

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO)	
LEDBETTER WATER DISTRICT CHARGING)	CASE NO.
UNAUTHORIZED RATES PURSUANT TO 807)	2021-00311
KAR 5:068)	

ORDER

On August 5, 2021, on its own motion, the Commission initiated an investigation pursuant to KRS 278.040, KRS 278.260, and KRS 278.160 to review whether Ledbetter Water District (Ledbetter District) charged its customers unauthorized rates between May 23, 2020, and May 4, 2021, in violation of KRS 278.160 and 807 KAR 5:068. In its response filed on October 28, 2021,¹ Ledbetter District admitted that, between May 23, 2020, and May 4, 2021, it charged rates different than Ledbetter District’s rate schedule on file with and authorized by the Commission.² As a result, Ledbetter District billed and collected \$7,962.69 more in revenues than Ledbetter District was authorized to charge in its rate schedule filed with the Commission.

LEGAL STANDARD

KRS 278.160(2) prohibits a utility from charging, demanding, collecting, or receiving from any person a greater or lesser compensation for service rendered than that prescribed in the utility’s filed rate schedule.

¹ The Order directed Ledbetter District to file a response within 20 days. Ledbetter District filed a motion requesting an extension of time to respond to the Order. The Commission granted Ledbetter District an extension of time until October 29, 2021, to submit its written response.

² Ledbetter District’s Response (filed Oct. 28, 2021), paragraphs 17, 23–24.

Commission regulation 807 KAR 5:068 prescribes the requirements for a water district to implement a purchased water adjustment to recover the cost of water purchased. In accordance with 807 KAR 5:068, Section 4(2)(b), a purchased water application must be filed no earlier than 30 days prior to the proposed effective date of the supplier's changed rate and no later than 20 days after the utility, without prior Commission approval, adjusts its rates to reflect the change in its purchased water costs due to the supplier's changed rate.

BACKGROUND

During the processing of a different matter, Case No. 2021-00158,³ Commission Staff discovered that Ledbetter District implemented rates as of May 23, 2020, to reflect a change in its purchased water costs due to a supplier's changed rate. However, Ledbetter District implemented an increased rate without filing an application with the Commission, and thus implemented a rate that had not been approved by the Commission or was reflected in Ledbetter District's rate schedule filed with the Commission. In an Order issued on August 5, 2021, in Case No. 2021-00158, the Commission stated that it would establish this proceeding.⁴

In its October 28, 2021, response filed in this case, Ledbetter District admitted that it charged its customers rates between May 23, 2020, and May 4, 2021, without prior Commission approval.⁵ Ledbetter District stated that the Commission approved a three-year, phased-in increase in the rates of Ledbetter District's wholesale water supplier in

³ Case No. 2021-00158, *Electronic Purchase Water Adjustment Filing of Ledbetter Water District* (Ky. PSC May 4, 2021).

⁴ See, Case No. 2021-00158, Aug. 5, 2021 Order.

⁵ Ledbetter District's Response, paragraph 17.

2019, and that Ledbetter District filed an application in 2019 to increase its rates to pass through the wholesale supplier's rate increase in accordance with 807 KAR 5:067.⁶ Ledbetter District further stated that, prior to the May 2020 rate increase from its water wholesale provided, a new general manager sought assistance from Commission Staff in filing an application to increase its rates and that due to the employee's lack of experience and misunderstanding of communications with Commission Staff, Ledbetter District believed that the submission of a tariff by email to Commission Staff was sufficient.⁷ Ledbetter District implemented the rate increase in May 2020, unaware that the rate increase had not been approved by the Commission.⁸ In preparing an application for approval of the final phase of the wholesale supplier's rate increase in 2021, Ledbetter District first became aware that the 2020 application had not be properly filed and the rates had not been approved by the Commission.⁹

In its October 28, 2021 response, Ledbetter District admitted that it failed to comply with KRS 278.160 between May 23, 2020, and May 4, 2021, by billing and collecting rates different from the rates in Ledbetter District's filed rate schedule.¹⁰ Ledbetter District disputes that it violated 807 KAR 5:068, arguing that the regulation sets forth only procedures for filing an application for a purchased water adjustment.¹¹

⁶ Ledbetter District's Response, paragraph 2–4.

⁷ Ledbetter District's Response, paragraph 5–16.

⁸ Ledbetter District's Response, paragraph 17.

⁹ Ledbetter District's Response, paragraph 18.

¹⁰ Ledbetter District's Response, paragraph 24.

¹¹ Ledbetter District's Response, paragraph 25.

In its October 28, 2021 response, Ledbetter District calculated that it billed and collected \$7,962.69 in additional revenues than it was authorized to bill and collect. This is based on Ledbetter District charging its customers an additional \$0.16 per 1,000 gallons between May 23, 2020, and May 4, 2021, and sold 49,766,787 gallons of water during that period.¹²

DISCUSSION

In Case No. 2019-00041,¹³ the Commission discussed the consequences of water utilities with inadequate oversight and poorly trained management, including failure to comply with statutes and regulations enforced by the Commission. In that case, the Commission stated that water utility general managers should possess the technical knowledge needed to ensure compliance with federal and state water quality standards, as well as knowledge of business and financial processes, compliance with statutes and regulations enforced by the Commission, and internal controls needed to run the day-to-day operations.¹⁴

Based upon the case record and Ledbetter District's admission, the Commission finds that Ledbetter District charged rates for water service that were higher than those listed in its filed rate schedule, and therefore violated provisions of KRS 278.160. The Commission further finds that Ledbetter District also violated 807 KAR 5:068, Section 4, which requires a utility to submit an application to adjust its purchased water rates and

¹² Ledbetter District's Response, paragraph 23. 49,766,787 gallons sold times \$0.16 per 1,000 gallons = \$7,962.69.

¹³ Case No. 2019-00041, *Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC Nov. 22, 2019).

¹⁴ Case No. 2019-00041, *Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC Nov. 22, 2019), Appendix L at 12.

the period for filing a purchased water adjustment application. Ledbetter District's denial that it violated 807 KAR 5:068 is contradicted by Ledbetter District's admission that it did not file a purchased water adjustment application consistent with 807 KAR 5:068. The Commission finds that the violations were willful and violated Ledbetter District's commissioners' and manager's duty to operate the utility in accordance with statutes in KRS Chapters 74 and 278, Commission regulations, and Commission Orders. KRS 74.070(2) states that "[t]he business and affairs of the water district shall be managed under the direction and oversight of its commission." Ledbetter District's commissioners' responsibility includes ensuring that personnel have appropriate training and knowledge for their positions, but especially for a manager of the utility.

Instead of taking responsibility for the error, Ledbetter District excused the failure to comply with its statutory and regulatory duty by attributing the failure on the inexperience of its manager, lack of knowledge of utility commissioners and other personnel, and communication with Commission Staff. The Commission is concerned that there is no evidence that Ledbetter District has taken any steps to address its decision-makers lack of knowledge of statutes and regulations enforced by the Commission. For this reason, and with the finding of a willful violation of KRS 278.160 and 807 KAR 5:068, the Commission finds that Ledbetter District commissioners and manager should be assessed a civil penalty of \$250 each, in accordance with KRS 278.990(1). However, the Commission will suspend the civil penalty conditioned upon Ledbetter District's commissioners and manager attending certified water management training approved by the Commission no later than March 31, 2023, and providing documentation of that training no later than May 1, 2023. The training is needed

to enable Ledbetter District's commissioners and manager to carry out their statutory duties.

Ledbetter District requested permission to retain the unauthorized amounts collected or, if required to refund the monies, to do so over a 12-month period. The Commission finds that it is unreasonable for Ledbetter District to retain the unauthorized funds because it would have the practical effect of a retroactive approval of rates, which is impermissible. For this reason, the Commission further finds that Ledbetter District should refund the amount that it collected in violation of KRS 278.160. The Commission agrees with Ledbetter District's calculation that it collected \$7,962.69 more than it was authorized to collect. The Commission denies Ledbetter District's request to refund the amount over 12 months and instead finds that a gradual refund period of six months is the most efficacious way to return the overcollection because it balances the financial impact on the utility with the importance of timely refunding customers the amount over collected. Based upon the amount and refund period, the Commission finds that a surcredit of \$1.11¹⁵ per bill per month to customers is reasonable and shall be implemented with the next billing cycle. Within 15 days of the termination of the surcredit, Ledbetter District shall file with the Commission a summary report with documentation illustrating that the overcollection was returned, any over- or undercollection, and how Ledbetter District proposes to account for any over- or undercollection.

Finally, the Commission finds that Ledbetter District's commissioners and manager shall adopt a policy of annual tariff reviews no later than July 1, 2022. Based

¹⁵ \$7,962.69 divided by 1,200 customers (Annual Report at end of 2020), divided by 6 months equals \$1.11.

upon Ledbetter District's October 28, 2021 response, it appears that its commissioners and manager are unfamiliar with Ledbetter District's filed tariff. An annual review is necessary to ensure that the tariff is accurate and thorough. Ledbetter District commissioners and manager shall file written notice on an annual basis of the report of the tariff review conducted by the manager and commissioners.

IT IS THEREFORE ORDERED that:

1. Ledbetter District's commissioners and manager are assessed a civil penalty of \$250 each, which is suspended for one year conditioned upon Ledbetter District's commissioners and manager attending six hours of certified water management training by March 31, 2023.

2. Ledbetter District's commissioners and manager shall attend six hours of certified water management training by March 31, 2023.

3. Ledbetter District commissioners and manager shall file written notice no later than May 1, 2023, that they attended six hours of certified water management training by March 31, 2023.

4. Ledbetter District shall file written notice of the adoption of annual tariff reviews no later than August 1, 2022.

5. Ledbetter District shall file written notice on an annual basis of the report of the tariff review conducted by the manager and Ledbetter District commissioners.

6. Beginning with the next billing month after the date of this Order, Ledbetter District shall refund \$7,962.69 to its customers as a surcredit of \$1.11 per bill per month for six months.

7. Within 15 days of the termination of the surcredit, Ledbetter District shall file with the Commission a summary report with documentation illustrating that the overcollection was returned, any over- or undercollection, and how Ledbetter District proposes to account for any over- or undercollection.

8. Within 20 days of the date of this Order, Ledbetter District shall file with the Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates and surcredit approved herein, and reflecting the effective date and that they were authorized by this Order.

9. All filings made pursuant to these ordering paragraphs shall be made in the post-case correspondence file in this proceeding and shall include the case number.

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

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner

ENTERED

MAY 13 2022
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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Case No. 2021-00311

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