

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|  |   |            |
|--|---|------------|
| ELECTRONIC APPLICATION OF NORTH        | ) |            |
| MERCER WATER DISTRICT FOR A            | ) |            |
| CERTIFICATE OF PUBLIC CONVENIENCE AND  | ) |            |
| NECESSITY TO CONSTRUCT A SYSTEM        | ) | CASE NO.   |
| IMPROVEMENTS PROJECT AND AN ORDER      | ) | 2021-00317 |
| APPROVING A CHANGE IN RATES AND        | ) |            |
| AUTHORIZING THE ISSUANCE OF SECURITIES | ) |            |
| PURSUANT TO KRS 278.023                | ) |            |

ORDER

This matter arises on North Mercer Water District’s (North Mercer District) request for an extension of time to file an alternative rate filing (ARF) rate adjustment case. On October 6, 2021, the Commission entered a final Order in this case that required North Mercer District to file for an adjustment in base rates or file for an ARF within one year of the date of filing of the Order to ensure that its rates are sufficient or, in the alternative, to file a formal motion with a detailed analysis of its rates, and state the reasons why no rate modifications are necessary.

On October 27, 2022, Mischell Lee, the manager of North Mercer District, filed a belated request for an extension of time to file an ARF application on behalf of North Mercer District. North Mercer District requested to extend the ARF filing required date to October 30, 2023, stating that North Mercer District’s initial rate study and rate increase did not include depreciation. North Mercer District also requested the extension because one of its wholesale water provider is in the process of increasing wholesale water rates

and North Mercer District wants to implement the base rate increase and wholesale water pass through cost at the same time. The Commission will treat the request as a motion.

### LEGAL STANDARD

KRS 278.390 provides that every Commission Order continues in force until the expiration of time, if any, named by the Commission in the Order, or until revoked or modified by the Commission, unless the Order is suspended or vacated in whole or in part by a state or federal court.

No person may engage in the practice of law in Kentucky without first obtaining a license to practice.

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.<sup>1</sup>

It includes, as Kentucky's highest court held in *Kentucky State Bar Association v. Henry Vogt Machine Co.*, 416 S.W.2d 727 (Ky. 1967), the representation of a corporation before a state administrative agency.

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission, must engage a member of the Kentucky Bar Association.<sup>2</sup>

It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layperson.

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<sup>1</sup> Kentucky Supreme Court Rule 3.020.

<sup>2</sup> Administrative Case No. 249, *Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky* (Ky. PSC June 15, 1981) at 2.

Commission regulations incorporate, at least in part, these sentiments. As 807 KAR 5:001, Section 4(4), states in part: “A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2).”

### DISCUSSION AND FINDINGS

As an initial matter, upon information and belief, Ms. Lee is not an attorney licensed to practice law in Kentucky, and thus the Commission cannot entertain the motion because, in accordance with 807 KAR 5:001, Section 4(4), a request such as that made by North Mercer District must be filed by an attorney licensed to practice law in Kentucky.

However, in the interest of administrative efficiency, the Commission will address the merits of North Mercer District’s request.

The Commission required North Mercer District to file a rate case in the October 6, 2021 Order because the utility had not sought a general rate increase since 2016 and that financial data suggested that North Mercer District was depleting a large share of its cash basis income and potentially not fully funding its depreciation.

Based upon the motion, the case record, and being otherwise sufficiently advised, the Commission concludes that North Mercer District’s request for an extension of time to file its ARF should be denied. North Mercer District failed to provide any explanation for its omission of depreciation in its rate study nor did North Mercer District provide an explanation why it will take one year to revise the rate study to include depreciation. As indicated in the Commission’s October 6, 2021 Order requiring the rate case, it appears that North Mercer District is in need of a significant rate increase<sup>3</sup>. Further, North Mercer

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<sup>3</sup> Order (Ky. PSC Oct. 6, 2021) at 3-4.


District's request to delay filing the ARF because of a pending wholesale rate increase does not establish good cause to extend the ARF filing date because North Mercer District can pass through the costs within the timeframe set forth in KRS 278.015 and 807 KAR 5:068.

Based upon the above, the Commission finds that North Mercer District should not delay the filing of an ARF case any longer and should file as soon as possible. Further, if North Mercer District has an increase in wholesale water costs, it can file for a separate rate adjustment. In accordance with KRS 278.015, when a wholesale supplier selling water to a water district increases its rates, the water district has the authority to increase its rate commensurate with the wholesale supplier. This is separate from the ability to file an ARF application.

IT IS THEREFORE ORDERED that:

1. North Mercer District's request for an extension of time to file for an ARF case is denied.
2. North Mercer District shall file the ARF case as soon as possible.

PUBLIC SERVICE COMMISSION

  
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Chairman

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Vice Chairman

  
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Commissioner



ATTEST:

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

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