

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

This matter arises on Bracken County Water District's (Bracken District) October 20, 2022 application for rehearing of the Commission's September 27, 2022 Order denying Bracken District's proposed leak adjustment tariff and leak adjustment form. On November 7, 2022, the Commission granted rehearing on the following issues: (1) whether the proposed policy conflicts with 807 KAR 5:006, Section 11(6); (2) whether the proposed policy provides adequate notice to customers of the requirements necessary to obtain a leak adjustment; and (3) whether the proposed policy imposes an unreasonable burden on customers. The Commission denied rehearing on the issue of due process as moot. Bracken District responded to one additional request for information from Commission Staff regarding these issues. This matter now stands submitted for a decision.

DISCUSSION AND FINDINGS

Commission regulation 807 KAR 5:006, Section 11(6).

In the November 7, 2022 Order, the Commission granted rehearing for further consideration of the Commission's finding in the September 27, 2022 Order that Bracken District's proposed leak adjustment policy conflicts with 807 KAR 5:006, Section 11(6).

In the September 27, 2022 Order, the Commission found that Bracken District's requirement that the customer pay the entire amount of the disputed bill to be in conflict with 807 KAR 5:006, Section 11(6), which provides that a customer's account shall be considered current while a dispute is pending provided that the customer makes payments for the disputed period in accordance with historic usage.

In its request for rehearing, Bracken District stated that Commission's September 27, 2022 Order contained a finding that the proposed policy had a requirement that the customer pay the entire amount of the disputed bill was incorrect. Bracken District explained that while the original proposal did contain such a requirement, its amended version submitted on September 1, 2022, excluded that requirement and instead allowed for a customer applying for a leak adjustment to continue to receive service without first having to pay their bill in full while the leak adjustment request was under review. Bracken District further explained that the customer would not be subject to any consequences for nonpayment until a final, adverse decision had been made on the leak adjustment request.¹

Bracken District stated that the policy is consistent with KRS 278.160(2), which requires a utility to charge a customer the rate contained in its filed rate schedules for service provided and that the obligation of the customer to pay the billed charges does not terminate upon the customer's request for a leak adjustment.² As part of its application for rehearing, Bracken District further revised the policy to clarify that a customer's service continues throughout the review of the leak adjustment request and

¹ Application for Rehearing at 4.

² Application for Rehearing at 4–5.

that any unpaid amount related to the customer's request will not be subject to any late payment fee regardless of the final decision on that application.³

The Commission did err in stating that the requirement that the customer pay the entire amount of the bill for which the leak adjustment was requested conflicts with 807 KAR 5:006, Section 11(6), as that regulation pertains to adjustments resulting from a usage investigation initiated by the utility or a meter test (periodic, request, or complaint). Instead, the Commission should have cited 807 KAR 5:006, Section 12, which states that for billing disputes to which 807 KAR 5:006, Section 11, does not apply, "a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills." Bracken District argued that 807 KAR 5:006, Section 12, is not applicable to a customer's request for leak adjustment because the customer has acknowledged that they received the volume of water billed and owes the billed amount but asserts that their situation meets the requirements of the leak adjustment policy.⁴

For the reasons described below, the Commission finds that subsection (i) of Bracken District's proposed revised leak adjustment policy should be rejected and replaced with the following: "A customer account shall be considered to be current while the leak adjustment request is being reviewed if the customer continues to make undisputed payments and stays current on subsequent bills."

The Commission is not convinced by Bracken District's arguments that 807 KAR 5:006, Section 12, should not apply to requests for leak adjustments. Should a customer

³ Application for Rehearing, Exhibit A, PSC KY NO. 1, Original Sheet No. 21.1.

⁴ Bracken District's Response to Commission Staff's First Request for Information on Rehearing (filed Dec. 5, 2022), Item 1(e).

request a leak adjustment under the proposed policy, the Commission would view it as a billing dispute because the customer is making the request pursuant to the tariff and requesting a lower bill amount. Further, while Bracken District attempted to alleviate the Commission's concerns with this provision, the inclusion of the language in subsection (i) of its proposed tariff stating, in part, that "[a] Customer remains responsible for the full amount of bill pending review of the Customer's request," is, at best, unclear and arguably inconsistent with what Bracken District indicated is its intended practice, and the language could dissuade less knowledgeable customers from taking advantage of the program due to fear of disconnection, which could result in inconsistent application.

Notice of the Requirements Necessary to Obtain a Leak Adjustment.

In the November 7, 2022 Order, the Commission granted rehearing for further consideration of the Commission's finding in the September 27, 2022 Order that Bracken District's proposed leak adjustment policy did not provide adequate notice to customers of the requirements necessary to obtain a leak adjustment. In the September 27, 2022 Order, the Commission found that Bracken District's proposed leak adjustment policy was vague and ambiguous regarding how a customer complies with the requirements. Specifically, the Commission noted that the tariff provided examples of what may be considered sufficient evidence to reasonably demonstrate that a leak existed and was repaired, but that the use of the word "may" indicates there exists scenarios that those items would not actually be considered sufficient evidence. The Commission also noted that the proposed tariff did not define the terms "sufficient evidence" or "reasonably demonstrate," and thus, Bracken District would have unlimited discretion in making a determination of whether a customer complied with the tariff.

In its request for rehearing, Bracken District argued that the proposed policy provided clear and specific directions as to the evidence necessary to support a leak adjustment request. Bracken District stated that the policy expressly identified such documents as a plumber's statement, invoices for material and labor, and sworn affidavits from those knowledgeable of the leak's existence and repair as supporting evidence. Bracken District also stated that the proposed policy gave customers the option to submit additional evidence that the customer believes supports their request for a leak adjustment. Bracken District stated that the Commission penalized it for providing the customer leeway in supporting its request with other evidence and for believing that its customers have sufficient knowledge and common sense to select the best form of evidence to support their request for a leak adjustment.⁵

As part of its application for rehearing, Bracken District proposed several revisions to address the Commission's concerns. Regarding the vagueness of the evidentiary requirements, Bracken District revised the policy to state that at least one of the following forms of evidence must be provided with a leak adjustment request: (1) a plumber's statement; (2) invoices for materials and labor; or (3) sworn affidavits from persons with knowledge of a leak's existence and repair. Bracken District also revised the policy to state that customers are encouraged to provide all available information that supports the request for a leak adjustment. Regarding the Commission's concerns about the standard for reviewing and evaluating a customer's request for a leak adjustment, Bracken District revised the policy to state that a customer must demonstrate by a preponderance of evidence the existence and repair of the leak and that the leak caused the above-average

⁵ Application for Rehearing at 2–3.

water usage.⁶ Bracken District argued that this is the same standard the Commission uses. Bracken District stated that it has a responsibility to the requesting customer and all Bracken District customers to determine whether a leak existed and whether the leak was the probable cause of the above-average usage.⁷

Bracken District explained that once a leak adjustment request is received, it will review the customer's past usage history to determine whether an unusually high level of usage occurred to support the existence of a leak or whether the usage fits the customer's historic usage patterns. If the customer presented a sworn statement from a plumber or contractor, Bracken District explained that it may contact that person to obtain additional information regarding the repairs and nature of the leak. In cases where the customer performed the repairs, Bracken District indicated that it would request the customer to provide proof of the repairs, and it may question the customer regarding the nature of the repairs. Bracken District did indicate that in some cases it may perform an onsite inspection.⁸

The Commission finds that Bracken District's proposed revision regarding the evidentiary requirements should be approved, as modified below, as it puts the customer on notice as to what type of evidence must be provided while allowing for additional forms of evidence. However, for the reasons described below, the Commission finds that Bracken District's proposed revision regarding the standard for reviewing and evaluating a customer's leak adjustment request should be rejected and replaced with the following:

⁶ Application for Rehearing, Exhibit A, PSC KY NO. 1, Original Sheet No. 21

⁷ Application for Rehearing at 3.

⁸ Bracken District's Response to Commission Staff's First Request for Information on Rehearing (filed Dec. 5, 2022), Item 1(a).

“A customer must show the existence and repair of the leak and that the leak caused the above-average water usage by providing at least one of the following with the customer’s application: a plumber’s statement, invoices for materials and labor, or sworn affidavits from persons with knowledge of the leak’s existence and repair. The Customer is encouraged to provide all available information that supports the request for adjustment. The District will review the application and verify the existence of the leak and repairs.”

With the revised forms of evidence, the proposed leak adjustment policy requires Bracken District should be able to determine whether a leak existed without an extensive investigation based on a review of that evidence and of the customer’s usage history. In fact, Bracken District confirmed that in the overwhelming number of leak adjustment requests, it has been able to quickly investigate and grant the requests for leak adjustments.⁹ Including language indicating that customers must show by a preponderance of evidence the existence and repair of the leak and that the leak caused the above-average water usage is unnecessary and is unlikely to have any effect on the tariff other than to cause confusion.

Undue Burden Placed upon Customers Requesting a Leak Adjustment.

In the November 7, 2022 Order, the Commission granted rehearing of the Commission’s finding in the September 27, 2022 Order that Bracken District’s proposed leak adjustment policy imposed an unreasonable burden on customers. In the Commission’s September 27, 2022 Order, the Commission noted several items it believed placed an unreasonable burden on customers who requested leak adjustments. The Commission specifically noted that the proposed policy required that a customer

⁹ Application for Rehearing at 3.

request a leak adjustment prior to the payment of the bill for which the adjustment was sought. The Commission noted that customers who did not have access to the internet and who could not travel to a district's office would have to have the leak adjustment form mailed to them and possibly would not have enough time to submit the request prior to payment being due.

As part of its application for rehearing, Bracken District revised the leak adjustment policy to remove the provision that required a customer to request a leak adjustment prior to the payment of the bill for which the adjustment was sought, noting that it could unduly burden on some customers.¹⁰

The Commission finds that the removal of the provision requiring a customer to request a leak adjustment prior to the payment of the bill for which the adjustment was sought should be approved.

Additional Items.

The originally proposed and the revised leak adjustment policy both contained language requiring the plastic pipe used for repair of underground service lines to be certified to withstand a working pressure of 200 pounds per square inch or greater and be CTS pipe. Bracken District explained that its current rules and regulations require that “[a]ll service lines beyond the metering point should be installed of material consisting of copper, PE or PVC pipe with a rating of not less than 160 psi.” Bracken District acknowledged that the provision in its leak adjustment policy conflicted with its current rules and regulations and that it would not object to a revision to the proposed policy that

¹⁰ Application for Rehearing at 6.

would require repair materials to meet the existing standards for service lines.¹¹ To be consistent with Bracken District's current rules and regulations, the Commission finds that the leak adjustment policy should be revised to make the standards for repair materials consistent with Bracken District's current rules and regulations regarding the standards for service lines.

The originally proposed and the revised leak adjustment policy also contained a provision that indicated the use of radiator clamps, King nipples or equivalent would not be accepted. Bracken District explained that the use of these items is less likely to result in a permanent repair of the service line and increases the potential for future leaks. Bracken District did indicate that should the Commission have concerns about this provision, it would not object to its removal.¹² The Commission finds that this provision should be removed from the proposed policy as its inclusion could be an impediment to a customer's ability to make repairs to its service lines.

IT IS THEREFORE ORDERED that:

1. Bracken District's proposed leak adjustment policy is approved, as modified herein, as of the date of service of this Order.
2. Bracken District's proposed revised language in subsection (i) of its leak adjustment policy is denied and shall be replaced with the following: "A customer account shall be considered to be current while the leak adjustment request is being reviewed if

¹¹ Bracken District's response to Commission Staff's First Request for Information on Rehearing (filed Dec. 5, 2022), Item 1(b).

¹² Bracken District's response to Commission Staff's First Request for Information on Rehearing (filed Dec. 5, 2022), Item 1(c).

the customer continues to make undisputed payments and stays current on subsequent bills.”

3. Bracken District’s proposed revision regarding the evidentiary requirements is approved as modified herein.

4. Bracken District’s proposed revision regarding the standard for reviewing and evaluating a customer’s leak adjustment is denied and shall be replaced with the following: “A customer must show the existence and repair of the leak and that the leak caused the above-average water usage by providing at least one of the following with the customer’s application: a plumber’s statement, invoices for materials and labor, or sworn affidavits from persons with knowledge of the leak’s existence and repair. The Customer is encouraged to provide all available information that supports the request for adjustment. The District will review the application and verify the existence of the leak and repairs.”

5. Bracken District’s removal of the provision requiring a customer to request a leak adjustment prior to the payment of the bill for which the adjustment was sought is approved.

6. Bracken District shall revise the standards for repair materials to be consistent with Bracken District’s current rules and regulations regarding the standards for service lines.

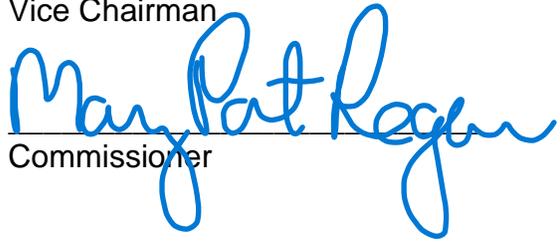
7. Bracken District shall remove the provision that prohibits the use of radiator clamps, King nipples or equivalent to repair the service line.

8. This case is closed and removed from the Commission’s docket.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


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