

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE BULLOCK PEN WATER)	
DISTRICT FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO CONSTRUCT)	CASE NO.
AND FINANCE AN IMPROVEMENTS PROJECT AND)	2002-00015
TO IMPLEMENT A SURCHARGE TO ITS EXISTING)	
RATES PURSUANT TO KRS 278.020 AND 278.300)	

O R D E R

On April 5, 2002, the Attorney General (AG) filed an application for rehearing of the Commission's March 18, 2002 Order granting Bullock Pen Water District ("Bullock Pen") a Certificate of Public Convenience and Necessity to construct a waterworks improvement project, approving its financing plan for the project, and approving a monthly surcharge to pay the debt service on a portion of the project. In his application for rehearing, the AG stated that he objected only to the approval of the surcharge, and that he had no objection to the issuance of the certificate or the approval of the financing plan.

The AG's objections to the surcharge are twofold. First, the AG contends that the Commission may not approve the surcharge requested by Bullock Pen because the Commission is not expressly authorized to authorize such charges by KRS Chapter 278, the statute under which the Commission derives its regulatory authority. Second, the AG contends that the surcharge may not be approved because Bullock Pen did not seek an adjustment of its rates in accordance with the procedures established under KRS 278.180. For the reasons hereinafter set forth, the Commission disagrees with the AG and concludes that the application for rehearing should be denied.

The Commission, in Case No. 2001-00211, recently addressed the issue of the Commission's authority to approve surcharges not specifically authorized by statute.¹ That case involved an application by Hardin County Water District No. 1 for a certificate to construct improvements to its water distribution system, for authority to issue revenue bonds to finance the project, to adjust its rates, and to impose a surcharge. As in this case, the surcharge was intended to apply only to those customers who would be served through the facilities to be constructed. The AG intervened in that proceeding and objected to the surcharge on the grounds that the Commission lacked statutory authority to authorize them. Although the Commission denied the surcharge as inappropriate under the circumstances of the case, it expressly rejected the AG's contention. At page 24 of its Order, the Commission asserted its authority to authorize surcharges when the circumstances made such charges appropriate, stating:

The Commission finds no merit in this argument [that it lacks statutory authority to authorize surcharges]. KRS 278.040 grants broad authority to us to establish rates. It is the final result of our use of this authority that determines whether we have acted within the scope of our authority. See *National-Southwire Aluminum Co. v. Big Rivers Electric Corporation*, Ky.App., 785 S.W.2d 503, 516 ("the PSC has many appropriate rate-making methodologies available to it ,and it must have some discretion in choosing the best one for each situation .[W]e must look more to whether the result is fair, just and reasonable rather than at the particular methodology used to reach the result.") (citation omitted).

The Commission's Order in the Hardin County Water District case recognizes that a surcharge is just another form of rate-making, and that its validity is determined by

¹ Case No. 2001-00211, The Application of Hardin County Water District No. 1 for (1) Issuance of Certificate of Public Convenience and Necessity, (2) Authorization to Borrow Funds and to Issue its Evidence of Indebtedness Therefore, (3) Authority to Adjust Rates, and (4) Approval to Revise and Adjust Tariff.

whether it satisfies the statutory criteria of being "fair, just and reasonable." Consistent with this opinion, the Commission has a long history of approving surcharges when it finds that they are appropriate under the circumstances of the case.

The AG also contends that the surcharge is invalid because Bullock Pen did not seek an adjustment of its rates under KRS 278.180. It is not entirely clear from the application for rehearing to what the AG refers. Nevertheless, that section of the statute merely requires a utility to give the Commission 30 days notice before putting a proposed rate change into effect. This allows the Commission time to review the new tariff before it becomes effective. However, in administering KRS 278.180 the Commission has recognized that no notice is required when a rate application does not specify an effective date. That also allows the Commission time to review the tariff because the tariff cannot become effective until approved by the Commission. In this case, because the surcharge would apply only to future customers and would not take effect until the construction project is complete, the application filed by Bullock Pen did not specify an effective date. Thus, the surcharge proposal in the application filed by Bullock Pen did not violate KRS 278.180.

This Commission being otherwise sufficiently advised, IT IS ORDERED that the application for rehearing filed by the AG is denied.

Done at Frankfort, Kentucky, this 24th day of April, 2002.

By the Commission

ATTEST:


Executive Director