

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JAMES L. MUDD)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2022-00322
MARION COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

On September 14, 2022, James L. Mudd, a customer of Marion County Water District (Marion District), filed a complaint requesting that Marion District issue a refund to him and to all customers for a rate increase arising from an alternative rate adjustment (ARF) proceeding because the refund was allegedly implemented prior to Commission approval.

LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 20 sets forth the procedures and legal standard for complaints, which requires the complaint to state with certainty the act or omission that is the subject of the complaint that violates a statute, regulation, or Commission Order.

Commission regulation 807 KAR 5:076, Section 7 addresses the effective date for an ARF rate increase, providing that, if the Commission does not issue an Order prior to six months after the application filing date, then a utility can place the proposed rates into

effect subject to refund upon written notice by the utility of its intent to place the proposed rates into effect.

Finally, 807 KAR 5:001, Section 4(4), Kentucky Supreme Court Rules, and case law prohibit the unauthorized practice of law by a person not licensed to practice law in Kentucky.¹ The unauthorized practice of law includes requesting a legal remedy, such as a refund, on behalf of others arising from the same injury, such as over collection of rates.

BACKGROUND

On May 23, 2022, the Commission approved Marion District's request for an ARF in Case No. 2021-00394.² Subsequently, a customer complained to Marion District that the utility implemented a rate increase prior to the permissible effective date. In response to the customer's complaint, Marion District submitted a request for a Commission Staff Advisory Opinion, stating that on its June bills, Marion District charged for water used between April 28, 2022, and May 22, 2022. In the June 21, 2022 Commission Staff Advisory Opinion,³ Commission Staff concluded that, based upon the facts presented Marion District was not authorized and thus over collected from its customer for water usage between April 28, 2022, and May 22, 2022. Commission Staff explained that only the Commission had the authority to issue a refund for an over collection, and that a copy

¹ Kentucky Supreme Court Rule 3.020; and *Kentucky State Bar Association v. Henry Vogt Machine Co.*, 416 S.W.2d 727 (Ky. 1967). See also Administrative Case No. 249, *Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky* (Ky. PSC June 15, 1981) at 2.

² Case No. 2021-00394, *Electronic Application of Marion County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC May 23, 2022).

³ Commission Staff Advisory Opinion 2022-009 (Ky. PSC June 21, 2022).

of the Commission Staff Advisory Opinion would be filed into the case record of the ARF case so that the Commission could determine whether a refund should be issued.

DISCUSSION AND FINDINGS

As noted in the Commission Staff Advisory Opinion, Marion District implemented a rate increase prior to a final Order in Case No. 2021-00394 and without written notice to the Commission. As discussed in a September 20, 2022 Order in Case No. 2021-00394, Marion District filed an ARF application on October 27, 2021. By operation of law under 807 KAR 5:076, Section 7(1), Marion District's proposed rates were suspended up to and including April 27, 2022. In accordance with 807 KAR 5:076, Section 7(2), Marion District could have placed its proposed rates into effect, subject to refund, for service rendered on and after April 28, 2022 only if Marion District first provided written notice to the Commission. By its own admission in the letter requesting a Commission Staff Advisory Opinion, Marion District admitted that it implemented rates for service rendered on and after April 28, 2022. However, as evidenced by the case record in Case No. 2021-00394, Marion District never provided written notice to the Commission of its intent to place rates into effect, subject to refund. Because the final Order approving the rate increase was issued on May 23, 2022, Marion District could implement the rate increase for service rendered on and after May 23, 2022, and not prior to that date.

When Mr. Mudd filed his complaint on September 14, 2022, a refund Order was in the process of being issued in Case No. 2021-00394. On September 20, 2022, the Commission entered an Order in Case No. 2021-00394 finding that Marion District impermissibly implemented a rate increase without prior Commission authority and

directed Marion District to refund its customers for the actual overcharge for rates for service rendered between April 28, 2022, and May 22, 2022.

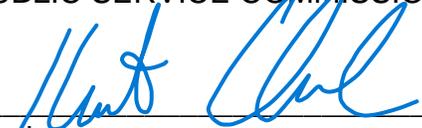
Based upon the complaint and the record of Case No. 2021-00394, the Commission finds that Mr. Mudd's complaint should be dismissed as moot. This is because the relief requested by Mr. Mudd has already been granted.

The Commission notes that, while Mr. Mudd can request relief in the form of a refund for his account, he cannot request a refund on behalf of all customers because it would constitute the unauthorized practice of law under 807 KAR 5:001, Section 4(4), Kentucky Supreme Court Rules, and case law.

IT IS THEREFORE ORDERED that:

1. Mr. Mudd's complaint is dismissed as moot.
2. This matter is closed and removed from the Commission docket.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

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