviation must identify the individual filing requirement at issue and be supported by a demonstration of good cause for relief from that requirement.¹⁴

On September 7, 2017, Kentucky-American filed a motion for reconsideration of the August 23, 2017 Order rejecting the application ("Motion"). The Motion, which will be considered a request for rehearing under KRS 278.400, asks the Commission "to fully consider the policy implication and practical effects of its decision requiring KAW's tariff proposal to be processed as a general base rate case."¹⁵ Per Kentucky-American, the August 23, 2017 Order hinders the ability of dozens of water utilities in Kentucky "to apply for, obtain approval, and implement" pipeline replacement programs.¹⁶

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ Kentucky-American Motion (filed Sept. 7, 2017) at 1.

¹⁶ *Id.*

Kentucky-American asserts that the Commission has the authority to consider a surcharge outside of a base rate case and “public policy suggests that the Commission should exercise its plenary authority and process this case as a tariff case so that . . . Kentucky water utilities will have the most efficient regulatory procedure to address their serious needs of line loss and aging infrastructure.”¹⁷ Kentucky-American further asserts that its application contains adequate information to support the filing, and that the Commission’s administrative regulations do not require requests for deviations be made on a sub-section-by-sub-section basis.¹⁸

The Attorney General filed a response in opposition to Kentucky-American’s Motion (“Response”). The Attorney General states that Kentucky-American reads the August 23, 2017 Order “too broadly.”¹⁹ Per the Attorney General, the Order “does nothing more than compel KAW to properly justify and support its proposal.”²⁰ The Attorney General argues that the exhibits required by 807 KAR 5:001, Section 16, do not create an unnecessary burden on Kentucky-American.²¹

The Lexington-Fayette Urban County Government (“LFUCG”) moved to intervene into the case, and on September 13, 2017, the Commission entered an Order granting LFUCG intervention.²² The Order also allowed LFUCG five days from the date of the

¹⁷ *Id.* at 4 and 5.

¹⁸ *Id.* at 6 through 8.

¹⁹ Attorney General Response (filed Sept. 14, 2017) at 2.

²⁰ *Id.*

²¹ *Id.* at 3.

²² Order (Ky. PSC Sept. 13, 2017).

Order to file a response to Kentucky-American's Motion.²³ To date, LFUCG has not filed a response.

Having considered Kentucky-American's Motion and the Attorney General's Response, the Commission finds that it should deny Kentucky-American's Motion.

In support of its Motion, Kentucky-American relies upon the Commission's May 10, 1999 Order in Case No. 99-046, *Delta Natural Gas The Company, Inc. Experimental Alternative Regulation Plan*. Kentucky-American argues the May 10, 1999 Order in Case 99-046 "was and remains the final and controlling pronouncement on the Commission's authority to process a proposed surcharge outside a rate case."²⁴ Kentucky-American's argument is not persuasive.

At issue in the instant case is the information that Kentucky-American must supply with its application in order for the application to be accepted for filing. There are several Commission Orders subsequent to Case No. 99-046 identified in the August 23, 2017 Order that discuss the filing requirements that apply to an application for a surcharge.

In Case Nos. 2004-00459 and 2004-00460, the Commission rejected for filing applications by Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") to establish monthly surcharges to pass through to their respective electric customers the net revenues and net expenses resulting from the wholesale energy market tariffs adopted by the Midwest Independent System Operator, Inc. ("MISO"). The rejections were due to the failure to comply with the filing requirements set

²³ *Id.*

²⁴ Motion (filed Sept. 7, 2017) at 4.

forth in 807 KAR 5:001, Section 16, for a general adjustment of existing rates. Those Orders stated as follows:

When a utility chooses to file new rates that are to be charged to all existing customers, those new rates constitute a general adjustment in existing rates and the filing must be supported by all information specified in 807 KAR 5:001, Section 10.

...

Absent compliance by LG&E and KU with the filing requirements set forth in 807 KAR 5:001, Section 10, the record is devoid of the evidence necessary for the Commission to determine whether their existing rates are no longer "fair, just and reasonable," and, if they are not, the amount of rate relief needed. Consequently, the pending rate applications must be dismissed for failure to comply with the filing requirements set forth in 807 KAR 5:001, Section 10.²⁵

As discussed by the Commission in Case No. 2009-00353, a request by LG&E and KU to establish surcharges to their existing rates for recovery of costs incurred in connection with wind power contracts:

To justify the authorization of a surcharge to recover a particular category of costs, such as those for wind power, a utility must first demonstrate, among other things, that its existing rates are insufficient to cover all of its reasonable costs, including those proposed to be recovered by the surcharge. Thus, the exhibits and documents required to be filed pursuant to 807 KAR 5:001, Section 10, are essential for an investigation of whether or not the existing rates of LG&E and KU are insufficient since, absent findings of insufficiency, there would

²⁵ Case No. 2004-00459, *The Application of Louisville Gas and Electric Company for Approval of New Rate Tariffs Containing a Mechanism for the Pass-Through of MISO-Related Revenues and Costs Not Already Included in Existing Base Rates* (Ky. PSC Apr. 15, 2005) at 6 and 9; and Case No. 2004-00460, *The Application of Kentucky Utilities Company for Approval of New Rate Tariffs Containing a Mechanism for the Pass-Through of MISO-Related Revenues and Costs Not Already Included in Existing Base Rates* (Ky. PSC Apr. 15, 2005) at 6 and 9.

be no justification for the authorization of the proposed surcharges.²⁶

The Commission finds that the above analysis from Case No. 2004-00459, Case No. 2004-00460, and Case No. 2009-00353 correctly states the filing requirements applicable to Kentucky-American's request. The Motion presented no argument that persuades the Commission to disturb the decision in the August 23, 2017 Order. To the extent that the Commission's May 10, 1999 Order in Case 99-046 reaches a contrary conclusion, the pronouncement in Case No. 99-046 is no longer controlling precedent. 807 KAR 5:001, Section 16, applies to Kentucky-American's surcharge proposal, and rehearing on this point should be denied.

The Commission reiterates that 807 KAR 5:001, Section 22, permits deviations "[i]n special cases, for good cause shown." Therefore, a party requesting a deviation from a requirement set forth in 807 KAR 5:001, Section 16, is required to demonstrate that a special case and good cause exists for permitting the deviation. The August 23, 2017 Order found that Kentucky-American's statement that it has provided relevant information and will provide additional information via discovery does not demonstrate good cause for a blanket deviation from the requirements of 807 KAR 5:001, Section 16.²⁷

The Commission finds that Kentucky-American's request for a deviation from the filing requirements set forth in 807 KAR 5:001, Section 16, in the instant case is comparable to the request for a waiver made by LG&E and KU that was denied by the

²⁶ Case No. 2009-00353, *Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Purchase Power Agreements and Recovery of Associated Costs*, (Ky. PSC Oct. 21, 2009) at 6 and 7.

²⁷ Order (Ky. PSC Aug. 23, 2017) at 3.

Commission in Case No. 2009-00353.²⁸ As discussed in Case No. 2009-00353, the exhibits and documents required to be filed pursuant to 807 KAR 5:001, Section 16, are essential for an investigation of whether the existing rates of Kentucky-American are insufficient since, absent a finding of insufficiency, there would be no justification for the authorization of the proposed surcharge.²⁹

Kentucky-American argues that the Commission's administrative regulations permit a deviation request "in blanket form."³⁰ Assuming *arguendo* that the proposition is correct, Kentucky-American ignores that the Commission's August 23, 2017 Order expressly found that the blanket deviation request submitted by Kentucky-American failed to demonstrate good cause for a deviation from the requirements of 807 KAR 5:001, Section 16.³¹ The Commission finds that rehearing on this point should be denied.

The discussion regarding a successive request for a deviation contained in the Commission's August 23, 2017 Order recognizes that Kentucky-American's blanket request has already been denied for failing to demonstrate good cause. The Order conveys that if Kentucky-American submits another request for a deviation from 807 KAR 5:001, Section 16, it must support the request with good cause for each requirement in the regulation for which a deviation is sought.³² The discussion is wholly consistent with both the August 23, 2017 Order and 807 KAR 5:001, Section 22.

²⁸ Case No. 2009-00353, LG&E and KU motion for a declaratory ruling or, in the alternative, for a waiver of certain filing requirements (tendered August 28, 2009) at 2 through 6.

²⁹ *Id.* at 6 and 7.

³⁰ Motion (filed Sept. 7, 2017) at 8.

³¹ Order (Ky. PSC Aug. 23, 2017) at 3.

³² *Id.* at 4 and 5.

With regard to the public policy discussion in Kentucky-American's Motion, the Commission notes that it rejected Kentucky-American's application because it was not supported by the exhibits required per 807 KAR 5:001, Section 16. The August 23, 2017 Order does not contain any findings or conclusions concerning the merits of Kentucky-American's proposal. The Commission also notes that, in the event that Kentucky-American decides to move forward with its proposal, the Commission will reach a decision in this case based upon the specific facts presented in the instant case. Decisions in other future cases concerning similar proposals will, likewise, be based on the specific facts presented in the individual case before the Commission.

The Commission's August 23, 2017 Order, in pertinent part, required Kentucky-American to file, within 15 days of the date of the Order, a notice that states whether Kentucky-American plans to tender for filing a QIP Rider application supported by the exhibits required by 807 KAR 5:001, Section 16.³³ As a result of the request for rehearing, the Commission, on its own motion, finds that it should modify the August 27, 2017 Order and revise the date by which Kentucky-American should advise the Commission as to whether it plans to tender for filing a QIP Rider application supported by the exhibits required per 807 KAR 5:001, Section 16, including a notice of intent required by 807 KAR 5:001, Section 16(2). The Commission finds that Kentucky-American should file the notice no later than October 6, 2017.

³³ *Id.* at 4, ordering paragraph 2.

IT IS THEREFORE ORDERED that:

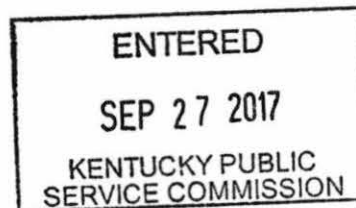
1. Kentucky-American's motion for rehearing is denied.
2. Ordering paragraph 2 of the Commission's August 23, 2017 Order is

amended to read as follows:

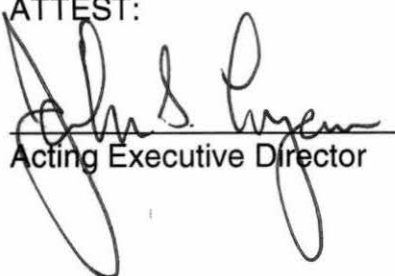
Kentucky-American shall file, by October 6, 2017, a notice that states whether Kentucky-American plans to tender for filing a QIP Rider application supported by the exhibits required by 807 KAR 5:001, Section 16. If applicable, Kentucky-American shall state in the notice the anticipated date that it will tender for filing such an application.

3. All other provisions of the Commission's August 23, 2017 Order not in conflict with this Order shall remain in full force and effect.

By the Commission



ATTEST:


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