

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF BRACKEN	)	CASE NO.
COUNTY WATER DISTRICT TO REVISE ITS	)	2022-00313
LEAK ADJUSTMENT POLICY	)	

ORDER

On October 20, 2022, Bracken County Water District (Bracken District) filed an application for rehearing of the Commission's September 27, 2022 Order denying Bracken District's proposed leak adjustment tariff and leak adjustment form.

BACKGROUND

Bracken District filed a tariff to revise its leak adjustment policy that, among other things, required customers to complete a leak adjustment form in order to request a leak adjustment and required the customer to provide evidence that the leak existed and was repaired. The Commission found that the proposed leak adjustment was not fair, just or reasonable and should be denied. Firstly, the Commission found the proposed leak adjustment language is vague and ambiguous regarding how a customer complies with revised requirements to obtain a leak adjustment, and advised that tariff language should be clear and unambiguous to give fair notice to customers of the utility's rates and conditions of service. The September 27, 2022 Order stated that without specific definitions of the applicable standards, Bracken District would have unlimited discretion in making its determination regarding customer compliance. The Commission also found the proposed leak adjustment required the customer to pay the entire amount of the

disputed bill, contrary to 807 KAR 5:006, Section 11(6), which provides that a customer's account is considered current while a dispute is pending provided that the customer makes payments for the disputed period in accordance with historic usage. The Commission further found the proposed leak policy places an undue burden on customers, in that the customer has to request a leak adjustment prior to paying the bill for which adjustment is sought and the request must include "evidence" that the leak existed and has been repaired; and the customer must make the request using a leak adjustment form that is available on Bracken District's website or from the utility's office.

Bracken District has requested rehearing and claimed: (1) the Order failed to afford Bracken District due process of law; (2) the proposed policy provides adequate notice to customers of the requirements necessary to obtain a leak adjustment; (3) the proposed policy does not conflict with 807 KAR 5:006, Section 11(6); and (4) it has removed the provisions found to impose an unreasonable burden on customers.

#### LEGAL STANDARD

KRS 278.400 governs requests for rehearing. Rehearing is limited to new 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. An order is deemed unreasonable only when the evidence presented leaves no room for difference of opinion among reasonable minds. An order can be unlawful if it violates a state or federal statute, regulation, or constitutional provisions. Rehearing does not present parties with an opportunity to re-litigate a matter fully addressed in the original order.

## DISCUSSION AND FINDINGS

Bracken District filed a revised proposed leak adjustment policy and form to address issues raised in the September 27, 2022 Order. Bracken District disputed that the proposed policy language is vague, and argued that the language provides adequate notice to customers of requirements necessary to obtain a leak adjustment because it “clearly identifies” the forms of evidence that would most often support a request for adjustment.” Bracken District argued that customers have the option of submitting other forms of evidence to support its claims. Bracken District argued that the September 27, 2022 Order “penalizes” the utility for providing the customer with “leeway to support its request” and “for believing that its customers have sufficient knowledge and common sense to select the best form of evidence to support their requests for adjustment.”

Bracken District filed a revised policy to expressly state that at least one of the following documents listed must be provided to support the request: a plumber’s statement, invoices for materials and labor, or sworn affidavits from persons with knowledge of the leak’s existence and repair. Bracken District’s revised policy also states that a customer must demonstrate by a preponderance of evidence “the existence and repair of the leak and that the leak was the cause of the above-average water usage.” Bracken District argued that this is the same standard that the Commission uses and notes that the policy defines the term preponderance of the evidence in terms an ordinary customer would understand. The Commission finds that rehearing should be granted on this issue to allow the Commission to investigate whether the proposed language revisions are fair, just and reasonable.

Bracken District further disputed its policy conflicts with 807 KAR 5:006, Section 11(6). Bracken District stated that an amended version of the tariff submitted on August 1, 2022, eliminated the requirement that the customer pay the entire amount of the disputed bill. Bracken District argued that the amended version states that the customer remains responsible for the full amount of the bill pending the utility's review and that service will not be terminated for nonpayment of the full amount of the bill until the review is completed and a bill reflecting the review has been issued. Bracken District revised the proposed policy as follows to state that:

A Customer remains responsible for the full amount of bill pending review of the Customer's request. Discontinuance of service for nonpayment of the full amount of the bill, however, shall not be made until review of the request is completed, a final decision on the request is issued, a bill reflecting the review's results has been issued and the Customer has had an opportunity to pay that bill in accordance with the terms of the District's Rules and Regulations. No late payment fee shall be assessed against the Customer for nonpayment of the amount unless the Customer fails to pay the amount owed on the bill reflecting the results of the final decision.

While the Commission finds that rehearing should be granted on this issue, it still has concerns regarding the proposed policy language and Bracken District will be required upon rehearing to demonstrate that its proposed language does not conflict with the regulation.

The September 27, 2022 Order found the originally proposed leak adjustment policy imposed an undue burden upon customers seeking a leak adjustment by requiring those customers to request the leak adjustment prior to payment of the bill for which the leak adjustment is sought. Bracken District acknowledged this provision may unduly burden customers and argued it addressed this by removing the time restrictions for

requesting a leak adjustment. Bracken District stated a customer seeking a leak adjustment will not be subject to any time restrictions in submitting his or her application. The Commission finds that rehearing should be granted on this issue to allow the Commission to investigate whether the proposed language revisions are fair, just and reasonable.

Bracken District also argued that it was not afforded due process because it did not have the opportunity to be heard and contends it should have been afforded the opportunity to respond to the Commission's concerns and requests rehearing to address the due process concern. This case arose upon the filing of tariff revisions through the Commission's tariff filing system, and the Commission followed its well-established procedures in processing Bracken District's proposed revisions to its tariff. The Commission finds that the opportunity to request rehearing afforded by statute provided the utility with adequate due process under state and federal law. Having found that rehearing should be granted on the aforementioned issues, the Commission finds this argument moot.

IT IS HEREBY ORDERED:

1. Bracken District is granted rehearing on the issue of whether the proposed policy conflicts with 807 KAR 5:006, Section 11(6).
2. Bracken District is granted rehearing on the issue of whether the proposed policy provides adequate notice to customers of the requirements necessary to obtain a leak adjustment.
3. Bracken District is granted rehearing on the issue of whether the proposed policy imposes an unreasonable burden on customers.

4. The Commission denies Bracken District's request for rehearing on the issue of due process as moot.

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PUBLIC SERVICE COMMISSION

  
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Chairman

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Vice Chairman

  
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Commissioner



ATTEST:

  
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