

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF HYDEN-LESLIE) CASE NO.
WATER DISTRICT) 2021-00071

ORDER

This matter arises on Hyden-Leslie County Water District's (Hyden-Leslie District) August 27, 2021 application requesting partial rehearing of the Commission's August 4, 2021 Order. On September 15, 2021, the Commission granted rehearing on the following issues: (1) revisions to Rule 9.d. regarding denial of service to persons residing with a former customer; (2) the substitute Rule 11.j. ordered by the Commission regarding meter placement; (3) the Commission's decision to strike Rule 3.b. regarding the requirement that a new Water User Agreement be entered into when the identity of a customer at a premises changes; and (4) the Commission's decision to strike from the Water User Agreement a question regarding whether any adult household members who are indebted to Hyden-Leslie District for water service at any address would be residing with a prospective customer. Hyden-Leslie District responded to two additional requests for information from Commission Staff regarding these issues and an informal conference was held on January 7, 2022. This matter now stands submitted for a decision.

DISCUSSION AND FINDINGS

1. Rule 9.d. – Denial of Service to Persons Residing with Former Customer

In the September 15, 2021 Order, the Commission granted rehearing for further consideration of the Commission's finding in the August 4, 2021 Order that Hyden-Leslie's

proposed Rule 9.d. be rejected. In the August 4, 2021 Order, the Commission found that the provision for imputed liability and joint and several liability was too ambiguous and potentially too far reaching in the ability to deny service to persons who are not acting as an agent for a delinquent customer and the ability to hold those persons responsible for past-due balances.

In its request for rehearing, Hyden-Leslie District further explained its reasoning for proposing Rule 9.d. Hyden-Leslie District indicated that it intended to use the proposed rule solely as a basis to deny service to applicants who are acting as agents of a present or former customer who is indebted to the district, and that it had no intention of using the proposed rule as the basis for legal action against members of a household who had not executed a written agreement for water service.¹ Hyden-Leslie District proposed a revised Rule 9.d. as follows:

Service will not be supplied or continued to any premises if at the time of application for service the Applicant is merely acting as an agent of a present or former customer who is indebted to the District for service previously supplied at the same or other premises until payment of such indebtedness shall have been made. Absent evidence to the contrary, an applicant will be presumed to be agent of a former customer if (1) the applicant lived in the customer's household when service was discontinued for nonpayment; (2) the applicant was at least 18 years of age at the time the unpaid service was provided to the former customer's household and the applicant received the benefit of the service; and (3) the former customer is residing in the premises for which the applicant is requesting water service.²

¹ Application for Rehearing at 2.

² *Id.* at 2–3.

Hyden-Leslie District stated that the revision would not extend legal liability for unpaid water service to members of a delinquent customer's household or serve as a basis for any legal collection action against any member of the household.³ Hyden-Leslie District argued that the revised rule would allow it to refuse service based on a delinquent customer's indebtedness only if the prospective applicant is acting as an agent for the delinquent customer. Hyden-Leslie District went on to state that it would have to have sufficient evidence to conclude that an agency relationship exists to deny service.⁴ Hyden-Leslie District argued that the revised rule is consistent with past decisions issued by the Commission that held that a delinquent customer's indebtedness could serve as the basis for denial of an application for service by a member of the delinquent customer's household.⁵ Finally, Hyden-Leslie indicated that it proposed the original rule to more aggressively pursue and collect unpaid debts and while the revision addresses the concerns noted by the Commission in its August 4, 2021 Order, the revised language would still allow Hyden-Leslie District to reduce its level of bad debt.⁶

As Hyden-Leslie District indicated, the revised rule will not extend legal liability for unpaid service to members of a delinquent customer's household or serve as a basis for any legal collection action against any household member. In addition, Hyden-Leslie District has established specific conditions that must be present in order for Hyden-Leslie District to conclude that an agency relationship exists. The revised rule gives Hyden-

³ *Id.* at 3.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 4.

Leslie District an avenue to try to reduce its bad debt expense. For the reasons set forth above, the Commission finds that Hyden-Leslie District's revised Rule 9.d. as proposed in its Application for Rehearing should be approved.

2. Rule 11.j. – Meter Placement

In the September 15, 2021 Order, the Commission granted rehearing for further consideration of the Commission's finding in the August 4, 2021 Order that Rule 11.j. be replaced with an alternate rule. In the August 4, 2021 Order, the Commission found that the alternate rule would better ensure that all customers requesting service from Hyden-Leslie District would reasonably be provided pressure of at least 30 pounds per square inch (psig).⁷

In its request for rehearing, Hyden-Leslie District argued that, in mandating the alternate rule, the Commission acted contrary to KRS 278.030(2), which permits a utility to "establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." Hyden-Leslie District argued that the Commission's August 4, 2021 Order did not contain a finding that Rule 11.j. was unreasonable or an explanation for why the rule was unreasonable.⁸ Therefore, Hyden-Leslie District argued that without such a finding the Commission could not prevent the rule from taking effect.⁹

Hyden-Leslie District also argued that the Commission acted contrary to KRS 278.280(1) by not holding a hearing on the alternate rule or on Hyden-Leslie

⁷ Order (Ky. PSC Aug. 4, 2021) at 5–6.

⁸ Application for Rehearing at 6.

⁹ *Id.*

District's current practices to address low pressure conditions and by not giving notice to Hyden-Leslie District that their current practices in dealing with low pressure conditions was unjust, unreasonable, unsafe, improper, inadequate, or insufficient.¹⁰

Finally, Hyden-Leslie District argued that the alternate rule appears to conflict with Kentucky Division of Water Regulations by requiring installation and use of individual pumps on the customer's side of the delivery point when it is unable to furnish service at 30 psig at the delivery point.¹¹ Hyden-Leslie District noted that 401 KAR 8:100 requires public water utilities design, construct and maintain their facilities in accordance with the *Recommended Standards for Water Works*, 2012 Edition.¹² Hyden-Leslie District argued that the alternate rule does not comply with Section 8.11.2 of the Recommended Standards for Water Works, which states "[i]ndividual booster pumps shall not be allowed for any individual residential service from the public water supply mains."¹³ Hyden-Leslie District argued that compliance with the alternate rule would subject it to administrative sanctions from the Energy and Environment Cabinet.¹⁴

Hyden-Leslie District indicated that it was only aware of one area of its system that has experienced low pressure problems in the last two years.¹⁵ After investigation, Hyden-Leslie District determined that the installation of an additional booster pump station

¹⁰ *Id.* at 6–7.

¹¹ *Id.* at 8.

¹² *Id.* at 8–9.

¹³ *Id.*

¹⁴ *Id.* at 9.

¹⁵ Hyden-Leslie District's Response to Commission Staff's Second Request for Information on Rehearing (Response to Staff's Second Request on Rehearing) (filed Nov. 1, 2021), Item 3.

in the pressure zone was necessary to ensure adequate water pressure.¹⁶ Hyden-Leslie District indicated that it has authorized the design of the booster pump station, ordered the necessary equipment, and awarded a contract for construction of the booster pump station.¹⁷

Hyden-Leslie District proposed a revised Rule 11.j. as follows:

Public Service Commission Regulations provide that in no event shall the pressure at a customer's service pipe under normal conditions fall below thirty (30) pounds per square inch. Accordingly, no meter shall be located on the service line of an applicant for service at a point that does not deliver a minimum pressure of 30 pounds per square inch at the meter point. If the District cannot deliver the minimum required pressure at the proposed meter point, it will undertake reasonable efforts to obtain the minimum pressure and, if such reasonable efforts will not achieve the minimum required pressure, advise the applicant that service will not be provided and inform him of his rights under KRS 278.260 to obtain review of the District's action and will also notify the Public Service Commission of its actions.¹⁸

Under the revised rule above, Hyden-Leslie District will still explore ways to obtain 30 psig at the meter in situations where it initially is not able to provide adequate pressure. The revised rule also adequately addresses the Commission's concern that Hyden-Leslie District could use the rule to deny service without exploring the need to upgrade its system. Finally the notification to the Commission under the revised rule will allow the Commission to be promptly informed when Hyden-Leslie District is having issues providing adequate pressure. For the reasons set forth above, the Commission finds that

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Hyden-Leslie District's Motion to Amend Proposed Tariff (filed Jan. 13, 2022).

the revised Rule 11.j. contained in Hyden-Leslie District's Motion to Amend Proposed Tariff is reasonable and should be approved.

3. Rule 3.b. – Requirement for New Contract

In the September 15, 2021 Order, the Commission granted rehearing for further consideration of the Commission's finding in the August 4, 2021 Order that the requirement for a new contract due to a change in identity of the customer at a premises should be rejected. In the August 4, 2021 Order, the Commission found that this requirement was unnecessary for the continued provision of service.¹⁹

In its request for rehearing, Hyden-Leslie District suggested that the Commission misinterpreted this requirement to mean something other than an existing customer vacating or departing the served premises and being replaced by another person.²⁰ Hyden-Leslie District argued that Rule 3.b. was meant to address occurrences in which a change in possession or legal ownership of the served premises occurred.²¹ Without a new contract from the new customer, Hyden-Leslie District argued that it would not know the identity of its customers for billing and collection purposes and would not know the contact information of the new customer should it need to contact them regarding their service.²²

Hyden-Leslie District proposed a revised Rule 3.b. as follows:

If a Customer transfers ownership of the property receiving water service and ceases to reside at the property and the acquiring party or a person acting on behalf of or under the

¹⁹ Order (Ky. PSC Aug. 4, 2021) at 7.

²⁰ Application for Rehearing at 10.

²¹ *Id.*

²² *Id.* at 11.

authority of the acquiring party takes possession of the premises and is the primary recipient of water service to that property, the acquiring party or new party in possession must execute a contract for water service with the District. The District may, after reasonable notice, discontinue water service to the property until the acquiring party or new party in possession has executed a contract for service.²³

Hyden-Leslie District should be permitted to have an avenue in place that allows it to know the identity of new customers when a premises transfers to a new customer. It should also be noted that while the Commission made changes to the Water User Agreement in its August 4, 2021 Order, it did not reject the Water User Agreement outright. Therefore, the Commission finds that the revised Rule 3.b. is reasonable and should be approved.

4. Water User Agreement.

In the September 15, 2021 Order, the Commission granted rehearing for further consideration of the Commission's finding in the August 4, 2021 Order that the question of whether any of the adult household members owe Hyden-Leslie District for water service furnished at the service address or another address be stricken from the Water User Agreement. In the August 4, 2021 Order, the Commission found that this question was unnecessary for the provision of service to potential customers.²⁴

In its request for rehearing, Hyden-Leslie District stated that such information is necessary for it to determine whether an applicant is acting as an agent for a delinquent

²³ Response to Staff's Second Request for Information on Rehearing, Item 5.

²⁴ Order (Ky. PSC Aug. 4, 2021) at 6.

customer, to meet its fiscal responsibility to collect unpaid debts, and its statutory duty to ensure that no customer is given unreasonable preference or advantage.²⁵

Due to the approval of Hyden-Leslie District's revised Rule 9.d., the Commission finds that it is reasonable for Hyden-Leslie District to include a question on its Water User Agreement asking whether any adult household members owe Hyden-Leslie District for past water service in order to determine whether the prospective customer is acting as an agent for someone indebted to Hyden-Leslie District and that the addition of such question should be approved.

While reviewing the issues related to Hyden-Leslie District's request for rehearing, the Commission noticed that Hyden-Leslie District's Water User Agreement included a photo ID requirement. In Case No. 2021-00185,²⁶ the Commission found that when a utility has a photo identification requirement, there must be alternative identification that should be accepted in lieu of photo identification. Hyden-Leslie District proposed to add the following language regarding photo identification to its Water User Agreement:

All applicants for water service must pay a security deposit of \$74.00 and must present identification card containing the applicant's photo. In lieu of photo identification, the applicant may present an alternative form of identification such as an identification card with applicant's name issued by a Kentucky county government or any food stamp identification card, electronic benefit transfer card, or supplemental nutrition assistance card issued by Kentucky state government that shows the applicant's name. A credit card showing the applicant's name is not an acceptable alternate form of identification.²⁷

²⁵ Application for Rehearing at 10.

²⁶ Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Jan. 3, 2022) at 19–20.

²⁷ Hyden-Leslie District's Motion to Amend Proposed Tariff (filed Jan. 13, 2022), Attachment.

While Hyden-Leslie District proposed to add the above language to the Water User Agreement, it should be noted that there still is no corresponding requirement in the body of the tariff.

The Commission finds that the revised photo identification language added to the Water User Agreement is reasonable and should be approved. The Commission also finds that similar language should be included in the body of Hyden-Leslie District's tariff to avoid any confusion over the revised requirement.

IT IS THEREFORE ORDERED that:

1. The Order of August 4, 2021 is amended to reflect the modifications discussed in this Order.
2. All provisions of the August 4, 2021 Order that do not conflict with this Order shall remain in full force and effect.
3. Within 20 days of the date of this Order, Hyden-Leslie District shall file with the Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the modifications approved or as required herein and reflecting their effective date and that they were authorized by this Order.
4. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED
FEB 22 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2021-00071

*Gerald E Wuetcher
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Hyden-Leslie County Water District
356 Wendover Road
Hyden, KY 41749