

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BRACKEN)	CASE NO.
COUNTY WATER DISTRICT FOR A RATE)	2021-00415
ADJUSTMENT PURSUANT TO 807 KAR 5:076)	

ORDER

On July 29, 2022, Bracken County Water District (Bracken District), pursuant to KRS 278.400, filed a motion requesting that the Commission reconsider portions of the July 25, 2022 Order entered in this proceeding. There are no intervenors in this proceeding. This matter stands submitted for a decision.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits any new evidence on rehearing to evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹ An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

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

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

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

Relevant legal standards applicable to the issues raised in Bracken District's motion are set forth in 807 KAR 5:076, which establishes a simplified and less expensive procedure for small utilities to apply for a rate adjustment. Commission regulation 807 KAR 5:076, Section 11(3)(f) states:

If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or commission staff recommends the assessment of an additional rate or charge not proposed in the application and commission staff's proposed rates produce a total increase in revenues that exceeds 110 percent of the total increase in revenues that the applicant's proposed rates will produce and the applicant amends its application to request commission staff's proposed rates, the commission shall order the applicant to provide notice of the finding or recommendation to its customers.

Commission regulation 807 KAR 5:076, Section 7(1), provides that an application for an alternative rate adjustment (ARF) may not place the proposed rates into effect until the Commission approves those rates or six months from the date of filing an application, whichever occurs first. Commission regulation 807 KAR 5:001, Section 4(5), provides that amendment of an application shall not relate back to the date of the filing of the original application unless the Commission orders otherwise.

KRS 278.990(1) states that any officer, agent, or employee of a utility, who willfully violates any of the provisions of KRS Chapter 278, Commission regulations, or a

Commission Order shall be subject to a civil penalty assessed by the Commission up to \$2,500 for each offence by each officer, agent, or employee of the utility.

DISCUSSION AND FINDINGS

In the July 25, 2022 Order, the Commission, among other things, found that Bracken District accepted Commission Staff's proposed rates, which produced a total increase that exceeded the revenue Bracken District initially proposed by 134.33 percent, and triggered the provisions of 807 KAR 5:076, Section 11(3)(f). The Commission further found that, in accordance with the plain language of 807 KAR 5:076, Section 11(3)(f), Bracken District "amend[ed] its application to request commission staff's proposed rates." In accordance with 807 KAR 5:076, Section 7(1), the Commission found that, because the amended application did not relate back to the original filing, Bracken District could not place the proposed rates into effect until the Commission issued an Order approving the rates or December 16, 2022, which is six months from the date the application was amended, whichever comes first.

Bracken District requested rehearing on the below issues, arguing that rehearing was necessary to correct alleged misstatements contained in the July 25, 2022 Order and to clarify Bracken District's authority to place proposed rates into effect subject to refund.

Acceptance of Proposed Rates

Bracken District acknowledged that it generally accepted Commission Staff's proposed rates but disputed that it accepted the proposed rates, arguing that it noted two exceptions that lowered the proposed rates. Bracken District argued that Commission Staff overstated the revenue requirement because they failed to include Bracken District's adjusted revenue from late payment fees and failed to adjust test period purchased water

and purchased power expenses that resulted from a settlement with Bracken District's wholesale water supplier.³

Based upon the motion and case record, the Commission finds that Bracken District failed to meet its burden of proof that the July 25, 2022 Order contained a material error, and thus rehearing is denied for the allegation that Bracken District did not accept rates proposed by Commission Staff. As Bracken District stated, it accepted the proposed rates. Further, the Commission has yet to render a final decision in this matter. Any issues raised by Bracken District in its response to Commission Staff's Report will be addressed by the Commission in a final Order that fully considers and weighs the evidence in the case record and authorizes rates that are fair, just and reasonable.

Renotice of the Proposed Rates

The July 25, 2022 Order included a notice of proposed rates that Bracken District is required to provide to customers. Bracken District argued that the notice contains errors because the rates are based upon Commission Staff's calculations that Bracken District alleged are incorrect and incorrectly states that Bracken District accepted revisions to non-recurring rates that Bracken District did not request. Further, Bracken District disputed that it had to include non-recurring rates in the notice, arguing that 807 KAR 5:076, Section 11(3)(f) does not require the inclusion of non-recurring rates in the notice because the rates are lower than present charges. Bracken District tendered a proposed notice correcting the alleged errors.

³ The Commission notes that Bracken District stated in its response to Commission Staff's Report that Bracken District and its wholesale supplier reached a settlement agreement on June 1, 2022, which is one day before Commission Staff's Report was issued on June 2, 2022. Bracken District did not file the settlement with the Commission until Bracken District filed its response to Commission Staff's Report on June 16, 2022.

Based upon the motion and case record, the Commission finds that Bracken District failed to meet its burden of proof that the July 25, 2022 Order contained a material error, and thus, rehearing is denied for this issue. As discussed above, Bracken District accepted the proposed rates; any issues raised by Bracken District will be addressed in the final Order that authorizes rates that are fair, just and reasonable. Further, Bracken District's cramped reading ignores that 807 KAR 5:076, Section 11(3)(f) requires notice to customers based upon the total amount of the rate increase, which may include a charge not proposed in the application. Setting aside the legal basis for providing customer notice, it is concerning that Bracken District does not want to provide its customers with notice of all possible rate changes. Additionally, to be clear, the notice provided to customers is not of rates the Commission will necessarily approve. Instead, the purpose of the re-notice is to put the public on notice of the newly proposed rates, following a utility's acceptance of the Commission Staff's report.

Amending Application

Bracken District argued that it has not amended its application, but instead was complying with a Commission Order to respond to Commission Staff's Report. Bracken District noted that it never expressly stated that it was amending its application in its response to the report. Bracken District further argued that its agreement with findings in Commission Staff's Report was nothing more than evidence to be considered by the Commission.

Based upon the motion and case record, the Commission finds that Bracken District failed to meet its burden of proof that the July 25, 2022 Order contained a material error, and thus, rehearing is denied for this issue. Bracken District's argument is meritless

and contrary to the law. Bracken District argument ignores portions of applicable regulations that produce a result that Bracken District deems unfavorable. Commission regulation 807 KAR 5:076, Section 11(3)(a) states that a party “shall file with the commission a written response to the commission staff report within” 14 days of the filing of the report. Thus, Bracken District was complying with the regulation, not merely a Commission Order, when it filed its response to Commission Staff’s Report. Commission regulation 807 KAR 5:076, Section 8(1) requires specified procedural steps if a party amends its application but carves out an exclusion for amending an application by responding to findings set forth in Commission Staff’s Reports. Similarly, 807 KAR 5:076, Section 11(3)(f) provides that accepting Commission Staff’s proposed rates, including the findings or recommendation, amends an application if the rates produce a total increase in revenue exceeding 110 percent of the total increase of revenue as originally proposed. As indicated by its response, “Bracken District accept[ed] for the purposes of this proceeding the findings and recommendations set forth in the Staff Report.” The plain language of applicable regulations and Bracken District’s own comments refutes Bracken District’s argument.

Placing Rates into Effect Subject to Refund

Based upon its claim that it did not amend the application, Bracken District argued that it may begin charging the rates proposed in its January 27, 2022 filing, subject to refund. Bracken District stated that it intends to place those rates in effect, subject to refund, on August 11, 2022. Bracken District maintained that, if the Commission did not allow Bracken District to implement new rates on August 11, 2022, then the Commission was “undermining its own efforts to improve Bracken District’s financial position” and

would deny Bracken District “revenue that the Commission previously found that the water district urgently needed.”⁴ On August 10, 2022, Bracken District filed notice that it intended to place rates proposed in its original application into effect, subject to refund, for service rendered on and after August 11, 2022.⁵

Based upon the motion and case record, the Commission finds that Bracken District failed to meet its burden of proof that the July 22, 2022 Order contained a material error, and thus, rehearing is denied on the issue of Bracken District placing rates into effect, subject to refund, for service rendered on and after August 11, 2022.

Regarding the allegation that denying Bracken District from placing rates into effect at this time with “undermine” the Commission’s Order in Case No. 2022-00271,⁶ this unsupported declaration is a significant misstatement of that Order. Nowhere did the Commission find in the final Order that the funds were “urgently” needed.⁷ What the Commission said was as follows:

Pursuant to the results of its financial analysis performed in this proceeding, the Commission finds that Bracken District should be ordered to file an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, or an application for an alternative rate adjustment pursuant to 807 KAR 5:076 within one year of the date of the issuance of this Order to ensure its revenue is sufficient to support adequate and reliable service. Any filing for a rate adjustment filed under

⁴ Bracken District Response to Commission Staff’s Report (filed June 16, 2022), paragraph 8.

⁵ The Commission notes that Bracken District filed its notice at 10:28.35 p.m. on August 10, 2022, which is after the Commission’s usual business hours. The first opportunity the Commission had to review the notice was the same day that Bracken District intended to place the rates into effect, subject to refund.

⁶ Case No. 2020-00271, *Electronic Application of Bracken County Water District for the Issuance of a Certificate of Public Convenience and Necessity to Construct a Water System Improvements Project and an Order Authorizing the Issuance of Securities Pursuant to the Provisions of KRS 278.020, KRS 278.300, and 807 KAR 5:001* (Ky. PSC Jan. 27, 2021) at 4 and 6, ordering paragraph 13.

⁷ Bracken District’s Motion for Reconsideration at 6.

KRS 278.023 does not relieve Bracken District from this requirement.⁸

Further, ordering paragraph 13 stated, “Bracken District shall file an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, or an application for an alternative rate adjustment pursuant to 807 KAR 5:076 *within* one year of the date of the issuance of this Order.”⁹ (emphasis added).

Bracken District did not file this rate case until the *very last day* of the time period established in the Order in Case No. 2020-00271. If Bracken District read the Commission Order to state that Bracken District had an urgent need to generate additional revenue, Bracken District had ample opportunity to file a rate case prior to January 27, 2021.

Based upon the notice of intent to place rates into effect, the case record, and being otherwise sufficiently advised, the Commission finds that, if Bracken District places rates proposed in its January 27, 2022 filing into effect, then Bracken District will be in violation of 807 KAR 5:076, Section 11(3)(f) and the July 25, 2022 Order finding that Bracken District amended its application on June 16, 2022. By implementing a rate increase, subject to refund, for service rendered on and after August 11, 2022, Bracken District implemented rates not authorized by the Commission and implemented rates earlier than the regulatory time period, which is six months from the June 16, 2022 date of filing the amended application. The Commission shall initiate a separate show cause proceeding for Bracken District, its commissioners, agents, officers, and employees, to

⁸ Case No. 2020-00271, Jan. 27, 2021 Order at 4.

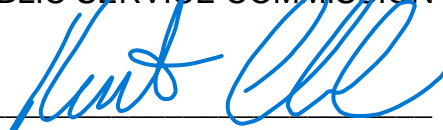
⁹ Case No. 2020-00271, Jan. 27, 2021 Order at 6, ordering paragraph 13.

show cause why they should not be assessed a civil penalty for violating 807 KAR 5:076, Section 11(3)(f) and the July 25, 2022 Order. In accordance with KRS 278.990(1), Bracken District, its commissioners, agents, officers, and employees may be subject to civil penalties up to \$2,500 per person per occurrence upon a finding of a willful violation of KRS Chapter 278, Commission regulations in 807 KAR Chapter 5, and a Commission Order.

IT IS THEREFORE ORDERED that Bracken District's motion for rehearing is denied.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner

ENTERED
AUG 12 2022
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SERVICE COMMISSION

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