

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE)	
WATER SERVICE RATES OF THE CITY OF)	CASE NO. 98-283
OWENTON, KENTUCKY)	

ORDER

This Order addresses the reasonableness of the city of Owenton, Kentucky's (Owenton) expenses to prosecute its application for an adjustment in its wholesale water service rate. We find that the level of Owenton's rate case expense should be reduced for rate-making purposes by \$545. We deny Tri-Village Water District's (Tri-Village) request for further reductions and Owenton's request for an increase in the level of this expense.

BACKGROUND

On February 22, 1999, the Commission established a new rate for Owenton's wholesale water service to Tri-Village. Finding that Owenton had incurred legal and engineering expenses of \$11,346 to prosecute its application, we authorized the assessment of a surcharge of 4 cents per 1,000 gallons of water for a 3-year period to recover those expenses. Owenton had sought recovery of rate case expenses of \$15,861.¹ The Commission, however, disallowed legal and engineering expenses of \$2,000 because Owenton failed to furnish supporting documentary evidence and

¹ See Brief of City of Owenton of 2/5/99 at 12-13. Owenton presented invoices for \$13,861 in legal and engineering expenses and claimed an additional \$2,000 in unbilled services to prepare post-hearing requests for information and written briefs.

\$2,516 of expenses associated with a cost-of-service study because Owenton's contract with Tri-Village required the parties to equally bear the cost of such study.²

Tri-Village petitioned for rehearing alleging that the Commission failed to provide it with a meaningful opportunity to address the issue.³ On April 5, 1999, the Commission granted Tri-Village's petition, directed Owenton to submit certain information regarding its legal fees, and established a schedule for additional discovery and the submission of briefs on the issue of rate case expenses. Discovery has been completed and both parties have submitted written briefs.

DISCUSSION

Tri-Village argues that engineering fees and legal fees totaling \$4,554⁴ should be removed from Owenton's allowable rate case expense. It contends that Owenton has failed to provide detailed invoices for expenses incurred for engineering services. Owenton's evidence fails to indicate the nature of the work being done . . . and the exact amount of work performed⁵ and contains only a vague reference to the work performed and its total cost. In the absence of detailed invoices, Tri-Village contends, Owenton has failed to demonstrate that the claimed expenses were related to the rate case or reasonable.

² Order of 2/22/99 at 9-10.

³ Owenton did not petition for rehearing of the Commission's Order of February 22, 1999.

⁴ In its Brief on Rehearing, Tri-Village sought total disallowances of \$9,888. This amount included expenses that had previously been disallowed or that Owenton had incurred since February 22, 1999.

⁵ Brief of Tri-Village of 6/3/99 at 3.

The Commission finds no merit in this argument. The invoices for engineering services indicate that activity, amount of hours, and the rate for such service. The evidence of record, moreover, supports the proposed level of expense. The cost-of-service study, the detailed responses to information requests, and the consulting engineer's testimony demonstrate the services that were performed. When the total record is considered, the proposed expense level for these services cannot be termed unreasonable.

Tri-Village also argues that \$2,238 in legal fees should be disallowed as unreasonable. Approximately \$675 of these fees relate to legal research on the issue of the Commission's jurisdiction over municipal utilities. Tri-Village contends that such fees are unreasonable as Owenton initiated the proceedings and voluntarily submitted itself to the Commission's jurisdiction.⁶ It further contends that \$1,263 in legal fees related to Owenton's petition for rehearing should also be disallowed. These fees, it argues, were the result of Owenton's inappropriate conduct. Had Owenton not challenged the Commission's jurisdiction in this matter, Tri-Village asserts, Owenton would have had no need to incur legal expenses for a rehearing petition.⁷

Owenton responds that the Commission initiated this proceeding and that Commission regulation of municipal utilities is a relatively new area of the law. Research into the extent of the Commission's jurisdiction, therefore, is not unreasonable. As to its petition for rehearing, Owenton contends the amount of legal fees involved was only \$351. Owenton further asserts that its petition for rehearing was

⁶ Id. at 5.

⁷ Id.

the result of a misunderstanding of the requirements of the law and not an effort to contest the Commission's jurisdiction.⁸

The Commission recognizes that the issue of Commission jurisdiction over municipal utilities is of recent vintage. We, therefore, cannot conclude that the expenses related to a municipal utility's research on our jurisdiction over a municipal utility's wholesale rates or our procedures for municipal utility rate filings are unreasonable. A municipal utility's refusal to comply with an explicit Commission directive on this issue after performing such research, however, is not reasonable. Any expenses incurred as a result of such unreasonable conduct should be disallowed. Our review indicates that Owenton incurred legal expenses of \$545⁹ related to its failure to

⁸ On August 14, 1998, the Commission directed Owenton to file the written testimony of its witnesses. Taking the position that such testimony was unnecessary and not required by the law, Owenton refused to file such testimony. By our Order of September 22, 1998, we then denied the proposed rate adjustment and closed this docket. In denying rate adjustment, we noted that no change in rates could be made without a hearing and that at such hearing Owenton bore the burden of proving the reasonableness of its proposed rate. Without written testimony, we concluded, Owenton could not meet this burden. On October 9, 1998, Owenton moved for rehearing and presented the written testimony of its proposed witnesses.

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Date of Expense	Description of Expense*	Amount
09/30/1998	Examine PSC order and conf Tully re motion for rehearing	97.50
10/05/1998	Tel Gill re motion for rehearing	58.50
10/06/1998	Draft motion for rehearing	195.00
10/07/1998	Meet with Gill re motion for rehearing	97.50
10/08/1998	Meet with Taylor and revise testimony and meet with Stephens re filing of motion for rehearing	48.00
10/09/1998	Prepare motion for filing with Public Service Commission; copy; mail to counsel, Scott Taylor and William Gill	48.00
TOTAL		\$ 544.50
* Description of Expense is taken from billing voices. See Owenton's Response to the Commission's Order of April 5, 1999.		

comply with our Order of August 14, 1998. We find those expenses should be disallowed.

In its Brief on Rehearing, Owenton requests an increase in allowable rate expense to \$20,739.92 to reflect additional expenses incurred since the issuance of the Commission's Order of February 22, 1999 and to reflect expenses incurred prior to that Order but not documented. The Commission finds that any increase in the level of Owenton's rate case expenses is inappropriate. Owenton did not seek rehearing on our decision to disallow those legal fees that were unsupported by the record. Having failed to request rehearing, it is precluded from seeking modifications to the Order of February 22, 1999.

IT IS THEREFORE ORDERED that:

1. Ordering Paragraph 3 of the Commission's Order of February 22, 1999 is vacated.
2. Owenton is authorized to assess a surcharge of \$.04 per 1,000 gallons on water sales to Tri-Village until February 22, 2002, or until it has collected revenues of \$10,801, whichever occurs first.
3. All provisions of the Commission's Order of February 22, 1999 that are not in conflict with this Order shall remain in full force and effect.

Done at Frankfort, Kentucky, this 4th day of November, 1999.

By the Commission

ATTEST:

Executive Director