

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF WOOD CREEK)	CASE NO.
WATER DISTRICT FOR A RATE ADJUSTMENT)	2021-00427
PURSUANT TO 807 KAR 5:076)	

ORDER

On November 30, 2021, Wood Creek Water District (Wood Creek District) filed a motion requesting deviation from Commission regulation 807 KAR 5:076, Section 2(1), to permit its filing of an application for an alternative rate adjustment (ARF) using the procedure set forth in 807 KAR 5:076 that is available to small utilities. The ARF is available to small utilities that had gross annual revenue in the immediate past calendar year of \$5,000,000 or less.¹ Wood Creek District states as a basis for its motion that although the district had operating revenue in excess of \$5,000,000, the expense of a general rate adjustment filing would be excessive, and it is in fact a “small” utility within the meaning of the regulation. Commission regulation 807 KAR 5:076, Section 17, provides that upon a showing of good cause, the Commission may permit deviations from the requirements of 807 KAR 5:076.

Based upon the motion and being otherwise sufficiently advised, the Commission finds Wood Creek District has not established good cause to grant the motion for a deviation of the requirement set forth in 807 KAR 5:076, Section 2(1), that a utility have “an annual gross revenue in the immediate past calendar year of \$5,000,000.00 or less.”

¹ 807 KAR 5:076, Section 2(1).

The Commission has granted deviations of this nature in the past.² However, each request must be evaluated on a case-by-case basis. The Commission does not appear to have granted a deviation from the requirement in 807 KAR 5:076, Section 2(1), since the regulation was amended in 2011 from a “\$300,000 or less” threshold to “\$5,000,000 or less” threshold. The regulation was amended from “\$200,000 or less” to “\$300,000 or less” or “500 or less customers” in 1996.³

Several of the utilities granted deviations by the Commission were operating at a loss although the revenue itself exceeded the regulation threshold. Black Mountain District operated mainly using grant money and had expenses exceeding revenue almost every year of its existence prior to the rate case in 2004.⁴ In 2002, Black Mountain District had a net loss of \$172,920.⁵ The Garrison-Quincy-Ky-O-Heights District also operated at

² Case No. 1992-00407, *In the Matter of the Notice of Gas Cost Adjustment Filing of Valley Gas, Inc.* (Ky. PSC Apr. 22, 1997); Case No. 1995-00231, *In the Matter of the Application of Valley Gas, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Dec. 4, 1995); Case No. 1996-00617, *In the Matter of the Application of East Knox County Water District for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Nov. 24, 1997); Case No. 2001-00009, *The Application of Valley Gas, Inc. for an Alternative Rate Filing* (Ky. PSC Mar. 14, 2001); Case No. 2003-00237, *Application of Ledbetter Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Sept. 16, 2003); Case No. 2004-00038, *Application of Black Mountain Utility District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Apr. 7, 2004); Case No. 2004-00376, *Application of Hendron Water District for a Declaratory Ruling Authorizing Applicant to Collect Payment of Sewer Service Bills on Behalf of the Paducah-McCracken County Joint Sewer Authority and to Discontinue Water Service for Non-Payment* (Ky. PSC Dec. 17, 2004); Case No. 2006-00012, *Application of Valley Gas, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Mar. 29, 2006); Case No. 2007-00476, *Application of Garrison-Quincy-Ky-O-Heights Water District for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Feb. 4, 2008); Case No. 2009-00367, *Application of Kentucky American Water Company for an Adjustment of Sewer Rates Pursuant to the Alternative Rate Filing Procedure* (Ky. PSC Dec. 8, 2009); Case No. 2011-00364, *Alternative Rate Filing Adjustment of Bluegrass Gas Sales, Inc.* (Ky. PSC July 17, 2012).

³ 8 Ky.R. 835; eff. 4-7-1982; 22 Ky.R. 994; 1312; 1-3-1996; 38 Ky.R. 132; 629; 765; eff. 11-4-2011; 39 Ky.R. 320, 1159; eff. 1-4-2013; 40 Ky.R. 704; 1123; eff. 1-3-2014; 41 Ky.R. 156; 494; eff. 10-31-2014; Crt eff. 3-27-2019.

⁴ Case No. 2004-00038, *Black Mountain Utility District*, (Ky. PSC Apr. 7, 2004).

⁵ Case No. 2004-00038, *Black Mountain Utility District*, (filed Feb. 6, 2004), Application at 3.

a loss, having had a revenue of \$328,855,⁶ exceeding the regulation threshold at the time, but the utility had expenses of \$379,176 that same year.⁷

The timing of the rate filing in relation to the timing of the effective date of proposed amendments to the regulation is also relevant to consider. Bluegrass Gas Sales would not have needed a deviation had the amendment to 807 KAR 5:076, Section 2, which became effective November 4, 2011, had been in effect at the time of their filing on September 26, 2011.⁸ Valley Gas, Inc. (Valley Gas) has had an extensive history with deviations from the requirement of 807 KAR 5:076 Section 2(1). In 1992⁹ and 1995,¹⁰ Valley Gas requested deviations because its amount of revenue was over \$200,000. The Commission granted those requests, but on January 3, 1996, amendments to 807 KAR 5:076, Section 2, went into effect¹¹ and under those changes Valley Gas would not have needed a deviation in neither 1992 nor 1995. In 2006, the Commission ordered that Valley Gas did not require a deviation even though it had asked for one.¹² This is because

⁶ Case No. 2007-00476 *Garrison-Quincy-Ky-O-Heights Water District* (filed Nov. 3, 2007), Application at 1.

⁷ Case No. 2007-00476, *Garrison-Quincy-Ky-O-Heights Water District*, (filed Nov. 6, 2007), Amended Application, Attachment A.

⁸ Case No. 2011-00364, *Alternative Rate Filing Adjustment of Bluegrass Gas Sales, Inc.* (Ky. PSC Oct. 20, 2011).

⁹ Case No. 1992-00407, *In the Matter of the Notice of Gas Cost Adjustment Filing of Valley Gas, Inc.* (Ky. PSC Apr. 22, 1997), Order (finding despite having \$44,000 in excess revenue, Valley Gas in all other respects substantially met the requirements for an ARF filing.)

¹⁰ Case No. 1995-00231, *In the Matter of the Application of Valley Gas, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filings for Small Utilities* (Ky. PSC May 25, 1995); Order (finding that despite having \$77,000 in excess revenue, Valley Gas in all other respects substantially met the requirements for an ARF filing.)

¹¹ 22 Ky.R. 994.

¹² Case No. 2006-00012, *Application of Valley Gas, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Mar. 29, 2006), Order.

even though Valley Gas had customers in excess of 500 and gross annual revenue in excess of \$300,000 at the end of its test year, by the time it filed its application its number of customers had decreased to 492. By 2011, Valley Gas had reduced so much in size that the utility did not and has not needed a deviation again.¹³

Ledbetter Water District was granted a deviation of 1 percent over the threshold in 2003. Kentucky American Water received a deviation with regard to its sewer service rates but withdrew the Notice to File an Application.¹⁴ The Hendron Water District asked for a deviation of 807 KAR 5:006 Section 14, not of 807 KAR 5:076.¹⁵ The East Knox County Water District was granted a deviation but it withdrew its application.¹⁶

Good cause is shown by explaining sufficient reason for the Commission to make an exception for the utility. In this case, the utility is not operating at a loss. The utility is almost a million dollars over the threshold set out in the regulation. The utility has multiple employees¹⁷ and shares the employees with two other districts.¹⁸ The statistics provided in the motion for deviation raise a question of whether wholesale and retail purchasers are being charged a fair amount for water. In 2011, Wood Creek District filed for a general

¹³ Case No. 2011-00010, *Application of Valley Gas, Inc. for Alternative Rate Filing Adjustment* (Ky. PSC July 5, 2011); Case No: 2013-00150, *Application of Valley Gas, Inc. for an Alternative Rate Adjustment* (Ky. PSC Mar. 6, 2014).

¹⁴ Case No. 2009-00367, *Application of Kentucky American Water Company for an Adjustment of Sewer Rates Pursuant to the Alternative Rate Filing Procedure* (Ky. PSC Dec. 8, 2009), Order.

¹⁵ Case No. 2004-00376, *Application of Hendron Water District for a Declaratory Ruling Authorizing Applicant to Collect Payment of Sewer Service Bills on Behalf of Paducah-McCracken County Joint Sewer Authority and to Discontinue Water Service for Non-Payment* (filed Sept. 24, 2004), Application.

¹⁶ Case No. 1996-00617, *In the Matter of the Application of East Knox County Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Nov. 24, 1997).

¹⁷ Motion for Deviation at 3.

¹⁸ *Id.*

rate adjustment when the revenue and customer base exceeded the regulation threshold.¹⁹ In 2015, the Wood Creek District filed an ARF with total operating revenue of \$4,980,440,²⁰ a mere \$19,560.00 away from the threshold and water revenue of \$4,826,293, \$173,707 shy of the threshold.²¹ Wood Creek District offered no evidence of good cause for a deviation. Wood Creek District has filed a general rate case in the past, and it has been on notice since 2015, that absent a change in the regulation, it would be required to do so again. Wood Creek District chose to prepare an ARF filing in lieu of a general rate case in response to the Commission's Order in Case No. 2020-00352.

However, *sua sponte*, the Commission finds that there is good cause to extend the deadline set out in Case No. 2020-00352²² for the utility to file a rate case. A general rate case requires more information, a cost of service study, preparation, and as a result, the utility will need more time.

IT IS THEREFORE ORDERED that:

1. The Wood Creek District motion seeking a deviation from the requirements set forth in 807 KAR 5:076 Section 2(1) is denied.

2. Based on the rejection of the filing for failure to meet the regulatory requirements set out in 807 KAR 5:076, the Commission extends the deadline set out in Case No. 2020-00352 to allow Wood Creek District to file a general rate adjustment

¹⁹ Case No. 2011-00209 *Application of Wood Creek Water District for Approval of a Proposed Increase in Rates for Water Service* (Ky. PSC Nov. 18, 2011).

²⁰ Case No. 2015-00428 *Application of Wood Creek District for Rate Adjustment Pursuant to 807KAR 5:076* (filed Dec. 28, 2015), ARF Form 1 Attachment SAO W at 1.

²¹ *Id.*

²² Case No. 2020-00352 *Electronic Application of Wood Creek Water District for a Certificate of Public Convenience and Necessity to Construct a System Improvements Project and an Order Authorizing the Issuance of Securities Pursuant to KRS 278.023* (Ky. PSC Dec. 2, 2020).

pursuant to 807 KAR 5:001 Section 16. Wood Creek District shall file an application for a general rate adjustment within six months of the date of this Order.

3. Wood Creek District shall include a Cost of Service Study with its rate adjustment filing.

4. This case shall be closed and removed from the Commission's docket.

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By the Commission

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00427

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