

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF MCCREARY	)	CASE NO.
COUNTY WATER DISTRICT	)	2022-00336

ORDER

On September 22, 2022, McCreary County Water District (McCreary District) filed with the Commission a completely revised tariff setting forth its rates, rules, and regulations effective October 23, 2022. Pursuant to KRS 278.190(2), the Commission suspended the proposed tariff revision on October 14, 2022, for five months, up to and including March 22, 2023. McCreary District responded to two sets of data requests from Commission Staff. There were no intervenors.

This matter stands submitted for a decision on the written record.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.<sup>1</sup> Kentucky law provides that a utility may demand, collect and receive fair, just and reasonable rates<sup>2</sup> and that the service it provides must be adequate, efficient and reasonable.<sup>3</sup> Kentucky law also provides that a utility must file with the Commission schedules of all rates and conditions for service established by it and

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<sup>1</sup> KRS 278.040(2).

<sup>2</sup> KRS 278.030(1).

<sup>3</sup> KRS 278.030(2).

collected or enforced.<sup>4</sup> KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken.<sup>5</sup> A nonrecurring charge shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.<sup>6</sup>

A utility's bill format must clearly show the following information: (1) the date the bill was issued; (2) class of service; (3) present and last preceding meter readings; (4) date of the present reading; (5) number of units consumed; (6) meter constant, if applicable; (7) net amount for service rendered; (8) all taxes; (9) adjustments, if applicable; (10) the gross amount of the bill; (11) the date after which a penalty may apply to the gross amount; and (12) if the bill is estimated or calculated.<sup>7</sup>

#### DISCUSSION AND FINDINGS

Having reviewed the proposed tariff and being otherwise sufficiently advised, the Commission finds that the tariff, as modified below, is fair, just and reasonable and should be approved.

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<sup>4</sup> KRS 278.160.

<sup>5</sup> 807 KAR 5:006, Section 9(1).

<sup>6</sup> 807 KAR 5:006, Section 9(2).

<sup>7</sup> 807 KAR 5:006, Section 7(1)(a).

Non-Recurring Charges

The Commission finds that the proposed establishment of the nonrecurring charges are reasonable and should be approved, for the reasons below.

McCreary District proposed to establish several nonrecurring charges;

Connection/Turn-On Charge	\$12.50
Connection/Turn-On Charge (After Hours)	\$50.00
Reconnection Charge (After Hours)	\$50.00
Service Call/Investigation Charge	\$12.50
Service Call/Investigation Charge (After Hours)	\$50.00
Termination of Service for Nonpayment Charge	\$12.50
Excessive Rock Removal Charge	Actual Cost
Water Main/Service Line Cost Estimate Charge	Actual Cost

McCreary District, recognizing that the Commission continues to follow its previous decisions regarding nonrecurring charges, made their filing fit the Commission's past findings that personnel are paid during normal business hours and their salaries are recovered through rates. Allowing a utility to recover the same labor expense twice is not fair, just and reasonable. McCreary District's tariff does specify that a customer requesting an estimate of the cost to make a connection or main extension would pay the actual costs of such service, including labor. If a customer executes a contract for service within 90 days of McCreary District providing the estimate, the amount charged would be credited to the cost of the service connection or main extension. Utilities are generally allowed to recover labor through meter tap-on charges and main extension charges. Therefore, the Commission finds it reasonable to allow McCreary District to recover its labor expenses through the water main/service line cost estimate charge.

## Bill Format

The Commission finds that the proposed bill format is reasonable and that it should be approved, for the reasons below, contingent on the bill issue date being added. McCreary District's proposed bill format included all the information required by 807 KAR 5:006, Section 7(1)(a) except for the date the bill was issued and the class of service. McCreary District stated that it was in the process of revising its bill format to include the date of issuance and that it would file a copy of the revised format when it is completed.<sup>8</sup> However, McCreary District has yet to file its revised bill format. Regarding the class of service, McCreary District stated that its water service rates are not based on customer classification. Except for seven customers specifically identified in McCreary District's tariff, all customers are billed in accordance with the same rate schedule.<sup>9</sup> Given that all but seven McCreary District customers are served under the same rate schedule, the costs of adding the class of service to the bill format would likely outweigh the benefit to McCreary District customers.

## Leak Adjustment Policy

McCreary District's current tariff on file with the Commission includes a leak adjustment policy.<sup>10</sup> The current leak adjustment policy provides that a leak adjustment may be made under the following conditions:

1. One adjustment will be allowed during any given 12-month period for a specific location.

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<sup>8</sup> McCreary District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Nov. 18, 2022), Item 8(a).

<sup>9</sup> McCreary District's Response to Staff's First Request (filed Nov. 18, 2022), Item 8(c).

<sup>10</sup> PSC KY NO., Sheet No. 21.

2. The customer would pay the average of the customer's previous consumption over the past 12 months. If the usage history is not available, the water bill will be estimated subject to an upward or downward adjustment once a 12-month average of actual meter readings can be calculated.

3. Any usage over the customer's average usage over the past 12 months would be billed at 50 percent of the regular rates.<sup>11</sup>

McCreary District proposed the following revisions to its leak adjustment policy:

1. A customer would be required to request a leak adjustment prior to payment of the bill for which the adjustment is sought.

2. A customer would be required to provide sufficient evidence to reasonably demonstrate the existence and repair of the leak. Such evidence may include a plumber's statement, invoices for materials and labor, and sworn affidavits from persons with knowledge of the leak's existence and repair.

3. Plastic pipe for repair of underground service lines must be certified to withstand a working pressure of 200 pounds per square inch or greater and be CTS pipe. The use of radiator clamps, king nipples or equivalent would not be accepted.

4. An adjustment may cover a maximum of two billing periods.

5. Customers would remain responsible for the full amount of the bill pending review of the request and service would be discontinued for non-payment if not paid in full. If service is discontinued, the full amount plus a termination fee and reconnection fee

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<sup>11</sup> McCreary District's current tariff on file with the Commission, Sheet No. 21 (stamped effective December 7, 2008).

must be paid before service will be restored and any adjustment made would be credited to the account.

6. The leak adjustment amount shall not exceed \$5,000.<sup>12</sup>

In responding to certain Staff Data Requests, McCreary District proposed modifications to its revised tariff. McCreary District proposed to eliminate the requirement that a customer must apply for a leak adjustment prior to payment of the bill for which the adjustment is sought.<sup>13</sup> McCreary District also proposed to revise the language regarding the type of pipe required to be used to the following: “Plastic pipe for repair of underground water service lines must be CTS or IPS pipe.” McCreary District also proposed to delete the sentence referring to the use of radiator clamps, king nipples or equivalent.<sup>14</sup> Finally, McCreary District proposed to revise the language regarding customers still being responsible for the full amount of the bill to the following:

A Customer remains responsible for the full amount of bill pending review of the Customer’s request. Discontinuance of service for nonpayment of the full amount of the bill however, shall not be made until review of the request is completed, a final decision on the request is issued, a bill reflecting the review’s results has been issued and the Customer has had an opportunity to pay that bill in accordance with the terms of the District’s Rules and Regulations. No late payment fee shall be assessed against the Customer for nonpayment of the amount unless the Customer fails to pay the amount owed on the bill reflecting the results of the final decision.<sup>15</sup>

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<sup>12</sup> PSC KY NO. 4, Original Sheet No. 34 and Original Sheet No. 35 (filed Sep. 22, 2022).

<sup>13</sup> McCreary District’s Response to Staff’s First Request (filed Nov. 18, 2022), Item 7(a).

<sup>14</sup> McCreary District’s Response to Staff’s First Request (filed Nov. 18, 2022), Item 7(b).

<sup>15</sup> McCreary District’s Response to Staff’s First Request (filed Nov. 18, 2022), Item 7(e).

The Commission finds that McCreary District's proposal to remove the revision requiring a customer to request a leak adjustment prior to payment of the bill for which the adjustment is sought is reasonable and should be approved for the following reasons. The original proposed revision to require a customer to request a leak adjustment prior to payment of the bill for which the adjustment is sought could place an undue burden on a customer if the leak is not obvious and not discovered prior to receiving the bill as it would leave a short amount of time to have the leak repaired and request a leak adjustment prior to the bill being due. In addition, if a customer does not have access to the internet to obtain the leak adjustment form and is not able to travel to the office, the customer would have to have the leak adjustment form mailed to them and could possibly not have enough time to submit the request prior to payment being due.

For the reasons below, the Commission finds that McCreary District's revision regarding the standard for reviewing and evaluating a customer's leak adjustment request should be rejected and 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.

McCreary District's proposed language regarding the evidence customers may present with their leak adjustment request is vague and ambiguous. For example, McCreary District will determine whether the customer complied with the requirement to provide, among other things, "sufficient evidence" to "reasonably demonstrate" that the leak was

repaired. If McCreary District deems that the customer does not meet the sufficient evidence or reasonable determination threshold, then that customer will not receive a leak adjustment. The proposed tariff does not define the “sufficient evidence” or “reasonable demonstration” standards with reasonable clarity to put the customer on fair notice of what is required to meet those standards. The tariff provides three examples of what “may” be sufficient evidence; the use of the word “may” indicates that those items may not actually be sufficient to be deemed evidence.<sup>16</sup> Further, the vague language implies that other forms of evidence may be sufficient, but, without a definition of “sufficient evidence”, customers do not have fair notice of what evidence would meet McCreary District’s threshold. Reasonably demonstrate is not defined at all. Without specific definitions of the applicable standards, McCreary District would have unlimited discretion in making its determination regarding customer compliance.

The Commission finds that McCreary District’s proposals to revise the language regarding the type of plastic pipe to be used in repairs and to remove the provision referring to the use of radiator clamps, king nipples or equivalent are reasonable and should be approved for the following reasons. McCreary District stated that it wished to ensure that materials used to perform repairs are adequate to prevent future leaks and avoid additional requests for leak adjustments. The provision regarding the use of radiator clamps and king nipples or equivalent could be an impediment to a customer’s ability to makes repairs to its service lines.

The Commission finds that McCreary District’s proposal to limit leak adjustments to a maximum of two billing periods is reasonable and should be approved. Two billing

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<sup>16</sup> PSC KY NO. 4, Original Sheet No. 34 (filed Sep. 22, 2022).

periods should give customers a sufficient amount of time to discover unusual high water usage and to take appropriate measures to repair the leak. In addition, that provision should encourage customers to keep their service lines in good repair.

The Commission finds that the revision regarding customers still being responsible for the full amount of the bill 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 believes that 807 KAR 5:006, Section 12, which states a customer account shall be current while a dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills. Should a customer request a leak adjustment under the proposed policy, the Commission would view it as a billing dispute as the customer is making the request pursuant to the tariff and requesting a lower bill amount. While McCreary District attempted to alleviate the Commission’s past concerns with the revised language, the inclusion of the language stating, in part, that “[a] Customer remains responsible for the full amount of bill pending review of the Customer’s request,”<sup>17</sup> is, at best, unclear, 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.

The Commission finds that McCreary District’s proposal to limit the leak adjustment amount to \$5,000 is reasonable and should be approved for the following reasons. In a recent proceeding, the Commission found that limiting a leak adjustment to situations where a customer’s bill exceeds a certain dollar amount or a customer’s usage exceeds

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<sup>17</sup> McCreary District’s Response to Staff’s First Request (filed Nov. 18, 2022), Item 7(e).

a certain amount of their average usage was unreasonable as it could lead to certain customers being discriminated against.<sup>18</sup> Limiting the dollar amount of the leak adjustment itself, however, treats all customers equitably as all customers that qualified for a leak adjustment could receive one up to the \$5,000 limit. In addition, such a provision would encourage customers to keep their service line in good repair.

#### Night Depository Box

McCreary District original proposal contained a provision indicating that payments deposited into the night deposit box, except for those made in response to a termination for service notice, would be considered as received on the previous business day. McCreary District later stated that the original proposal incorrectly stated their policy and that it had been marked for revision prior to the filing but was not revised. McCreary District stated that the original proposed policy should have stated that payments deposited into the night deposit box would be considered as received on the next business day.<sup>19</sup> The Commission finds that McCreary District's revised night deposit box language indicating that payments placed in the night deposit box would be considered received on the next business day is reasonable and that it should be approved for the reasons below. For customers facing termination, McCreary District stated that they generally do not terminate service on the final payment date on the termination notice, but instead will do so on the next business day after the final payment date. McCreary District explained that prior to beginning terminations of service, office personnel would

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<sup>18</sup> Case No. 2023-00055, *Electronic Tariff Filing of LaRue County Water District No. 1 for a Revision to Its Leak Adjustment Policy* (Ky. PSC Feb. 17, 2023).

<sup>19</sup> McCreary District's First Supplemental Response to Staff's First Request (filed Jan. 18, 2023), Item 2(b).

review payments placed in the night deposit box for payments from customers subject to a disconnect notice and that any such customers who placed a payment in the night deposit box the evening before terminations were set to begin would be removed from the termination schedule.<sup>20</sup> This practice would prevent customers who paid the night before terminations were set to begin from having their service unjustly terminated.

IT IS THEREFORE ORDERED that:

1. McCreary District's proposed tariff is approved, as modified herein, as of the date of this Order.

2. The nonrecurring charges as set forth in the Appendix to this Order are approved for service rendered by McCreary District on and after the date of this Order.

3. McCreary District's proposed bill format is approved contingent on the bill issue date being added to it.

4. McCreary District's proposed leak adjustment policy, as modified herein, is approved.

5. McCreary District's proposal to remove from its leak adjustment policy the revision requiring a customer to request a leak adjustment prior to payment of the bill for which the adjustment is sought is approved.

6. McCreary District's revision regarding the standard for reviewing and evaluating a customer's leak adjustment request is rejected 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

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<sup>20</sup> McCreary District's First Supplemental Response to Staff's First Request (filed Jan. 18, 2023), Item 2(c).

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."

7. McCreary District's proposal to revise the language regarding the type of plastic pipe to be used in repairs is approved.

8. McCreary District's proposal to remove the provision referring to the use of radiator clamps, king nipples or equivalent is approved.

9. McCreary District's proposal to limit the leak adjustment to two billing periods is approved.

10. McCreary District's proposal to revise the language regarding customers still being responsible for the full amount of the bill is rejected 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 the customer continues to make undisputed payments and stays current on subsequent bills."

11. McCreary District's proposal to limit the leak adjustment amount to \$5,000 is approved.

12. McCreary District's revised night deposit box language indicating that payments placed in the night deposit box would be considered received on the next business day is approved.

13. Within 20 days of the date of service of this Order, McCreary District shall file with the Commission, using the Commission's electronic Tariff Filing System, its

revised tariff sheets setting forth the rates, charges, and modifications approved or as required herein and reflecting their effective date and that they were authorized by this Order.

14. This case is closed and removed from the Commission's docket.

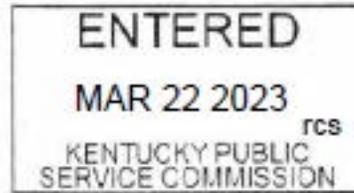
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PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2022-00336 DATED MAR 22 2023

The following rates and charges are prescribed for the customers in the area served by McCreary County Water District. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of the Commission prior to the effective date of this Order.

Nonrecurring Charges

Connection/Turn-On Charge	\$12.50
Connection/Turn-On Charge (After Hours)	\$50.00
Reconnection Charge (After Hours)	\$50.00
Service Call/Investigation Charge	\$12.50
Service Call/Investigation Charge (After Hours)	\$50.00
Termination of Service for Nonpayment Charge	\$12.50
Excessive Rock Removal Charge	Actual Cost
Water Main/Service Line Cost Estimate Charge	Actual Cost

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