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June 21, 2022

**Staff Opinion 2022-009**

*Sent electronically to lmudd@monarchengineering.net*

Lee Mudd, P.E.  
Monarch Engineering, Inc.  
556 Carlton Drive  
Lawrenceburg, KY 40342

Mr. Mudd,

Commission Staff acknowledges receipt on June 20, 2022, of your email in which you request an opinion on behalf of Marion County Water District (Marion District) regarding the effective date of a recent rate increase.

The facts, as you present them, are as follows. In Case No. 2021-00394,<sup>1</sup> the Commission entered an Order on May 23, 2022, approving a rate increase effective for service rendered on and after the Order date. Marion District implemented the new rates on its June 15, 2022 billing, which included water sold no earlier than April 29, 2022. Because the June 2022 billing included water that went through customers' meters between April 29, 2022 and May 22, 2022, a customer questioned whether Marion District charged the correct rate for water usage that occurred prior to the May 23, 2022 Order.

Your question is whether Marion District correctly applied the effective date for the rate increase on the June 2022 billing. In your email, you stated that Case No. 2021-00394 had a suspension date of April 27, 2022, and because the suspension date passed prior to water billed at the new rate, the District contended that it was entitled to issue the June 15, 2022 bills at the rates approved in the May 23, 2022 Order for all water consumed on and after April 29, 2022 and the end of the billing period. You explained that one of Marion District's customers asserted that, because none of the Commission's orders specifically mention the suspension date, Marion District was not entitled to charge the new rates until May 23, 2022.

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<sup>1</sup> 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).

You also asked if Marion District should issue refunds for customers' water usage between April 29, 2022 and May 22, 2022, if Commission Staff concludes that Marion District did not apply the correct effective date for the rate increase.

Finally, you stated that Marion District intends to conform to all Commission regulations and Orders.

Commission regulation 807 KAR 5:076 governs alternative rate adjustment cases, such as Case No. 2021-00394. Relevant to Marion District's questions, 807 KAR 5:076(7), which governs the effective date of proposed rates, states:

An applicant shall not place the proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.

The Commission entered an Order on November 17, 2021, that, among other things, noted the following in a footnote:

No action is necessary to suspend the effective date of Marion District's proposed rates for service. Pursuant to 807 KAR 5:076, Section 7(1), an applicant who applies for a rate adjustment pursuant to the procedures set for in 807 KAR 5:076 may not place its proposed rates into effect until the Commission approves those rates or six months from the date of the filing of its application.<sup>2</sup>

Marion District's alternative rate adjustment case was accepted for filing on October 27, 2021. Based upon the express language of 807 KAR 5:076, Section 7(1), the suspension date for Marion District's ARF case was April 27, 2022, which is six months after the October 27, 2021 date of filing date of Marion District's alternative rate adjustment case. As referenced in the November 17, 2021 Order, the suspension date was established by operation of law, and no action was necessary by the Commission to suspend the effective date of the rates. For that reason, Commission Staff concludes that Marion District's customer's assertion regarding a suspension date is not correct to the extent that the suspension date was established by operation of law and required no further action by the Commission.

However, 807 KAR 5:076(7)(2) is also relevant to Martin District's question. This regulation states:

If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund **upon providing the commission with written notice of its intent to place the rates into effect.** (emphasis added).

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<sup>2</sup> Case No. 2021-00394, Order (Ky. PSC Nov. 17, 2021), footnote 1.

While 807 KAR 5:076(7)(2) allows a utility to place an alternative rate adjustment rate increase into effect if the Commission does not enter an order on or before the suspension date, then a utility may place the rates into effect **only** if the utility provides written notice of its intent to do so and the rate increase is subject to refund if the Commission authorizes rates other than those proposed by the utility. Further, 807 KAR 5:076, Section 7(3) requires the utility to maintain records so that the utility or the commission can determine the amounts to be refunded and to whom a refund is due if the Commission orders a refund.

In your letter, Marion District does not state or provide evidence that it filed written notice with the Commission that Marion District intended to place the rates into effect, subject to refund, for service rendered on and after April 28, 2022, which is the first date after the suspension period that rates could have been effective. The case record does not contain a written notice filed by Marion District that it intended to place the rates into effect, subject to refund, for service rendered on and after April 28, 2022.

Based upon the facts presented and a review of the case record, Commission Staff concludes that Marion District did not file written notice of its intent to place the rates into effect, subject to refund, for service rendered on and after April 28, 2022. Because written notice was required, but not provided, Commission Staff further concludes that Marion District could not place the proposed rates into effect after the suspension period lapsed but before the Commission entered a final Order authorizing new rates because Marion District failed to comply with the requirements established in 807 KAR 5:076, Section 7(2).

KRS 278.160(1) requires utilities, such as Marion District, to file its rate schedules with the Commissions. KRS 278.160(2) prohibits a utility, such as Marion District, to charge rates for service rendered other than the rates contained in the rate schedules filed with the Commission.

Commission Staff concludes that Marion District was not authorized, and thus could not charge, rates for service rendered after the lapse of the suspension period and before the final Order from the Commission because Marion District failed to file the required written notice in accordance with 807 KAR 5:076, Section 7(2) and failed to file a rate schedule with the Commission in accordance with KRS 278.160(1)-(2) for the rates Marion District charged for service rendered between April 28, 2022 and May 22, 2022.

Consistent with Commission precedent<sup>3</sup> and KRS 278.160, any utility that over collects from its customers because the utility charged a higher rate than authorized by the Commission must refund customers for the over collection of rates. However, such determinations are made by the Commission in the context of a case and not by

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<sup>3</sup> See Case No. 2020-00396, *Electronic Application of Navitas KY NG, Johnson County Gas Company, and B & H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems* (Ky. PSC Feb. 1, 2021).

Commission Staff in an advisory opinion. This is because the Commission and not Commission Staff has the statutory authority to authorize utility rates and because the Commission speaks only through its orders.<sup>4</sup>

Because Commission Staff is unable to address the issue of a refund amount, Commission Staff will file a copy of this Staff Advisory Opinion into the case record of Case No. 2021-00394 so that the Commission can decide how to proceed with a determination whether a refund is required and, if so, the amount of the refund.

This letter represents Commission Staff's interpretation of the law as applied to the facts as presented. The opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Nancy J. Vinsel, General Counsel, at (502) 782-2872 or [nancy.vinsel@ky.gov](mailto:nancy.vinsel@ky.gov).

Sincerely,



Linda Bridwell, P.E.  
Executive Director

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<sup>4</sup> See KRS 278.040(2) and KRS 278.390. See also *Union Light, Heat & Power Co. v. Public Service Comm'n*, 271 S.W.2d 361 (Ky. Ct. App. 1954).