

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF	)	CASE NO.
HENDERSON WATER UTILITY REVISING ITS	)	2021-00067
WHOLESALE WATER SERVICE RATES	)	

ORDER

On December 15, 2021, Henderson Water Utility (Henderson Water) filed a motion, pursuant to KRS 278.400, requesting rehearing of the Commission’s December 14, 2021 Order that, among other things, clarified the effective date as November 24, 2021, for the increased rates for wholesale water service to Henderson County Water District (Henderson District) and Beech Grove Water System (Beech Grove) granted by the Commission’s November 24, 2021 Order (Final Order).

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup>

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<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An Order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup>

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

### DISCUSSION AND FINDINGS

Henderson Water requested rehearing on two issues regarding the effective date of the rates granted by the Commission's Final Order and the cost of service study (COSS) required by the Commission's Final Order.

#### Effective Date of Increased Rates:

This case was established to investigate the reasonableness of Henderson Water's proposed wholesale rate increase to Henderson District and Beech Grove. Following discovery and an Informal Conference with Commission Staff, on June 10, 2021, Henderson Water filed a motion for the parties to submit briefs and submit the case for final decision. The Commission granted Henderson Water's motion to amend the procedural schedule in order to provide additional time for briefing by Order dated July 30, 2021. The Commission's decision was granted "under the condition that the proposed rates set forth in the tariff not be put into effect until the Commission makes a final decision in this matter." This condition was necessary in order to provide the Commission

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<sup>2</sup> *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

adequate time to consider the parties' briefs in making a decision. The parties filed briefs and then the Commission issued its Final Order on November 24, 2021, granting the proposed rate increase.

Henderson District and Beech Grove previously requested clarification regarding the effective date of the increased rates granted by the Commission's Final Order. By Order dated December 14, 2021, a clarification was made that the rate increase was effective as of November 24, 2021, the date of the Final Order.

In its motion for rehearing, Henderson Water requested that the rates' effective date be retroactive to August 2, 2021. Henderson Water asserted that the July 30, 2021 Order prohibiting it from charging the proposed rates was improper pursuant to KRS 278.190(3), and proposed that the funds lost could be collected over several months so as not to cause a significant burden to any of the rate payers. Henderson Water further asserted that the briefings were a necessity as determined by the Commission, and punishing Henderson Water for the time to file them and make their decision is not appropriate.

The Commission finds that briefing by the parties—as requested by Henderson Water itself—was necessary to develop the record in this matter and reach a decision as to the reasonableness of the proposed rate increases. KRS 278.190(3) provides:

At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules.

Henderson Water filed its tariff on February 10, 2021, and the Commission issued its Final Order granting the proposed rate increases on November 24, 2021, within the ten months required pursuant to KRS 278.190(3). While the Commission's July 30, 2021 Order conditioned its decision with a requirement that Henderson Water not place the proposed rates in effect until the Commission had reached a final decision in this matter, Henderson Water could have filed notice with the Commission, pursuant to KRS 278.190(2), of its intention to place the rates into effect subject to refund. However, Henderson Water failed to file any such notice. Additionally, if Henderson Water felt compelled to place rates into effect with the expiration of the Commission's suspension of those rates, and understood the Commission's July 30, 2021 Order precluded their ability to place them into effect after filing notice, Henderson Water should have sought rehearing of the July 30, 2021 Order, not the Final Order in this matter. The Commission has explained in Case No. 1995-00011:<sup>3</sup>

The rule against retroactive ratemaking is a 'generally accepted principle of public utility law which recognizes the prospective nature of utility ratemaking and prohibits regulatory commissions from rolling back rates which have already been approved and become final.' . . . It further prohibits regulatory commissions when setting utility rates, from adjusting for past losses or gains to either the utility consumers, or particular classes of consumers.

The Commission finds that the effective date of November 24, 2021, is correct and shall remain as the effective date for the increased rates previously granted to Henderson Water.

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<sup>3</sup> Case No. 1995-00011, Kentucky Industrial Utility Customers, Inc. v. Big Rivers Electric Corporation (Ky. PSC April 1, 1997).

## COSS

In its Final Order, the Commission ordered Henderson Water to file a COSS using an industry-accepted method in support of the rate adjustments within one year or within two months after the resolution of electric costs at the South Plant, whichever should occur first. Henderson Water stated that the parties each audit the costs of their respective systems and their interests in Henderson Water systems on an annual basis. Henderson Water asserted that a COSS should be delayed at least one year after the new intake system has been put into full service, as only then can an accurate COSS be completed and have some benefit to the parties.

The Commission finds that the installation of the water intake system does present a material change that will impact expenses and that the COSS can be delayed until the project is complete. However, the Commission does not believe that Henderson Water requires a year after the completion of the project to prepare and file the COSS. After the new intake is constructed, Henderson Water can use the pump size to estimate the cost of the electricity that it will require. Accordingly, the Commission finds that within two months after the construction of the new raw water intake has been constructed, Henderson Water should notify the Commission that the construction has been completed. Within four months of the completion of constructing the raw water intake Henderson Water should have a COSS completed and filed with this Commission.

IT IS THEREFORE ORDERED that:

1. The wholesale rates granted by Commission's Final Order dated November 24, 2021, shall remain effective as of that date.

2. Within two months after the construction of the new raw water intake has been completed, Henderson Water shall notify the Commission that the construction has been completed.

3. A COSS shall be completed and filed with the Commission within four months of Henderson Water completing the construction of the raw water intake.

4. This case is closed and removed from the Commission's docket.

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By the Commission

ENTERED  
JAN 04 2022 rCS  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2021-00067

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