

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

This matter arises on Bracken County Water District's (Bracken District) motions to amend previous orders. On September 29, 2022, Bracken District filed a motion, pursuant to KRS 278.400, requesting to amend the September 27, 2022 Order that, among other things, approved a rate increase that was effective as of the date of the September 27, 2022 Order. On October 5, 2022, Bracken District filed another motion to amend the September 27, 2022 Order that superseded and replaced the September 29, 2022 filing.

Bracken District requested that phases 1 and 2 of monthly water rates be amended to take effect with bills rendered after October 31, 2023, but that the nonrecurring charges be effective for service rendered on and after September 27, 2022.

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

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.

MOTION TO AMEND ORDER

In the October 5, 2022 motion to amend the September 27, 2022 Order, Bracken District requested that the effective dates for the monthly water rates and for the nonrecurring charges be amended.

Regarding its billing period, Bracken District stated that it reads meters on a monthly basis between the tenth and twelfth day each month using automated meter reading equipment. Bracken District explained that it issues bills based upon meter readings on the last working day of the same month that meter readings are conducted. Bracken District further explained that each customer has the same number of days in their respective billing cycles, because meters read on the same day each month. For example, a customer whose meter is read on the tenth day of September will next be read on the tenth day of October, and a meter read on the eleventh day of September will next be read on the eleventh day of October.

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).

In support of its request for rehearing under KRS 278.400, Bracken District explained that the effective date of the rates approved in the September 27, 2022 Order falls within the billing cycle. Bracken District explained that it captures water usage over the entire billing period and asserted that it cannot accurately segregate actual water usage during the billing cycle for which prior rates were effective and actual water usage during the billing cycle when the new rates are effective. Bracken District argued that it could develop rates for the billing cycle between September 10, 2022, and October 10, 2022, to implement the Order, but that it would require additional resources and would result in customer confusion. Bracken District requested that the Commission amend the September 27, 2022 Order to provide an effective date for new rates tied to the issuance of bills. Bracken District explained that, under its proposed effective date, it would assess the new phase 1 rates for service rendered on or about October 10, 2022, which reflects the dates that meters are read in October, and that all bills issued in November 2022 would reflect the new rates. Bracken District argued that using billing cycles for rate effective dates is a common Commission practice followed in fuel adjustment charges and gas cost recovery mechanisms.

Bracken District maintained that no change in the effective date is required for nonrecurring charges because those are assessed on a transactional basis and the date the service was performed can be identified. Bracken District requested that the Commission include express language to state that the nonrecurring charges are approved for service rendered on and after September 27, 2022, to avoid any confusion regarding the effective date of the approved nonrecurring charges.

DISCUSSION AND FINDINGS

Bracken District never addressed in its motion how the September 27, 2022 Order was unreasonable or unlawful, or that the Order contained a material error or omission, which is the legal standard that must be met to grant rehearing under KRS 278.400. The Commission finds that Bracken District's request for rehearing of the September 27, 2022 Order should be denied because Bracken District did not meet its burden under the KRS 278.400 legal standard for rehearing.

Further, Bracken District's request regarding an effective date for new rates was raised for the first time in this proceeding. Bracken District never requested in its application or during the processing of this case to implement new rates with an effective date other than the date of the Order approving new rates. Thus, Bracken District's request is contrary to the purpose of finality in Commission proceedings under KRS 278.400.

Additionally, Bracken District's arguments regarding its inability to implement rates approved during a billing cycle are inconsistent with Commission precedent and previous orders that approved general rate adjustments for Bracken District. Bracken District does not argue that it does not have the technology to implement two rate schedules in the same billing cycle; Bracken District argued that it would take too much effort to do so. This is contrary to the long-standing practice of establishing effective dates for new rates in ARF cases – and other general rate adjustment cases – as of the date of the Order approving the new rates. For example, in final Orders in ARF cases since at least 1985, the Commission approved new rates “for service rendered . . . on and

after the date of this Order.”³ This is also contrary to previous ARF cases and cases brought under KRS 278.023 filed by Bracken District that establish an effective date for general rate adjustments approved for service rendered “on and after the date of this Order.”⁴ The Commission finds no evidence in the cases cited below that Bracken District ever requested an effective date for general rate adjustments other than the date of the orders approving the rate increases.

Finally, in future rate cases, if Bracken District wants a rate increase approved by the Commission to be effective as of a date other than the date of the Order approving the rate increase, then Bracken District must expressly make that request in its application, supported by an explanation for the request.

IT IS THEREFORE ORDERED that:

1. Bracken District’s request for rehearing is denied.
2. This case is closed and removed from the Commission’s docket.

³ See Case No. 9235, *Application of Water Valley Water Works for an Adjustment of Rates* (Ky. PSC Feb. 14, 1985), at 3; Case No. 9249, *Application of Pilot Oak Water Supply for an Adjustment of Rates Pursuant to the Alternative Procedure for Small Utilities* (Ky. PSC Mar. 12, 1985), at 4; Case No. 9219, *Application of Bronston Water Association for an Adjustment of Rates Pursuant to the Alternative Rate Adjustment for Small Utilities* (Ky. PSC July 12, 1985), unnumbered page 10; and Case No. 9526, *Application for Adjustment of the Rates of West Marshall Water District Pursuant to 807 KAR 5:076, Alternative Rate Filing for Small Utilities* (Ky. PSC July 11, 1986), ordering paragraph 2.

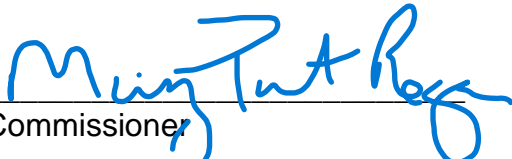
⁴ See Case No. 2018-00352, *Application Of Bracken County Water District for a Certificate of Public Convenience and Necessity to Construct a Water Improvements Project and an Order Authorizing the Issuance of Securities and Increase Rates Pursuant to KRS 278.023* (Ky. PSC Nov. 7, 2018), ordering paragraph 11; Case No. 2010-00184, *Application of Bracken County Water District for an Adjustment of Water Rates* (Ky. PSC Aug. 10, 2010), ordering paragraph 2; Case No. 2006-00313, *Application of the Bracken County Water District for (1) The Approval of a Proposed Plan to Finance a Waterworks Project; and (2) The Approval of the Proposed Increase in Rates for the Water Service* (Ky. PSC Nov. 1, 2006), ordering paragraph 2; and Case No. 2004-00056, *Application of Bracken County Water District of Bracken County, Kentucky, for a Certificate of Public Convenience and Necessity to Construct, Finance, and Increase Rates Pursuant to KRS 278.023* (Ky. PSC Mar. 24, 2004), ordering paragraph 5.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

*Diana Moran
Office Manager
Bracken County Water District
P. O. Box 201
Brooksville, KY 41004

*Bracken County Water District
1324 Brooksville Germantown Road
P. O. Box 201
Brooksville, KY 41004

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

*Dale Appleman
Bracken County Water District
P. O. Box 201
Brooksville, KY 41004