

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLACK	)	CASE NO.
MOUNTAIN UTILITY DISTRICT FOR A RATE	)	2022-00275
ADJUSTMENT PURSUANT TO 807 KAR 5:076	)	

ORDER

On August 22, 2022,<sup>1</sup> Black Mountain Utility District (Black Mountain District) filed its application with the Commission requesting an adjustment to its water rates pursuant to 807 KAR 5:076.

In its application, Black Mountain District requested rates that would increase its annual water sale revenues by \$90,449, or a 5.54 percent increase to pro forma present rate water sale revenues. Also, in its application, Black Mountain District requested to implement a per customer, monthly water loss reduction surcharge of \$3.65 for Division 1 customers and \$7.91 for Division 2 customers, each for a period of 48 months.

To ensure the orderly review of the application, the Commission established a procedural schedule by Order dated September 23, 2022, which, among other things, required the Commission Staff to file a report containing its findings regarding Black Mountain District's application. Commission Staff issued its first round of discovery (Staff's First Request) on September 15, 2022. Black Mountain District filed its responses to Staff's First Request on October 7, 2022, which included a letter requesting an

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<sup>1</sup> Black Mountain District tendered its application on August 22, 2022. By letter dated September 8, 2022, the Commission accepted the application.

additional 14 days to respond to four items.<sup>2</sup> On October 21, 2022, in accordance with 807 KAR 5:001E, Section 4(5), the Commission found that that good cause existed to grant the motion in order to have a more complete and accurate record.<sup>3</sup> Further, the procedural schedule was amended to reflect the impact of Black Mountain District's delay on future dates.<sup>4</sup>

Black Mountain District filed its supplemental response to Staff's First Request on October 21, 2022, which again included a letter requesting an additional three days to respond to one item.<sup>5</sup> On October 24, 2022, Black Mountain District's updated supplemental response to Staff's First Request was submitted.

Commission Staff issued its second round of data requests (Staff's Second Request) on October 28, 2022. Black Mountain District filed a partial response on November 14, 2022, which, for the third time, included a letter requesting an additional 30 days to respond to several items.<sup>6</sup> On December 6, 2022, in accordance with 807 KAR 5:001E, Section 4(5), the Commission found that that good cause existed to grant the motion in order to have a more complete and accurate record.<sup>7</sup>

Black Mountain District filed partial supplemental responses on December 14, 2022, including a letter stating that it was unable to respond to a number of questions and

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<sup>2</sup> Black Mountain District's Read-First Letter (filed Oct. 7, 2022).

<sup>3</sup> Order (Ky. PSC Oct. 21, 2022).

<sup>4</sup> Order (Ky. PSC Oct. 21, 2022).

<sup>5</sup> Black Mountain District's Read-First Letter (filed Oct. 21, 2022).

<sup>6</sup> Black Mountain District's Read-First Letter (filed Nov. 14, 2022).

<sup>7</sup> Order (Ky. PSC Dec. 6, 2022).

another extension would not meaningfully change its ability to respond.<sup>8</sup> Black Mountain District further stated that it was willing to meet with Commission Staff to review available information to provide assurance that the alternative rate filing application was reasonable and appropriate.<sup>9</sup> On December 29, 2022, in accordance with 807 KAR 5:001E, Section 4(5), the Commission found that good cause existed to schedule an Informal Conference and the request was granted.<sup>10</sup> On December 29, 2022, the procedural schedule was amended to reflect the addition of an informal conference (IC) and its impact on future dates.<sup>11</sup> Commission Staff conducted an IC on January 5, 2023.

The Commission amended the procedural schedule on its own motion on March 7, 2023, extending the date from March 7, 2023, to March 15, 2023 to allow for additional time for Commission Staff to file the Commission Staff's Report. Commission Staff required additional time to finalize the report due to Black Mountain District's previous extensions of time to respond to Commission Staff's requests for information.

On March 15, 2023, Commission Staff issued its report (Commission Staff's Report) summarizing its findings and recommendations regarding Black Mountain District's requested rate adjustment. In the Commission Staff's Report, Commission Staff found that Black Mountain District's adjusted test-year operations support an overall revenue requirement of \$1,913,196, and that an annual revenue increase of \$67,503 or 4.14 percent, is necessary to generate the overall revenue requirement. In the absence

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<sup>8</sup> Black Mountain District's Read-First Letter (filed Dec. 14, 2022).

<sup>9</sup> Black Mountain District's Read-First Letter (filed Dec. 14, 2022).

<sup>10</sup> Order (Ky. PSC Dec. 29, 2022).

<sup>11</sup> Order (Ky. PSC Dec. 29, 2022).

of a cost of service study (COSS), Commission Staff allocated its recommended revenue increase evenly across the board to calculate its recommended water rates. Commission Staff also recommended that Black Mountain District be allowed to assess a monthly water loss reduction surcharge of \$7.91 per active meter for both divisions for 48 months with a three-year phase-in period of \$2.63 in year one, \$5.27 in year two, and \$7.91 in year three.

On March 24, 2023, Black Mountain District filed its response to Commission Staff's Report. Black Mountain District stated it disagreed with Commission Staff's recommendation to have the same water loss reduction surcharge amount for both Division 1 and Division 2 and removal of certain labor expenses but did not wish to contest the adjustments in this proceeding. Black Mountain District further stated that it waived its right to request an informal conference or hearing in this case and concurred with the remainder of Commission Staff's recommendations.<sup>12</sup>

On June 9, 2023, the Commission issued an Order finding that Black Mountain District had amended its application on March 24, 2023, when it did not contest the adjustments in this proceeding and ordered Black Mountain District to provide notice of the proposed rate increase and water loss surcharge in the Commission Staff's Report. Black Mountain District filed proof of publication on June 21, 2023.

The case now stands submitted for a decision by the Commission.

#### LEGAL STANDARD

Alternative rate adjustment proceedings, such as this one, are governed by Commission regulation 807 KAR 5:076, which establishes a simplified process for small

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<sup>12</sup> Black Mountain District Response to Staff Report (filed. Mar. 24, 2023).

utilities to use to request rate adjustments, with the process designed to be less costly to the utility and the utility ratepayers. The Commission’s standard review of a utility’s request for a rate increase is well established. In accordance with KRS 278.030 and case law, Black Mountain District is allowed to charge its customers “only fair, just and reasonable rates.”<sup>13</sup> Further, Black Mountain District bears the burden of proof to show that the proposed rate increase is just and reasonable under KRS 278.190(3).

UNACCOUNTED-FOR WATER LOSS

Pursuant to 807 KAR 5:066, Section (6)3, water loss is limited to 15 percent for ratemaking purposes. Black Mountain District reported a water loss of 47.91 percent in its 2020 Annual Report.<sup>14</sup> The total annual cost of water loss to Black Mountain District is \$464,858 and the annual cost of water loss in excess of 15 percent is \$319,316 as shown in the table below.

Total Water Loss	Purchased		
	Water	Power	Total
Pro Forma Purchases	\$ 851,385	\$ 118,900	\$ 970,285
Water Loss Percent	47.9095%	47.9095%	
Total Water Loss	<u>\$ 407,894</u>	<u>\$ 56,964</u>	<u>\$ 464,858</u>

Disallowed Water Loss	Water	Power	Total
Pro Forma Purchases	851,385	118,900	
Water Loss in Excess of 15%	32.9095%	32.9095%	
Disallowed Water Loss	<u>\$ 280,187</u>	<u>\$ 39,129</u>	<u>\$ 319,316</u>

As discussed in greater detail below, Black Mountain District requested to implement a water loss reduction surcharge in its application that will collect an amount

<sup>13</sup> *City of Covington v. Public Service Commission*, 313 S.W.2d 391 (Ky. 1958); and *Public Service Comm’n v. Dewitt Water District*, 720 S.W.2d 725 (Ky. 1986).

<sup>14</sup> *Annual Report of Black Mountain District to the Public Service Commission for the Calendar Year Ended December 31, 2020* (Annual Report) at 58.

that reflects the amount disallowed for excessive water loss pursuant to 807 KAR 5:066, Section 6(3). In establishing water-loss surcharges, the Commission recognizes that the adjustments required to comply with the 15 percent line-loss limitation in 807 KAR 5:066, Section 6(3), could severely restrict cash flow and could impair a water district's ability to take the necessary action to focus on its leak detection and repair. Using a surcharge to fund a water utility's water loss reduction efforts allows the Commission to place strict controls governing the surcharge proceeds to ensure their effective use, public acceptance of the surcharge, and public confidence in the water utility's use of those funds.

### BACKGROUND

Black Mountain District is a water utility organized pursuant to KRS Chapter 74. It owns and operates a water distribution system through which it provides water service to approximately 3,289 residential customers, 58 commercial customers, and 16 public authorities that reside in Harlan County, Kentucky.<sup>15</sup> Black Mountain District does not produce any of its own water; rather, it purchases its water from Pineville Water, the City of Evarts, and Harlan Municipal Water Works. A review of the Commission's records indicates that this is Black Mountain District's first alternative rate adjustment since March 19, 2015.

### TEST PERIOD

The calendar year ended December 31, 2020, was used as the test year to determine the reasonableness of Black Mountain District's existing and proposed water rates, as required by 807 KAR 5:076, Section 9.

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<sup>15</sup> Annual Report at 12 and 49.

## SUMMARY OF REVENUE AND EXPENSES

The Commission Staff's Report summarizes Black Mountain District's pro forma income statement as follows:

	Commission Staff's Report		
	Test-Year Operations	Pro Forma Adjustments	Pro Forma Operations
Operating Revenues	\$ 1,787,938	\$ 57,755	\$ 1,845,693
Operating Expenses	2,232,365	(500,023)	1,732,342
Net Utility Operating Income	\$ (444,427)	\$ 557,778	\$ 113,351

### REVIEW AND MODIFICATIONS TO COMMISSION STAFF'S RECOMMENDATIONS

Black Mountain District's proposed adjustments to revenues and expenses reflect current and expected operating conditions. In the Commission Staff's Report, Commission Staff proposed additional adjustments. The Commission accepts the findings and recommendations contained in the Commission Staff's Report. The Commission has no further modifications.

### REVENUE REQUIREMENTS

Billing Analysis. Black Mountain District provided usage data by meter size, listing the water usage and water sales revenue for the 12-month test year. Commission Staff calculated the data provided within a normalized billing analysis and determined that annual base rate revenues of \$1,631,637 for all retail customers is an accurate representation of the normalized test-year revenue from water sales. In the Commission Staff's Report, Commission Staff recommended reclassifications of a Debt Service Surcharge of \$152,927 and Late Payment Penalties of \$9,186 from Sales of Water to Debt Service Surcharge and Late Payment Penalties, respectively.<sup>16</sup> Additionally,

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<sup>16</sup> Commission Staff's Report at 16, Reference A.

Commission Staff recommended an increase of \$5,812 to Black Mountain District's test-year Water Sales Revenue.<sup>17</sup> The Commission finds that these adjustments are reasonable because an examination of Black Mountain District's billing analysis was completed by Commission Staff and a normalized revenue was based on the information provided.

Debt Service Surcharge. In the Commission Staff's Report, Commission Staff recommended Black Mountain District's proposed reclassification of a Debt Service Surcharge of \$152,927 from Sales of Water to Debt Service Surcharge be accepted.<sup>18</sup> The Commission finds that this adjustment is known and measurable and should be accepted.

Miscellaneous Water Revenues. In the Commission Staff's Report, Commission Staff recommended an increase of \$8,051 to Miscellaneous Water Service Revenues for non-recurring charges based on test year revenues provided by Black Mountain District in response to the first data request. Commission Staff then reduced this amount by \$5,857 for labor expense related to nonrecurring charges for a total net Pro Forma adjustment increase of \$2,194.<sup>19</sup> The Commission finds this adjustment is reasonable because the labor charges are known and measurable.

Late Payment Penalties. Black Mountain District proposed an increase of \$49,749 in late payment penalties but did not explain the adjustment. In the Commission Staff's Report, Commission Staff recommended reclassifications of Late Payment Penalties of

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<sup>17</sup> Commission Staff's Report at 16, Reference B.

<sup>18</sup> Commission Staff's Report at 16, Reference E.

<sup>19</sup> Commission Staff's Report at 16, Reference C.



\$9,186 from Sales of Water to Late Payment Penalties due to the misclassification of forfeited discounts in Sales of Water Revenues.<sup>20</sup> Due to the test year 2020 moratorium on late payment penalties Commission Staff calculated a three year average of late fees to normalize the late payment penalties amount and concluded that Black Mountain District's proposed adjustment was reasonable. The Commission finds that this adjustment is reasonable because it is known and measurable based on a three-year average of late fees.

Removal of Sewer Expenses from Accounts. Black Mountain District does not segregate sewer expenses in a manner that makes them readily identifiable. In the Commission Staff's Report, Commission Staff recommended exclusion of \$39,833 from Miscellaneous Expenses for certain items that were excluded from Black Mountain District's annual report but that were subsequently grouped in Miscellaneous Expenses in its application.<sup>21</sup> Commission Staff determined the \$39,833 amount after review of Black Mountain District's 2020 general ledger. The Commission finds that these adjustments are reasonable because the identified amounts are known and measurable.

Salaries and Wages – Employees. Black Mountain District proposed to decrease Salaries and Wages-Employees by \$28,070 to reflect the net effect of vacancies, new hires, and authorized wage increases after the test year. The Commission finds that this adjustment is reasonable as Commission Staff reviewed Black Mountain District's calculations and determined the proposed adjustments were an accurate representation of the decrease in the annual labor expense to Black Mountain District.

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<sup>20</sup> Commission Staff's Report at 16, Reference A.

<sup>21</sup> Commission Staff's Report at 19 and 20, Reference F.

Employee Pensions and Benefits. Black Mountain District proposed a decrease of \$9,146 in employee benefits costs to reflect changes in the current number of covered employees net of inflation. In Commission Staff's Report, Commission Staff recommended a decrease of \$16,538 to Black Mountain District's Employee Benefits to reflect cost changes associated with lower labor costs and the Revised Test Year. The Commission finds Commission Staff's adjustment is reasonable because the amounts are known and measurable.

Additionally, Black Mountain District pays 100 percent of the cost of employee insurance coverage and proposed to reduce the pro forma amount for ratemaking purposes by \$16,258 to reflect the Commission's policy of prohibiting rate recovery of any employer contribution for medical insurance that exceeds 79 percent of the cost of the single premium coverage. The Commission finds that Black Mountain District's adjustment is reasonable because Commission Staff reviewed Black Mountain District's supporting calculations and the proposed adjustment complies with the Commission's precedent.

Excess Water Loss. Black Mountain District's test year water loss was 47.9095 percent. Commission regulation 807 KAR 5:066, Section 6(3), limits water loss to 15 percent for ratemaking purposes, unless the Commission finds an alternative level is reasonable. Black Mountain District proposed a reduction to Purchased Water Expense of \$283,741 to account for the district's water loss in excess of 15 percent. Additionally, Black Mountain District proposed a reduction of \$39,129 to Purchased Power Expense to reflect the disallowance of Purchase Power Expense attributable to water loss above 15 percent. In the Commission Staff's Report, Commission Staff

recommended a decrease of \$280,187 to Black Mountain District's Purchased Water Expense and a decrease of \$39,129<sup>22</sup> to its Purchased Power Expense to reflect the costs associated with the production of water in excess of 15 percent water loss. The Commission agrees with Commission Staff's calculation of water loss in excess of 15 percent.

Expenses Related to Meter Installation. Black Mountain District installed 15 regular meter connections during the test year and proposed to reduce Salaries and Wages by \$1,860 and Materials and Supplies by \$4,340. In the Commission Staff's Report, Commission Staff recommended accepting the proposed adjustments based on a review of the evidence. The Commission finds that the adjustments are appropriate and accepts the proposed adjustment by Black Mountain District.<sup>23</sup>

Taxes Other than Income – FICA. Black Mountain District proposed to decrease Taxes Other than Income by \$4,717 to reflect a reduction of FICA taxed on pro forma wage decreases. In Commission Staff's Report, Commission Staff recommended a decrease to Black Mountain District's Taxes Other than Income Expense by \$2,725.<sup>24</sup> This was based on Commission Staff recalculated FICA taxes based on pro forma wages of \$299,852 and therefore a decrease in FICA due to a reduction in pro forma wages. The Commission finds that this adjustment is appropriate based on the adjusted wage expenses.

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<sup>22</sup> Commission Staff's Report at 21, Reference J.

<sup>23</sup> Commission Staff's Report at 16, Reference H.

<sup>24</sup> Commission Staff's Report at 16, Reference K.

Depreciation. Black Mountain District decreased its test year Depreciation Expense of \$505,159 by \$368 due to an error in reporting.<sup>25</sup> Black Mountain District also decreased its test year depreciation by \$70,715 for adjustments of asset service lives to the midpoint of service life range. In the Commission Staff's Report, Commission Staff recommended the Commission accept Black Mountain District's proposed decrease of \$70,715 to Black Mountain District's Depreciation Expense<sup>26</sup> to reflect the adjustment of the useful life of capital assets to the midpoint of the National Association of Regulatory Utility Commissioners (NARUC) depreciation study and the decrease of \$368 due to a reporting error. Commission Staff decreased the pro forma Depreciation Expense by \$71,083. The Commission finds that these adjustments are reasonable because it reflects a reporting error and the calculation reflected Commission precedent, using the midpoint of service life range.

#### OVERALL REVENUE REQUIREMENT

Based upon the Commission findings and determinations made in this Order, Black Mountain District requires an increase in revenues from water sales of \$67,503, or 4.14 percent above the pro forma present water rate revenues as calculated below. This level of increase is required for Black Mountain District to continue to strive toward being operationally and financially sound and to provide adequate, efficient and reasonable service to its customers.

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<sup>25</sup> Commission Staff's Report at 16, Reference L.

<sup>26</sup> Commission Staff's Report at 16, Reference L.

Pro Forma Operating Expenses	\$ 1,732,342
Plus: Average Annual Principal and Interest Payments	150,712
Additional Working Capital	30,142
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Overall Revenue Requirement	1,913,196
Less: Other Operating Revenue	(61,129)
Miscellaneous Service Revenues	(152,927)
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Revenue Required from Rates	1,699,140
Less: Pro Forma Present Rate Service Revenues	(1,631,637)
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Required Revenue Increase	<u>\$ 67,503</u>
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Percentage Increase	<u>4.14%</u>

### WATER LOSS SURCHARGE

Black Mountain District requested to implement a per customer, monthly water loss reduction surcharge of \$3.65 for Division 1 customers and \$7.91 for Division 2 customers for a period of 48 months. In the Commission Staff's Report, Commission Staff recommended the Commission approve a Water Loss Reduction Surcharge of \$2.85 per active meter per month for 48 months to help lower system water losses to more acceptable levels. However, Commission Staff recommended a uniform surcharge because Black Mountain District did not provide evidence in the record to demonstrate that Division 2 customers experienced a higher level of water loss than Division 1 customers.

The surcharge collection reflects the amount disallowed for excessive water loss pursuant to 807 KAR 5:066, Section 6(3). The use of a surcharge is consistent with prior Commission action in cases involving water utilities with excessive unaccounted-for water

loss.<sup>27</sup> In establishing a water-loss surcharge, the Commission recognized that the adjustments required comply with the 15 percent line-loss limitation in 807 KAR 5:066, Section 6(3), could severely restrict cash flow and could impair a water district's ability to take the necessary action to focus on its leak detection and repair. Using a surcharge to fund a water utility's water loss reduction efforts allows the Commission to place strict controls governing the surcharge proceeds to ensure their effective use, public acceptance of the surcharge and public confidence in the water utility's use of those funds. In its report titled *Confronting the Problems Plaguing Kentucky's Water Utilities: An Investigative Report by the Kentucky Public Service Commission November 2019* that was fully incorporated in the final Order in Case No. 2019-00041, Appendix L, the Commission recommended more frequent rate cases and pursuing qualified infrastructure improvement surcharges, the proceeds of which will be devoted exclusively to infrastructure improvement and replacement.<sup>28</sup>

Therefore, the Commission finds that a monthly surcharge is a reasonable means for Black Mountain District to recover the cost for its water leak detection efforts and repairs in order to reduce the increased expense and lost revenue from unaccounted-for water loss. The Commission will open a separate surcharge monitoring case. The

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<sup>27</sup> See Case No. 96-126, *An Investigation into the Operations and Management of Mountain Water District* (Ky. PSC Aug. 11, 1997); Case No. 2011-00217, *Application of Cannonsburg Water District for (1) Approval of Emergency Rate Relief and (2) Approval of the Increase in Nonrecurring Charges* (Ky. PSC June 4, 2012); Case No. 2018-00017, *Application of Martin County Water District for an Alternative Rate Adjustment* (Ky. PSC Nov. 5, 2018); Case No. 2018-00429, *Application of Graves County Water District for an Alternative Rate Adjustment* (Ky. PSC Sept. 30, 2019); and Case No. 2019-00119, *Electronic Application of Estill County Water District No. 1 for a Surcharge to Finance Water Loss Control Efforts* (Ky. PSC Mar. 24, 2020).

<sup>28</sup> Case No. 2019-00041, *Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC Nov. 22, 2019), Order, Appendix L, *Confronting the Problems Plaguing Kentucky's Water Utilities: An Investigative Report by the Kentucky Public Service Commission November 2019* at 24–25.

Commission finds that a monthly water loss reduction surcharge of \$7.91 per customer over 48 months, or until \$319,316 has been assessed, whichever occurs first, should be approved and that the surcharge should be phased in over three years subject to the below conditions:

1. Within 120 days of the date of this Order, Black Mountain District should file with the Commission a qualified infrastructure improvement plan, including a comprehensive unaccounted-for water loss reduction plan that establishes priorities and a time schedule for eliminating each source of unaccounted-for water loss, and provide a detailed spending plan for the proceeds of a surcharge.

2. Black Mountain District should deposit surcharge collection in a separate interest bearing account.

3. On the 15th day of each month for 48 months from the date of service of this Order or until all surcharge proceeds are expended, Black Mountain District should file with the Commission a monthly activity report that includes a statement of monthly surcharge billings and collections using the format in the Surcharge Reporting form<sup>29</sup>, a monthly surcharge bank statement, a list of each payment from the account, its payee, and a description of the purpose, and invoice supporting each payment.

4. On the 15th day of each month for 48 months from the date of service of this Order or until all surcharge proceeds are expended, Black Mountain District should file a monthly water-loss reports with the Commission.<sup>30</sup>

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<sup>29</sup> The Surcharge Reporting form can be found at <https://psc.ky.gov/Home/UtilForms> under the Water tab, "Surcharge Report (Excel format).

<sup>30</sup> The report format is found at <https://psc.ky.gov/Home/UtilForms> under "Water Use & Loss Calculations (Excel format)".

5. Black Mountain District should not use any surcharge proceeds for reimbursement of unaccounted-for water loss reduction expense without prior Commission authorization.

6. Black Mountain District should file requests to use surcharge proceeds into the record of this proceeding. The request should include a complete description of the equipment, project, or service for which approval is sought; bids, invoices, or price quotes as applicable; and a statement describing how the proposed purchase, project, or service is related to the qualified infrastructure improvement plan and the goal of reducing unaccounted-for water loss.

7. Black Mountain District should consider all surcharge collections as contributions and shall account for them in the manner that a Uniform System of Accounts for Class A and B Water Districts and Associations prescribes.

8. Black Mountain District should debit monthly billings for the surcharge to customers' accounts receivable and credit the contribution account.

9. When Black Mountain District collects the surcharge from the customers, it should debit special funds and credit the customer account.

10. For the purpose of evaluating whether adjustments in the surcharge are required, Black Mountain District should file an annual report of surcharge activity and water loss improvement progress no later than April 30 of each year. The report should be based on the preceding year ended December 31 with reported surcharge billings and expenditures reflecting the amounts reported for surcharge activity in the financial and statistical Annual Report filed with the Commission and Black Mountain District's audited financial statements.



11. Black Mountain District should respond to any requests for information propounded by Commission Staff according to the date set forth in the request.

12. Black Mountain District's failure to comply with any conditions attached to its assessment of the surcharge will result in termination of the surcharge and the refund of all surcharge proceeds previously collected.

### RATE DESIGN

Black Mountain District proposed to increase all of its monthly retail water service rates evenly across the board by approximately 5.54 percent. Black Mountain District has not performed a cost of service study (COSS). Black Mountain District stated that it did not consider filing a COSS because there have not been any material changes in customer usage patterns to warrant it.

In the Commission Staff's Report, Commission Staff followed the method proposed by Black Mountain District and allocated Commission Staff's calculated revenue increase across the board to Black Mountain District's monthly retail water service rates. The Commission finds that in the absence of a COSS, the proposed across-the-board method is an appropriate and equitable method to allocate the increased cost to Black Mountain District's customers.

The rates set forth in Appendix A to this Order are based upon the revenue requirement the Commission has found to be fair, just and reasonable, and will produce sufficient revenues to recover the required revenue of \$1,699,140 from water sales, an approximate 4.14 percent over normalized test-year water sales of \$1,631,637.

In an effort to avoid a significant hardship on Black Mountain District's customers, the Commission finds that a three-year phase-in approach is appropriate. Although

applying a three-year phase-in will not allow for depreciation reserves to be fully funded in the first two phases, it will allow for adequate revenues to cover expenses and debt service and a portion of the depreciation reserves. In year one, these rates (including the proposed phased-in surcharge rate) will increase a typical residential monthly water bill for customers located in the Division 1 service area from \$46.27 to \$50.64, an increase of \$4.37, or approximately 9.44 percent.<sup>31</sup> In year one, these rates will increase a typical residential monthly water bill for customers located in the Division 2 service area from \$42.01 to \$46.38, an increase of \$4.37, or approximately 10.40 percent.<sup>32</sup> In year two, these rates will increase a typical residential monthly water bill for customers located in the Division 1 service area from \$50.64 to \$53.28, an increase of \$2.64, or approximately 5.21 percent. In year two, these rates will increase a typical residential monthly water bill for customers located in the Division 2 service area from \$46.38 to \$49.02, an increase of \$2.64, or approximately 5.69 percent. In year three, these rates will increase a typical residential monthly water bill for customers located in the Division 1 service area from \$53.28 to \$55.92, an increase of \$2.64, or approximately 4.95 percent. In year three these rates will increase a typical residential monthly water bill for customers located in the Division 2 service area from \$49.02 to \$51.66, an increase of \$2.64 or approximately 5.39 percent.

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<sup>31</sup> The typical residential customer uses approximately 4,000 gallons per month. Application, Black Mountain District Customer Notice (filed Aug. 22, 2022) at 8. The average customer bill for Division 1 customers also includes Black Mountain District's debt service surcharge of \$4.26 per month as well as a year-one water loss surcharge of \$2.63 per month.

<sup>32</sup> The average customer bill for Division 2 customers includes Black Mountain District's year-one water loss surcharge of \$2.63 per month.

## RATE CASE FREQUENCY

In Case No. 2019-00041 and the resulting investigative report, the Commission discussed the problems that can occur when utilities avoid a review of their financial records.<sup>33</sup> A key recommendation from that investigative report was that water utilities should monitor the sufficiency of their base rates closely and, in general, apply for base rate adjustments on a more frequent basis.<sup>34</sup> In light of its findings in Case No. 2019-00041, the Commission noted, in Case No. 2018-00068,<sup>35</sup> that Black Mountain District had not sought a base rate adjustment since 2015<sup>36</sup> and that despite the rate increase, Black Mountain District was using the majority of its depreciation reserves to pay current operating expenses. Consequently, the Commission ordered Black Mountain District to file an application for general or an alternative rate adjustment within one year of the date of filing of the Order in Case No. 2018-00068.<sup>37</sup>

The Commission recommends that Black Mountain District conduct internal financial reviews on an annual basis to ensure that its water rates are sufficient. The Commission also recommends that Black Mountain District file an Alternative Rate Filing based on its audited 2024 financial statements by no later than June 30, 2025. The Commission also recommends that Black Mountain District's board of commissioners

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<sup>33</sup> Case No. 2019-00041, *Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC. Nov. 22, 2019), Order.

<sup>34</sup> Case No. 2019-00041, Nov. 22, 2019 Order.

<sup>35</sup> Case No. 2018-00068, *An Investigation into the Feasibility of Proposed Merger of Cawood Water District and Black Mountain Utility District Pursuant to KRS 74.361* (Ky. PSC. July 7, 2021), Order.

<sup>36</sup> Case No. 2015-00088, *Alternative Rate Adjustment Filing of Black Mountain Utility District* (Ky. PSC. Nov. 9, 2015), Order.

<sup>37</sup> Case No. 2018-00068, July 7, 2021 Order.

consider filing periodic rate cases with the Commission every three to five years and implement a written policy to that effect to maintain a regular review of the utility's finances. These are good practices to ensure that there is not a seven -year gap between base rate cases in the future. If Black Mountain District needs assistance in conducting its annual internal rate reviews to ensure the sufficiency of its rates, Black Mountain District can request the Commission to allow its Financial Analysis Staff to assist with the annual rate analysis.

### INVESTIGATION INTO ALLEGED VIOLATIONS

The Commission notes that the Commission Staff's Report contained a discussion of multiple alleged violations of KRS Chapters 74 and 278, Commission regulations, and a Commission Order. For the reasons discussed below, the Commission finds that a separate proceeding should be established to investigate the alleged violations pursuant to KRS 278.250 and KRS 278.260. The Commission places Black Mountain District and its commissioners and manager on notice that, if the Commission determines that violations occurred and were willful, the parties may be assessed a civil penalty under KRS 278.990 for violations of KRS Chapter 278, Commission regulations, and a Commission Order. Further, the Commission places Black Mountain District's commissioners on notice that failure to complete the water district commissioner training required by KRS 74.020(8)(a) forfeits her or his office under KRS 74.020(9)(a). Finally, the Commission puts Black Mountain District's commissioners on notice that they could be removed from office under KRS 74.025, for good cause, including incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office,

and failure to comply with rules, regulations, and orders issued by the Public Service Commission.

Alleged violation of KRS 74.020(8)

The initial appointments for all Black Mountain District's current commissioners have occurred since 2020.<sup>38</sup> KRS 74.020(8)(a) requires the Commission to conduct a program at least once annually consisting of at least 12 hours of instruction intended to train newly appointed water district commissioners in laws governing the management and operation of a water district and other relevant topics. KRS 74.020(8)(b) requires water district commissioners to complete that training within 12 months of the commissioner's initial appointment. The Commission held the trainings required by KRS 74.020(8)(1) in December 2020; July and December 2021; July, September, October, and December 2022; and in July 2023.

In a discovery response, Black Mountain District admitted that "[n]one of the current commissioners have yet received any training."<sup>39</sup> Black Mountain District's current commissioners' initial appointment dates December 1, 2020; December 1, 2021; March 20, 2022; January 11, 2023; and February 16, 2023.

Based upon the above discussion, the Commission finds that a separate proceeding should be established to investigate Black Mountain District's commissioners' alleged violation of KRS 74.020(8) for failure to attend water district commissioner training within 12 months of their initial appointment.

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<sup>38</sup> Commission Staff's Report at 25.

<sup>39</sup> Black Mountain District's Response to Staff's Second Request (filed Dec. 14, 2022), Item 1(g).

Alleged violation of KRS 278.030 and 807 KAR 5:006, Sections 4 and 24

KRS 278.030(1)-(2) requires every utility subject to Commission jurisdiction to provide adequate, efficient and reasonable service at fair, just and reasonable rates. KRS 74.070(2) provides that all corporate powers of the water district are exercised under the authority of the water district board of commissioners. KRS 74.070(2) further provides that the water district business affairs are managed under the direction and oversight of the utility commissioners.

As noted in the Commission Staff's Report, there are significant concerns regarding the financial and operational condition of the utility and the utility's commissioners' ability to provide the appropriate oversight and direction of Black Mountain District's business affairs. For example, 807 KAR 5:006, Section 24 requires that certain records, including financial records, be kept in the utility's office, and to be made available to Commission Staff upon reasonable notice. Black Mountain District repeatedly told Commission Staff that Black Mountain District did not maintain or could not access key financial information.<sup>40</sup> As one example, in discovery responses, Black Mountain District stated that it does not maintain the general ledger or trial balance in its office, and that the records are maintained by and in the possession of the utility's auditor.<sup>41</sup>

Black Mountain District is required by 807 KAR 5:006, Section 4(3) to file with the Commission an audit report for the previous year by September 30. Black Mountain

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<sup>40</sup> See Commission Staff's Report at 24-25.

<sup>41</sup> Black Mountain District's Supplemental Response to Staff's First Request (filed Oct. 24, 2022), Item 1.

District last filed an audit with the Commission in 2017.<sup>42</sup> Black Mountain District filed 2019 and 2020 audits in response to discovery in this proceeding,<sup>43</sup> but the 2021 audit was not started until October 2022, which is past the regulatory deadline.<sup>44</sup>

Similarly, Black Mountain District is required by 807 KAR 5:006, Section 4(1) to file a financial and statistical report by March 31 each year for the previous year, Black Mountain District filed its ARF application on August 22, 2022, five months after the 2021 annual report should have been completed, filed, and accepted by the Commission. However, Commission Staff had to rely on the 2020 Annual Report for the test year because 2021 had not been accepted by the Commission as complete when the application was filed on August 22, 2022.<sup>45</sup>

Commission Staff noted other financial inconsistencies in its report including that Black Mountain District reported a \$136,091.64 sewer receivable in the water accounts,<sup>46</sup> reported funds as grant revenue in its schedule of adjusted operations that was actually funds collected through the debt service surcharge,<sup>47</sup> and, according to the March, May, and September 2022 Board meeting minutes, Black Mountain District used a portion of \$100,000 in federal grant money to pay delinquent bills for daily operating expenses.<sup>48</sup>

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<sup>42</sup> See [https://psc.ky.gov/UMS\\_New/Utility/Reports](https://psc.ky.gov/UMS_New/Utility/Reports) (accessed July 16, 2023).

<sup>43</sup> Black Mountain District's Supplemental Response to Staff's First Request, Item 1.

<sup>44</sup> Black Mountain District's Supplemental Response to Staff's First Request, Item 1.

<sup>45</sup> Commission Staff's Report at 25.

<sup>46</sup> Commission Staff's Report at 24-25.

<sup>47</sup> Commission Staff's Report at 25.

<sup>48</sup> Commission Staff's Report at 25.

Based upon the above discussion, the Commission finds that a separate proceeding should be established to investigate Black Mountain District's alleged violation of KRS 278.030 and 807 KAR 5:006, Sections 4 and 24.

Alleged violation of KRS 278.300

The Commission Staff's Report noted that Black Mountain District allegedly violated KRS 278.300 by entering into a debt agreement without prior Commission approval. KRS 278.300(1) states that no utility shall issue evidences of indebtedness until it has been authorized by the Commission. KRS 278.300(8) exempts a utility obtaining prior Commission approved for evidences of indebtedness with terms of two years or less, which may be renewed for a term not exceeding six years from the date of issue of the original note.

On June 16, 2015, Black Mountain District entered into a debt agreement with the Bank of Harlan for \$150,000 with a maturity date of June 16, 2016.<sup>49</sup> The Bank of Harlan was subsequently acquired, and the debt held by Monticello Bankshares (Monticello Bankshares Debt Agreement). The Monticello Bankshares Debt Agreement was renewed several times, with the most recent renewal on September 1, 2022, which is over seven years after the original note was executed.<sup>50</sup> As of October 31, 2022, the balance was approximately \$101,000.<sup>51</sup> As of the date of this Order, the note has been outstanding for approximately eight years.

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<sup>49</sup> Commission Staff's Report at 22.

<sup>50</sup> Commission Staff's Report at 22.

<sup>51</sup> Commission Staff's Report at 22.



There is no evidence that Black Mountain District ever requested or obtained Commission approval prior to entering into the Monticello Bankshares Debt Agreement on June 16, 2015.<sup>52</sup> Because the September 2022 renewal fell outside the time period established in KRS 278.300(8) for an exemption, Black Mountain District was required to obtain prior Commission approval before entering into the September 2022 renewal under KRS 278.300(1).

Based upon the above discussion, the Commission finds that a separate proceeding should be established to investigate Black Mountain District's alleged violation of KRS 278.300 for entering into the Monticello Bankshares Debt Agreement without obtaining prior Commission approval.

#### Alleged violation of a Commission Order

On November 9, 2015, the Commission entered an Order that, among other things, approved a debt service surcharge for the sole purpose of repaying bonds from U.S. Department of Agriculture Rural Development (RD) and a loan from Kentucky Infrastructure Authority (KIA).<sup>53</sup> KRS 278.390 provides that Commission Orders continue in force until the expiration of time, if any, named in the order, or until revoked or modified by the Commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a state or federal court. In reviewing Commission records, there is no evidence that the November 9, 2015 Order issued in Case No, 2015-00088 is expired, revoked, modified, suspended, or vacated.

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<sup>52</sup> Commission Staff's Report at 22.

<sup>53</sup> Case No. 2015-00088, *Alternative Rate Adjustment Filing of Black Mountain Utility District* (Ky. PSC Nov. 9, 2015), Ordering paragraph 3.

In the November 9, 2015 Order, the Commission directed Black Mountain District that:

The proceeds from the debt service surcharge shall be used for no purpose other than the repayment of the RD bonds and KIA loans that were outstanding at the time Black Mountain merged with Green Hills. To ensure compliance with KRS 74.363(4), Black Mountain shall establish an escrow account with a financial institution into which it shall deposit the surcharge collections and out of which it shall separately account for repayment of these long-term debts. The amount of the surcharge may be reduced from time to time, with the Commission's approval, as each of the nine debt obligations is fully retired. The surcharge shall remain in effect until all debts are fully repaid.<sup>54</sup>

Black Mountain continues to collect the debt service surcharge approved in Case No. 2015-00088.<sup>55</sup> In discovery responses, Black Mountain District filed minutes of the January 11, 2022 board meeting that stated, “[w]e paid two of the back garbage bills and only have one to pay to catch up on the garbage. All bills are paid, and we are doing ok. It is tight but we are ok. Sometimes bills come in late but we can pay them.” The minutes further noted that a motion made by Shawn Miller to pay the garbage bills out of debt surcharge money was unanimously approved by Mr. Miller, Chad Brock, Bill Clem, and Dewayne Williams, the commissioners present at the January 11, 2022 board meeting.

Based upon the above discussion, the Commission finds that a separate proceeding should be established to investigate Black Mountain District's alleged violation of a Commission Order by using the debt surcharge funds in a manner other than authorized in the November 9, 2015 Order in Case No. 2015-00088.

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<sup>54</sup> Case No. 2015-00088, Nov. 9, 2015 Order, ordering paragraph 3.

<sup>55</sup> Commission Staff's Report at 12.

## SUMMARY

After consideration of the evidence of record and being otherwise sufficiently advised, the Commission finds that the recommendations contained in the Commission Staff's Report are supported by the evidence of record and are reasonable. The Commission has historically used a Debt Service Coverage method to calculate the revenue requirement for water districts or associations with outstanding long-term debt. Therefore, applying the DSC method to Black Mountain District's pro forma operations results in an Overall Revenue Requirement of \$1,913,196, a required revenue from water sales of \$1,699,140, and an increase in revenue from water sales of \$67,503, or 4.14 percent.

The Commission finds that allocating the calculated revenue increase across the board to Black Mountain District's monthly water service rates and to phase this increase over three years to be fair, just and reasonable.

IT IS THEREFORE ORDERED that:

1. The recommendations contained in the Commission Staff's Report are adopted and incorporated by reference into this Order as if fully set out herein.
2. The water service rates proposed by Black Mountain District are denied.
3. The rates set forth in Appendix A to this Order are approved for service rendered by Black Mountain District on and after the date of this Order.
4. The Nonrecurring Charges set forth in Appendix A to this Order are approved for service rendered by Black Mountain District after the date of this Order.
5. Phase 1 rates set forth in Appendix A to this Order are approved for water services rendered by Black Mountain District on and after the date of this Order.

6. Phase 2 rates set forth in Appendix A to this Order are approved for water services rendered by Black Mountain District one year following the date of this Order.

7. One month prior to the effective date of the Phase 2 rates, Black Mountain District shall notify its customers of the implementation of the Phase 2 rates by publishing one-time notice of the increase in a newspaper of general circulation in its territory or placing an insert in bills rendered to its customers.

8. Within 45 days of publishing notice required in ordering paragraph 7, Black Mountain District shall file proof of publication of the notice to the Commission as required pursuant to 807 KAR 5:076, Section 5(3) in the post case correspondence, referencing this case number.

9. Phase 3 rates set forth in Appendix A to this Order are approved for water services rendered by Black Mountain District two years following the date of this Order.

10. Within 20 days of the date of service of this Order, Black Mountain District shall file with this Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates and charges approved by this Order and their effective date, and also stating that the rates and charges were authorized by this Order.

11. Any documents filed in the future pursuant to ordering paragraphs 8 and 10 shall reference this case number and shall be retained in the post-case correspondence file.

12. Black Mountain District is authorized to assess a monthly Water Loss Reduction Surcharge of \$7.91 per meter per month for 48 months, or until \$319,316 has been assessed, whichever occurs first, phased in over three years, to fund its

unaccounted-for water loss reduction efforts as set forth in the Commission Staff's Report, subject to the conditions set forth in ordering paragraph 15.

13. The Commission shall open a separate proceeding, Case No. 2023-00202 to monitor the surcharge proceeds collection and expenses, subject to the following conditions:

a. Within 120 days of the date of service of this Order, Black Mountain District shall file with the Commission a qualified infrastructure improvement plan, including a comprehensive unaccounted-for water loss reduction plan that establishes priorities and a time schedule for eliminating each source of unaccounted-for water loss and provides a detailed spending plan for the proceeds of a surcharge.

b. Black Mountain District shall deposit surcharge collections in a separate interest-bearing account.

c. On the 15th day of each month for 48 months from the date of this Order or until all surcharge proceeds are expended, Black Mountain District shall file with the Commission a monthly activity report that includes a statement of monthly surcharge billings and collections using the format in the Surcharge Reporting form located on the Commission's website, a monthly surcharge bank statement, a list of each payment from the account, its payee, a description of the purpose, and invoices supporting each payment.

d. On the 15th day of each month for 48 months from the date of service of this Order or until all surcharge proceeds are expended, Black Mountain District shall file a monthly water loss report with the Commission.

e. Black Mountain District shall not use any surcharge proceeds for reimbursement of unaccounted-for water loss reduction expenses without prior Commission authorization.

f. Black Mountain District shall file all requests to use surcharge proceeds in the record of this proceeding. A request shall include a complete description of the equipment, project, or service for which approval is sought; bids, invoices, or price quotes as applicable; and a statement describing how the proposed purchase, project, or service is related to the qualified infrastructure improvement plan and the goal of reducing unaccounted-for water loss.

g. Black Mountain District shall consider all surcharge collections as contributions and shall account for them in the manner that the Uniform System of Accounts for Class A and B Water Districts and Associations prescribes.

h. Black Mountain District shall debit monthly billings for the surcharge to customers' accounts received and credit the contribution account.

i. When Black Mountain District collects the surcharge from the customers, it shall debit special funds and credit the customer account

j. No later than April 30 of each year, Black Mountain District shall file in Case No. 2023-00202, a report of surcharge activity and water loss improvement progress based on the preceding year ended December 31 with reported annual surcharge billings and expenditures reflecting the amounts reported for surcharge activity in the financial and statistical Annual Report filed with the Commission and Black Mountain District's audited financial statements. Cumulative surcharge billings and expenditures shall also be reported. A schedule of the estimated and actual progress of

the water loss detection and repair program, actual expenditures made with surcharge proceeds, and encumbered amounts of future surcharge proceeds for the purpose of evaluating whether adjustments to the program or to the surcharge amount shall be provided.

k. Black Mountain District shall respond to any requests for information propounded by Commission Staff as provided in those requests.

l. Black Mountain District's failure to comply with any conditions attached to its assessment of the surcharge shall result in termination of the surcharge and the refund of all surcharge proceeds previously collected.

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

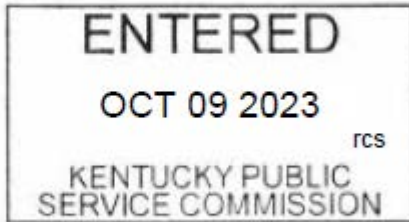
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PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
\_\_\_\_\_  
Executive Director



APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2022-00275 DATED OCT 09 2023

The following rates and charges are prescribed for the customers in the area served by Black Mountain Utility District. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of the Commission prior to the effective date of this Order.

Monthly Water Rates  
Phase 1

Division 1

First	2,000 Gallons	\$26.17 Minimum Bill
Over	2,000 Gallons	\$0.00879 Per Gallon

Debt Service Surcharge	\$4.26 Per Month
Water Loss Reduction Surcharge	\$2.63 Per Month

Division 2

First	2,000 Gallons	\$26.17 Minimum Bill
Over	2,000 Gallons	\$0.00879 Per Gallon

Water Loss Reduction Surcharge	\$2.63 Per Month
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Other Rates

Wholesale & Leak Adjustment Rate	\$0.00479 Per Gallon
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Monthly Water Rates  
Phase 2 – To Be Implemented One Year After Phase 1 Rates

Division 1

First	2,000 Gallons	\$26.17 Minimum Bill
Over	2,000 Gallons	\$0.00879 Per Gallon

Debt Service Surcharge	\$4.26 Per Month
Water Loss Reduction Surcharge	\$5.27 Per Month

Division 2

First	2,000 Gallons	\$26.17 Minimum Bill
Over	2,000 Gallons	\$0.00879 Per Gallon

Water Loss Reduction Surcharge \$5.27 Per Month

Other Rates

Wholesale & Leak Adjustment Rate \$0.00479 Per Gallon

Monthly Water Rates

Phase 3 – To Be Implemented One Year After Phase 2 Rates

Division 1

First 2,000 Gallons \$26.17 Minimum Bill  
Over 2,000 Gallons \$0.00879 Per Gallon

Debt Service Surcharge \$4.26 Per Month  
Water Loss Reduction Surcharge \$7.91 Per Month

Division 2

First 2,000 Gallons \$26.17 Minimum Bill  
Over 2,000 Gallons \$0.00879 Per Gallon

Water Loss Reduction Surcharge \$7.91 Per Month

Other Rates

Wholesale & Leak Adjustment Rate \$0.00479 Per Gallon

Nonrecurring Charges

Reconnection Fee	\$ 8.00
Reconnection Fee (After Hours)	\$43.00
Meter Cover Replacement	\$35.00
Meter Re-Read Charge	\$ 5.00
Broken Meter Lock	\$15.00
Returned Check Charge	\$ 2.00
Meter Test Charge	\$25.00

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