

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CALDWELL COUNTY)
WATER DISTRICT FOR RATE ADJUSTMENT) Case No.
PURSUANT TO 807 KAR 5:076) 2016-00054

ATTORNEY GENERAL’S COMMENTS

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and pursuant to the Commission’s February 18, 2016 Order tenders the following comments in the above-styled matter. The comments filed herein, represent the preliminary position of the Attorney General. The Attorney General reserves his right as an intervenor in this proceeding to fully participate in a hearing or informal conference that may be scheduled, and to file a post-hearing brief, if desired and consistent with the Commission’s Order.

I. INTRODUCTION

Caldwell County Water District (“Caldwell”) is a water district serving more than 2,000 customers in Caldwell County, Kentucky and pursuant to 807 KAR 5:076, filed an application (“Application”) with the Public Service Commission (“Commission”) for an increase in rates on January 29, 2016¹. Using an historic test period, Caldwell requested an increase in yearly

¹ *APPLICATION OF CALDWELL COUNTY WATER DISTRICT FOR RATE ADJUSTMENT PURSUANT TO 807 KAR 5:076*, Case No. 2016-00054, ARF Form -1, Page 1-3, January 29, 2016. (“Application”)

revenues in the amount of \$ 374,168.42, for a total revenue from service rates of \$ 1,512,213.² This increase as reflected in Caldwell’s proposed rates would mean customer’s bills would be 33.9 percent higher.³ Pursuant to Commission’s February 18, 2016 Order, Commission staff performed a financial review and a subsequent report of the review, filed May 4, 2016.⁴ The Commission staff’s report detailed findings that the original amount requested by Caldwell was more than necessary to generate the Overall Revenue Requirement and that \$ 1,350,682 or an increase of \$ 209,058 is the necessary Overall Revenue Requirement.⁵ This change of pro forma present-rates revenue represents an increase of 18.88 percent. The Attorney General agrees with Commission staff’s report filed May 4, 2016 in so far as the report details discrepancies in the application that overinflated Caldwell’s necessary increase, and he also agrees with many of the proposals of the report. Although the Attorney General agrees with Commission staff’s conclusion that a significant decrease in Caldwell’s proposed rates is necessary, he shall now offer his comments as to some specifics presented in Commission staff’s report, which in his opinion warrants a further reduction of the proposed revenue increase. It should be noted that the Attorney General does not wish to comment on every part of Commission staff’s report, and that his decision to not address certain topics discussed in the report should not be construed as either a repudiation or a ratification of the report’s conclusions.

II. REVENUE REQUIREMENT RECOMMENDATIONS

Caldwell County Water District bears the burden of proof to show “that the rates contained in its application were just and reasonable.”⁶ As pointed out in Commission staff’s report, there are increases proposed by Caldwell that are neither justified in the application nor

² *Id.* at 3.

³ Staff Report on Caldwell County Water District, Case No. 2016-00054, May 4, 2016. Page 2 (“Staff Report”)

⁴ *Id.*

⁵ Staff Report, Page 2-3.

⁶ *Kentucky-American Water Company v. Commonwealth ex rel. Cowan, Ky.*, 847 S.W.2d 737, (1993).

apparent on their face.⁷ As Commission staff was so comprehensive, the Attorney General will not address every facet of the report, but he will address some portions he disagrees with as well as those parts he may agree with in full and feels it is necessary to address.

A. Employee Wages and Wage Overheads

Commission staff's report increased the wages of Caldwell by \$68,486 to the test year, primarily driven by the hiring of two additional field employees.⁸ Although the report indicates these positions will replace the contracted meter readers Caldwell was previously utilizing, the cost difference between the two is enormous.⁹ The staff report indicated that the pro forma amount charged by the contracted meter readers for their services was less than \$20,000, yet Caldwell has seen fit to replace these services with two full-time employees with wages totaling \$68,486, and additional costs of nearly \$30,000 a year.¹⁰ Although the report notes that staff believe these additional employees will allow Caldwell to be more responsive and perform preventive measures, the district has the burden to prove those efficiencies and the Attorney General finds no mention from the district making the assertion that spending more than four (4) times more a year on wages and wage overheads will lead to extended service lives for its assets.¹¹ As the Attorney General considers the burden of demonstrating the need for additional employees has not been met by Caldwell, the Attorney General stresses that the addition of two (2) full-time employees is not reasonable, especially considering the substantial cost of wages and wage overheads associated with their employment compared to the cost of previously contracted meter readers.

⁷ Staff Report, Page 8-9.

⁸ *Id.* at 7.

⁹ *Id.* at 16

¹⁰ *Id.* at 7, 16.

¹¹ *Id.* at 8, footnote 4.

Further, the Attorney General believes that the overtime procedure of Caldwell is unreasonable in the sense that every day one full-time employee is paid 2 hours of overtime for being “on-call.”¹² The Attorney General understands the need for having employees of a water district “on-call” in the event an incident arises, but to do so in such a way does not make sense for a rural water district that only serves roughly 2000 customers.¹³ Caldwell should pay their workers overtime for work performed beyond 40 hours a week, but paying \$17,228 a year in order to keep an employee near a phone and in the district at all times outside of normal work hours, is an unreasonable request to burden rate-payers with.¹⁴ It is the Attorney General’s position that Caldwell should not be unreasonably paying 730 hours of overtime at a wage of \$23.60 just to keep an employee near a phone. Rather, with five (5) employees, it is reasonable to assume one (1) would be in district most all of the time, and in the event of an emergency additional employees can come into work and be paid overtime, for overtime worked. Although the Attorney General believes paying an employee of such a small district to be “on-call” at all times is unreasonable, if the Commission should so choose to keep a similar practice in place, the Attorney General wishes the Commission to take into consideration a compromise.

If the Commission should decide that it is reasonable to allow the district to recover the costs associated with the two (2) new employees that Caldwell has not justified hiring otherwise, the Attorney General believes it would be reasonable to use these two (2) new positions to overhaul the district’s overtime system. With more employees the district will have the ability to stagger the working hours of its employees so that one employee is always working, even outside of the normal workhours, but rather than Caldwell paying thousands of dollars of wages at an overtime rate, the employees will be working at a normal wage rate. This not only addresses

¹² Staff Report, Page 9.

¹³ Application, Page 3.

¹⁴ Staff Report, Page 10.

Caldwell's desire to have an employee available 24/7, but also keeps Caldwell from having to pay the individual that works "on-call" hours the mandatory 2-hour overtime pay.¹⁵ This savings will also trickle down to additional wage overhead items such as the FICA tax rate, workers compensation rate and retirement contributions, as they are tied to the total pro forma wages. If the Commission chooses to accept the Attorney General's proposal of eliminating the "on-call" process, now that the district has the ability of staggering the hours that employees work every day so that hours that are currently considered nonbusiness hours are covered, Caldwell will see a significant reduction of costs associated with wages and wage overhead. Based solely on the 730 hours Caldwell is currently paying its employees to be "on-call," by having the hourly employees work staggered hours, the company would see an initial reduction of \$22,118.61 in wages and wage overhead.¹⁶ This number does not take into account the amount that would be saved from the 264 hours of overtime paid for overtime actually worked, as having an employee working 24/7 will now alleviate the need for much of that overtime. If the new employees are able to complete jobs that arise during times that are now considered non-business, the district may see a further reduction of wages and wage overhead of nearly \$8,000.¹⁷ Therefore, the Attorney General believes that even if the Commission allows the company to recover the costs associated with the two (2) new employees, they should still consider reducing revenues by \$30,000.

Although the Attorney General disagrees that hiring two new employees to perform tasks that previously costed the district less than twenty thousand dollars (\$20,000) is reasonable,

¹⁵ Staff Report, Page 9.

¹⁶ Calculated by taking the 2 hours of overtime given to an employee each day of the year ($365 * 2 = 730$), multiplied by the average overtime wage rate on page 10 in the staff report ($730 * \$23.60 = \$17,228$), multiplied by 1 + the FICA rate (7.65%), multiplied by 1 + the average workers compensation rate from the test year (1.8827%), multiplied by 1 + the CERS current rate (17.06%) equals \$22,118.61.

¹⁷ Same calculation as above, but with 264 hours rather than 730. Calculates to \$7,999.06.

allowing Caldwell to recover the costs associated with these hires in addition to the overtime costs included in the historical test-year is wholly unreasonable. Lastly, the Attorney General believes that the amount that Caldwell is spending on employee insurance is an issue as well. Providing single health, life and vision coverage to each employee at *no cost* to the employee is unreasonable.¹⁸ Caldwell already has a relatively high monthly rate for just water service, and is proposing a 33.9% increase, while also still offering a premium insurance package with no cost to the employee.¹⁹ The Attorney General believes that it is unreasonable to ask rate-payers to pay for such a luxury while the rates put forth by the district are so much higher than the average across the Commonwealth.

Additionally, the Attorney General agrees with Commission staff's report in its discussion and conclusion regarding the fourteen (14) and fifteen (15) percent raises of one field employee and the GM, respectively.²⁰ The Attorney General also finds no justification for the large increase and subsequently notes that absent any justification, Caldwell has failed to carry its burden to show the increases were reasonable.²¹ Though in contrast to staff's report, the Attorney General is also not persuaded that the district has shown any justification for a three (3) percent wage increase to the any employee.²² Although Commission staff notes that in the absence of justification, the disparity between the level of raises between the other four employees and the two (2) receiving much larger raises, gives rise to an assumption that the larger raises are unreasonable, it is the Attorney General's position that the absence of any justification for a raise of any amount, even three (3) percent, is unreasonable.

¹⁸ Staff Report at Page 10. (*emphasis added*)

¹⁹ *Id.* at 1, 10.

²⁰ Staff Report at Page 8.

²¹ *Kentucky-American Water Company v. Commonwealth ex rel. Cowan, Ky.*, 847 S.W.2d 737, (1993).

²² Staff Report at Page 8.

B. Contracted Legal Fees

The Attorney General agrees with Commission staff's assessment that legal fees should be excluded from the test-year, and he is not convinced by Caldwell's comments offered in response to staff's report, that the district has carried its burden in demonstrating the expenses are necessary and reasonable.²³

C. Adjustments to Depreciable Lives

The Attorney General also agrees with Commission staff's proposal regarding the change to depreciable lives of Caldwell's assets. Even though the Attorney General agrees with the staff's assessment of the health of Caldwell's system and that the depreciable lives of Caldwell's assets should be set to the longer end of the NARUC ranges, the Attorney General does not agree that adding two (2) additional staff will have such a significant impact so as to extend the service lives of Caldwell's assets.²⁴

D. Additional and Miscellaneous Comments

In addition to the above-mentioned comments, the Attorney General would also like to present some miscellaneous observations and clarifications regarding Commission staff's report and Caldwell's application. The Attorney General is in complete agreement with Commission staff regarding the length of time he believes is reasonable to pass between a utility's rate case filings.²⁵ On that same note, the Attorney General also agrees that averaging the debt payments over 5 years is much more reasonable, and adequately reflects the actual costs incurred by the utility in the period between rate cases.²⁶ Additionally, the Attorney General would also like the Commission to take note of whether the utility has an issue with water loss, especially as to

²³ *Id.* at 15.

²⁴ *Id.* at 8, 20 & 21.

²⁵ *Id.* at 26. (Footnote 22)

²⁶ *Id.* at 26.

whether or not the loss exceeds the 15% afforded to it by regulation.²⁷ As there was no discovery during this proceeding, the Attorney General is not able or willing to assert that there is a water loss issue with this particular district, but there was some documentation that was provided in the districts filing that does lend itself to that possibility, and he only hopes that the Commission takes note of all relevant facts in coming to a conclusion in this matter.

III. CONCLUSION

The Attorney General appreciates the time and effort put forth by staff in compiling and completing this comprehensive report, and agrees with many of its conclusions. Although the Attorney General would be more than happy to participate in an informal conference if either Caldwell County Water District or the Commission believe it necessary or prudent to do so, he is not requesting one at this time. Additionally, the Attorney General does not believe it is necessary to request a hearing at this time.

WHEREFORE, based on the factual record, legal analysis and reasons set forth in the above comments, the Attorney General requests that the Commission approve his proposals.

²⁷ 807 KAR 5:066 Section 6 (3).

Respectfully submitted,

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