

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	CASE NO.
FOR AN ADJUSTMENT OF RATES AND)	2020-00290
APPROVAL OF CONSTRUCTION)	

ORDER

On August 19, 2021, John and Donna Coyle filed a motion requesting that the Commission reconsider the August 2, 2021 Order that, among other things, approved, in part, Bluegrass Water Utility Operating Company, LLC’s (Bluegrass Water) request for a rate adjustment. In their motion, Mr. and Mrs. Coyle alleged that the rates approved by the Commission are unreasonable based upon affordability to customers, who cannot afford the rate increase. No other motions for rehearing were filed in this matter.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to “any party to the proceedings” 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, 50 (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.

DISCUSSION AND FINDINGS

Based upon a review of the motion and case record, and being otherwise sufficiently advised, the Commission finds that, as discussed below, Mr. and Mrs. Coyle are not parties to this proceeding. Commission regulation 807 KAR 5:001, Section 1(10) defines a “party” as a person who initiates action through the filing of a formal application or tariff, is named as a defendant in a formal complaint or investigation, is granted leave to intervene pursuant to 807 KAR 5:001, Section 4(11), or is joined to a Commission proceeding. Relevant here, Mr. and Mrs. Coyle filed a motion to intervene that was denied by Commission Order entered February 5, 2021. Mr. and Mrs. Coyle did not request that the Commission reconsider the denial of Mr. and Mrs. Coyle’s motion. Thus, they were never made a party to this proceeding. Because Mr. and Mrs. Coyle are not parties to this proceeding and a request for rehearing may be made only by a party, Mr. and Mrs. Coyle do not have standing to request rehearing of the August 2, 2021 Order, and therefore their motion should be denied in accordance with KRS 278.400.

The Commission will also address the merits of the motion for rehearing, although we need not do so because we denied the motion for lack of standing. As noted above, Mr. and Mrs. Coyle allege that the Commission’s order is unreasonable because the approved rate increase is not affordable. In support of this assertion, Mr. and Mrs. Coyle

allege that most of Bluegrass Water's customers are low income customers, and thus cannot afford the rate increase.

Based upon the motion and being otherwise sufficiently advised, Mr. and Mrs. Coyle have not met their burden of proof that the August 2, 2021 Order is unreasonable because Mr. and Mrs. Coyle have not established that the evidence presented in this proceeding "leaves no room for difference of opinion among reasonable minds."³ Instead, Mr. and Mrs. Coyle seek to relitigate a matter that was fully litigated and decided by the Commission when it determined fair, just and reasonable rates for Bluegrass Water to charge to customers. As noted in a dissent to the Commission's Order, the Commission cannot dismiss a proposed rate based upon a statement that the rate is "unaffordable," especially if there is no evidence, or insufficient evidence, in the case record that supports the statement.⁴ Here, Mr. and Mrs. Coyle repeat the same allegation regarding affordability of the proposed rates that they made in their motion to intervene, which was denied. For these reasons, the Commission finds that Mr. and Mrs. Coyle have not met their burden of proof that the August 2, 2021 Order was unreasonable, and therefore their motion is denied.

IT IS THEREFORE ORDERED that:

1. John Coyle and Donna Coyle's motion for reconsideration is denied.
2. This case is closed and removed from the Commission's docket.

³ *Energy Regulatory Comm'n*, 605 S.W.2d at 50 (Ky. App. 1980).

⁴ Order (Ky. PSC Aug. 2, 2021) Dissent at 8.

By the Commission

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2020-00290

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