

Commonwealth of Kentucky  
Before the Public Service Commission

In the Matter of:

FARMDALE DEVELOPMENT CORPORATION        )  
APPLICATION FOR AN ADJUSTMENT IN        ) Case No. 2007-00436  
RATES PURSUANT TO THE ALTERNATIVE        )  
RATE FILING PROCEDURE FOR SMALL UTILITIES)

ATTORNEY GENERAL'S RESPONSE TO  
FARMDALE'S MOTION FOR RECONSIDERATION  
AND FOR ORAL ARGUMENT

RECEIVED

AUG 20 2008

PUBLIC SERVICE  
COMMISSION

Farmdale has filed a Motion for Reconsideration and for Oral Argument.

The applicable statute in tandem with Commission precedent indicates that the Commission should deny the Motion.

While KRS 278.400 affords a procedure for seeking rehearing, rehearing is a matter of Commission discretion rather than a right. As the PSC notes, KRS 278.400 "requires parties to Commission proceedings to use reasonable diligence in the preparation and presentation of their case and serves to prevent piecemeal litigation of issues."<sup>1</sup> Therefore, a party seeking relief through rehearing must establish the necessity for modification to or change in the Order, and the mere identification of a different outcome or methodology does not establish necessity.<sup>2</sup> The Motion does not satisfy this standard; it should be denied.

---

<sup>1</sup> *In the Matter of: Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2000-00120, Order, 26 February 2001, page 3 (citing *An Examination of the Fuel Adjustment Clause of Louisville Gas and Electric Company from November 1, 1994 to October 31, 1996*, Case No. 96-524).

<sup>2</sup> See *In the Matter of: An Investigation of the Sources of Supply and Future Demand of Kentucky-American Water Company*, Case No. 93-434, Order (on rehearing), 24 April 1995, pages 3 and 4.

- I. Farmdale did not meet its burden of proof regarding its efforts to consider alternative billing and collection options.

“Farmdale has made little effort to investigate alternatives to its present billing and collection arrangements.” (Order, page 14.) “Farmdale has not conducted any systematic inquiry into possible billing and collection agencies and has not published any requests for proposals for billings services or conducted any analysis into performing those services itself.” (Order, pages 14, 15; footnote omitted.) Both of these statements are correct. Farmdale did not convince this Commission that it has used reasonable diligence in examining reasonably available options.

Yet again, Farmdale places great emphasis on the fact that it produced some evidence that was “unrebutted.” (Motion, pages 3 and 4.) Nevertheless, Farmdale at all times has the burden of proof.<sup>3</sup> The unrebutted evidence of an applicant does not compel a finding of fact in favor of the applicant.<sup>4</sup> To put it simply, ‘the trier of facts in an administrative agency may consider all of the evidence and choose the evidence that he [it] believes.’<sup>5</sup> “The administrative trier of fact has the exclusive province to pass on the credibility of the witnesses

---

<sup>3</sup> KRS 2778.190(3).

<sup>4</sup> *In the Matter of: Notice of Adjustment of Rates of Kentucky-American Water Company*, Case No. 8836, Order, 20 December 1983, Page 9; *Energy Regulatory Commission v. Kentucky Power*, 605 S.W.2d 46, 50 (Ky.App. 1980)(fact that applicant’s evidence is uncontroverted or otherwise unrebutted, unexplained or unimpreached is unremarkable).

<sup>5</sup> *Bowling v. Environmental and Natural Resources Environmental Protection Cabinet*, 891 S.W.2d 406, 410 (Ky.App. 1995)(citation in case omitted); *New v. Commonwealth*, 156 S.W.3d 769, 773 (Ky.App. 2005)(fact-finder with “sole authority to judge the weight, credibility and inferences to be drawn from the record.” (citation in case omitted)).

and the weight of the evidence.”<sup>6</sup> The Commission did not find Farmdale’s evidence, un rebutted or otherwise, persuasive.

Farmdale attacks Commission Staff by pointing out that Commission Staff’s analysis is not as comprehensive as Farmdale would wish. (Motion, pages 3 and 4.) First, Commission Staff had no burden of proof. Second, it is an argument relating only to the weight of the evidence. Farmdale has already had the opportunity to cross-examine Staff on the allegations in its Motion and argue any allegations relating to the weight of the evidence in its brief and reply brief. Therefore, Farmdale seeks rehearing to do what it should have, and more importantly could have, done prior to the Order, namely, argue this point.

Farmdale had the opportunity to review the position of Commission Staff prior to the evidentiary hearing, cross-examine Commission Staff, present its own evidence, and file a comprehensive brief and reply brief. Farmdale, thus, received its due process rights.<sup>7</sup> The Commission thereafter reviewed Farmdale’s evidence regarding billing and collection options, and the Commission, as trier of fact, did not find it persuasive. There is no error. There are no legitimate grounds for rehearing.

---

<sup>6</sup> *Energy Regulatory Commission v. Kentucky Power*, 605 S.W.2d at 50 (citation in case omitted).

<sup>7</sup> See *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company*, 983 S.W.2d 493, 497 (Ky. 1998).

- II. There is no Commission precedent through which the PSC made a determination that Farmdale's Agency Collection Fee Expense is presumptively reasonable and conclusive for rate-setting.

Farmdale charges that "the Commission ignored the fact that in rate case 97-456 the 15% FWD fee of \$7,949.00 [sic]<sup>8</sup> was approved." (Motion, page 4.) Farmdale further represents that the 15% "Agency Collection Fee was approved by the final Order entered in that case [97-456]." (Motion, page 4.) Interestingly, Movant neglects to provide a reference to any portions of the 9 October 1998 Order in Case No. 97-456 supporting these two representations.

Actually (upon examination of the Order), what the Commission approved in Case No. 97-456 was a Single Family Residential flat-rate of \$19.05 per month.<sup>9</sup> The Ordering provisions of that Order do not provide for the approval of the 15% fee arrangement. (The Commission Staff Report does not mention the 15% fee arrangement.) Instead, the Order reflects that the Commission determined the test year result of \$7,780 for billing and collection expense reasonable for establishing rates in that proceeding.<sup>10</sup>

The reasonableness of the \$7,780 test period expense was a finding of fact for Case No. 97-456. It is a finding applicable to the final Order in that proceeding. To the extent that Farmdale desires to point out that the Commission has previously set rates using an expense amount that is lower than

---

<sup>8</sup> The record in Case No. 97-456 speaks for itself. Both Attachments "A" (Farmdale's requested pro forma amount) and "B" (Staff's recommended pro forma amount) to the Commission's Staff Report show an Agency Collection Fee amount of \$7,780 rather than \$7,949.

<sup>9</sup> Case No. 97-456, Order, 9 October 1998, page 4.

<sup>10</sup> Case No. 97-456, Order, 9 October 1998, page 3.

the expense amount it wants to use in the current proceeding, the point has already been made by Farmdale on numerous occasions. It is a fact that does not suggest any error in this proceeding or any ground for rehearing. To the extent that Farmdale desires use of this finding as "precedent," the effort is feckless.

Factual determinations regarding the reasonableness of test period revenue and expense amounts are made on a case-by-case basis. There was no suggestion either express or implied that the Commission's 9 October 1998 Order in Case No. 97-456 made a determination that Farmdale's billing and collection arrangement with the Farmdale Water District was deemed forever reasonable under any set of facts. Regardless of how many times Farmdale makes the assertion, the Commission has not made a determination that the 15% fee arrangement is presumptively reasonable and conclusive for rate-setting.

With regard to Case No. 2006-00028, Farmdale alleges that the Commission approved a "billing and collection fee of 10% of the amount to be collected by the FWD." (Motion, page 5.) Again, Movant does not provide a reference to the approval. Per the 11 April 2007 Order in Case No. 2006-00028:

Based upon a review of all aspects of the Stipulation and Agreement, an examination of the record, and being otherwise sufficiently advised, the Commission finds that the Stipulation and Agreement is in the public interest and should be approved. The Commission's approval of this settlement is based solely on its reasonableness in toto and does not constitute the approval of any particular ratemaking adjustment or revenue allocation.

Hence, while the Commission did approve an overall total annual revenue requirement, there is no factual or legal basis to argue that the \$8,097 agency

collection fee amount was specifically part of the rate approved in Case No. 2006-00028. Further, the Commission certainly did not, through its 11 April 2007 Order, authorize a billing and collection fee rate of 10%. The language of the Commission's Order in Case No. 2006-00028 is clear; the 11 April 2007 Order (page 5) "**does not** constitute the approval of any particular ratemaking adjustment or revenue allocation (emphasis added)."

Farmdale complains that the Commission did not inflate Farmdale's test period result. (Motion, page 5.) It is true that the Commission utilized an inflation factor in Public Service Commission Case No. 2007-00134.<sup>11</sup> Farmdale does not disclose that the use of the inflation factor was for the purpose of establishing the net present value for two different projects in a certificate case.<sup>12</sup> The Commission did not use the inflation factor to set rates. Farmdale offers no credible evidence or argument that the inflation factor used in the certificate case is relevant or applicable to this proceeding.

The Commission has never vested Farmdale with a right to compel the Commission's acceptance of the results of Farmdale's fee agreement with the Farmdale Water District in setting rates. There is no such precedent. There is no error. There are no grounds for rehearing.

---

<sup>11</sup> *In the Matter of: The Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main.*

<sup>12</sup> Case No. 2007-00134, Order, 25 April 2008, page 52.

- III. There is no need for a Rehearing Order for Farmdale to implement a new billing and collection procedure – methodology.

Farmdale asserts that it wants “30 days from the final Order in this case to implement a new billing and collection procedure. methodology.” Farmdale wants an Order allowing it to continue to use the Farmdale Water District as its billing and collection service for 30 days. (Motion, page 8.) The Order is unnecessary; there are no grounds for rehearing.

As a preliminary matter, Farmdale again incorrectly asserts that the Commission approved its agency and collection fee in Case No. 2006-00028. As noted previously, the 11 April 2007 Order did not grant such an approval.

With regard to the Commission’s Order in Case No. 97-00456, the Commission set rates using a \$7,780 test period amount for Farmdale’s agency collection fee expense.<sup>13</sup> The only thing that Farmdale demonstrates is that the Commission’s 9 October 1998 Order found that the billing and collection arrangement produced a reasonable result for setting rates under that set of facts. The Order did not vest Farmdale with any right to continue forever its then-existing billing and collection arrangement or a prospective finding of reasonableness for use in future rate cases.

The Commission’s Order in this case limits the agency collection fee for setting rates to \$8,097. (Order, page 11.) While it finds the current arrangement unreasonable (Order, page 12.), the Order does **not** prohibit Farmdale from

---

<sup>13</sup> Case No. 97-00456, Staff Report, Attachment B.

paying the fee. (Motion, page 6.) Instead, it prohibits Farmdale from assigning the costs of the now uneconomical arrangement to Farmdale's customers.

The fact that Farmdale did not heed Commission Staff's admonition in Case No. 2006-00028 is regrettable, but it is a problem for Farmdale's owner not its customers or the Commission. There are no grounds to grant Farmdale's request for extraordinary relief to protect its owner from the consequence of Farmdale's failure to carry its burden of proof regarding its proposed agency collection fee. There are no grounds for rehearing.

- IV. The Commission's Order with regard to the amortization of legal fees provides Farmdale with the amortization period Farmdale sought through its Application.

In its Application, Farmdale proposed to amortized its legal fees for the current rate case over five (5) years. (Order, page 18, citing Application at page 12.) Thus, the Commission's Order utilizes the amortization period sought by Farmdale. Yet, Farmdale complains.

On this issue, Farmdale got exactly what it sought. Now, according to Farmdale, giving a utility what it seeks is a "disincentive to file a rate case." (Motion, page 6.) The claim lacks rational direction.

- V. The Commission correctly rejected Farmdale's untimely and unsupported request for the creation of a regulatory asset.

The Commission rejected Farmdale's actual fuel/power test year costs of \$19,150; the Commission found that the test period expense level was not representative of normal operations. (Order, page 9.) Given that Farmdale



concedes that its fuel/power expense for the test period is not normal,<sup>14</sup> the finding is beyond any legitimate attack.

Also beyond legitimate attack is the Commission's decision to decline to create a reimbursement program through single-issue, retroactive ratemaking. Specifically, Farmdale seeks the recovery of the difference between the adjusted test period fuel/power costs and the actual test period fuel/power costs. Thus, Farmdale **now** wants to establish a regulatory asset. The request is improper.

First, Farmdale did not seek the timely-establishment of a deferred debit; accordingly, it has defaulted on this option. While Farmdale complains that the well-settled regulatory requirement is a mere "procedural technicality,"<sup>15</sup> the requirement is inextricably part-and-parcel of the regulatory framework that Farmdale urges the Commission to apply.<sup>16</sup> 807 KAR 5:076 does not suspend or eliminate any precedent relating to the establishment of a regulatory asset.

Second, Farmdale places emphasis on its claim that the expense was legitimate. (Motion, page 7.) However, Farmdale, which at all times has the burden of proof, fails to further demonstrate that the amount at issue is material and the corresponding circumstances meet the standards of FASB Statement No. 71. Hence, procedural default aside, there is no factual basis to support the creation of a regulatory asset.

---

<sup>14</sup> Farmdale's Written Comments to Staff's Report on Farmdale Development Corporation (21 February 2008), page 13.

<sup>15</sup> Farmdale Reply to the Brief of the AG, p. 4.

<sup>16</sup> See Post Hearing Brief of Farmdale, page 1 (citation to KRS 278.030(1)). Farmdale simply wants the Commission to ignore one of the procedures for determining "fair, just and reasonable rates."

Finally, Farmdale argues for an inflation adjustment for this expense. As the Commission correctly notes, the increase in the rates of Farmdale's retail electric supplier, if there is any increase, fails to meet the criteria of a known and measurable adjustment. (Order, pages 9 and 10.) There is no basis to apply an inflation adjustment. There are no grounds for rehearing.

WHEREFORE, the Commission should deny Farmdale's request for rehearing and oral argument. Further, the Motion is not well-grounded in fact or warranted under existing law. The Commission should deny any rate recovery of fees or costs associated with the Motion.

Respectfully submitted,

JACK CONWAY  
ATTORNEY GENERAL

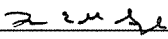
*David Edward Spenard*

David Edward Spenard  
Assistant Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204  
T 502 696-5457  
F 502-573-8315

*Certificate of Service and Filing*

Counsel certifies the filing of the original and ten photocopies of this Response by hand-delivery to Stephanie L. Stumbo, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Further, counsel certifies the mailing of a true and correct of the same, first class postage prepaid, to: Wilma Adkins, 271 Cherry Lane, Frankfort, KY 40601; Deborah Deimel, 276 Cherry Lane, Frankfort, KY 40601; Gabe & Brook Jenkins, 127 Strawberry Lane, Frankfort, KY 40601; Bobby Anderson, 136 Strawberry Lane, Frankfort, KY 40601; Elizabeth Baker, 264 Cherry Lane, Frankfort, KY 40601; Robert Berme, 109 Stable Lane, Frankfort, KY; 40601; Ursula Burchett, 123 Strawberry Lane, Frankfort, KY 40601; Archie Chaney, 266 Cherry Lane, Frankfort, KY 40601; Carroll F. Cogan, President, Farmdale Development Corporation, 1706 Bardstown Road, Louisville, KY 40205; Angela Drane, 128 Strawberry Lane, Frankfort, KY 40601; Linda E. Ethington, 5698 Louisville Road, Frankfort, KY 40601; Peggie S. Gardner, 185 Briarwood Drive, Frankfort, KY 40601; Kenny & Marilynn Glass, 223 Briarwood Drive, Frankfort, KY 40601; Stephane Haerel, 259 Cherry Lane, Frankfort, KY 40601; Michelle Hartman, 958 Green Wilson Road, Frankfort, KY 40601; Robert L. King, 254 Cherry Lane, Frankfort, KY 40601; Chris Lee, 288 Cherry Lane, Frankfort, KY 40601; Albert Loman, 102 Stable Lane, Frankfort, KY 40601; Garry Lucas, 344 Farmers Lane, Frankfort, KY 40601; Randall Mills, 114 Briar Wood, Apt. 2, Frankfort, KY 40601; Robert C. Moore, Hazelrigg & Cox, LLP, P.O. Box 676, Frankfort, KY 40602;

Kenard Corele, 270 Cherry Lane, Frankfort, KY 40601; Leslie Hyatt, Cherry Lane, Frankfort, KY 40601; Barbara J. Pulliam, 284 Cherry Lane, Frankfort, KY 40601; Dixie Rash, 103 Stable Lane, Frankfort, KY 40601; Cindy Thomas, 275 Cherry Lane, Frankfort, KY 40601; Joe Ray, 113 Stable Lane, Frankfort, KY 40601; Joseph Tyson, 281 Cherry Lane, Frankfort, KY 40601; Carolyn Rayborn, 132 Strawberry Lane, Frankfort, KY 40601; Samuel A. Wiley, 114 Strawberry Lane, Frankfort, KY 40601; Amber Skirvin, 260 Cherry Lane, Frankfort, KY 40601; Carey Wilson, 105 Stable Lane, Frankfort, KY 40601; Mr. Elva Slone, 974 Green Wilson Rd. , Frankfort, KY 40601; Mark Wilson, 287 Cherry Lane, Frankfort, KY 40601; Tom Wise, 107 Stable Lane, Frankfort, KY 40601; Jacqueline Taylor, 115 Stable Lane, Frankfort, KY 40601; and Robin Taylor, 263 Cherry Lane, Frankfort, KY 40601. These actions took place this 20<sup>th</sup> day of August 2008.

  
Assistant Attorney General