

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF MONROE)
COUNTY WATER DISTRICT FOR RATE) CASE NO. 2017-00070
ADJUSTMENT PURSUANT TO 807 KAR 5:076)**

**POST-HEARING BRIEF OF
MONROE COUNTY WATER DISTRICT**

Pursuant to the Commission’s Order of October 31, 2017,¹ Monroe County Water District (“Monroe District”) submits this Post-Hearing Brief.

Background

Monroe District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that are used to distribute water to approximately 3,476 customers in Monroe County, Kentucky.² Monroe District’s territory includes the City of Gamaliel, Kentucky and the unincorporated areas of Monroe County, except those areas that Fountain Run Water District serves. Monroe District was created in 1975 and began providing water service in December 1978.

On February 9, 2017, Monroe District filed notice with the Commission of its intent to apply for a rate adjustment using the alternative rate adjustment procedures for small utilities and its election of its use electronic filing procedures for such application.³ On March 16, 2016, Monroe District applied to the Commission for a general rate adjustment. In its application,

¹ On November 29, 2017, the Commission amended this Order to permit the parties an additional seven days to file their post-hearing briefs and reply briefs.

² Application at ¶ 12.

³ 807 KAR 5:076, Section 2, authorizes utilities with gross annual revenue in the immediate past calendar year of \$5,000,000 or less to use the alternative rate adjustment procedure. For the calendar year ending December 31, 2015, the test period in this proceeding, Monroe District had annual revenues of \$1,681,401. *See Report of Monroe County Water District to the Public Service Commission of Kentucky for the Calendar Year Ending December 31, 2015* (“2015 Annual Report”) at Ref Page 11.

Monroe District requested general rates that would generate additional revenues of \$224,312, an increase of approximately 13.2 percent over test period revenues. It further proposed to increase several non-recurring charges. At the time of filing its application, more than five years had elapsed since Monroe District's last general rate adjustment⁴ and more than 13 years has passed since its non-recurring charges had been revised.⁵

On March 27, 2017, the Attorney General ("AG") moved to intervene in this matter. The Commission granted his motion on April 10, 2017. On April 12, 2017, the Commission directed Commission Staff to review Monroe District's application and to prepare and submit a written report of its findings and recommendations regarding the proposed rates. The Commission further established a schedule for the parties to file written comments and objections to this report and to request a hearing.

On May 1, 2017 the AG served requests for information upon Monroe District. In its response, Monroe District agreed to revisions in how it calculated certain non-recurring charges. On May 19, 2017, it filed its First Supplement to Application which contained actual rate case expense as of that date, revised financial exhibits to reflect the effect of refinancing of certain long-term debt, and revised calculations for certain non-recurring charges. The First Supplement did not amend Monroe District's Application, but notified the Commission of changing conditions that might affect the Commission's review. Monroe District subsequently filed two additional supplements to its Application to reflect changing conditions in its operations.⁶

On June 30, 2017, Commission Staff issued a report of its findings and recommendations ("Report") on the proposed rates. In its report, Commission Staff generally accepted Monroe

⁴ *Application of the Monroe County Water District for the Approval of the Proposed Increase in Rates for Water Service*, Case No. 2011-00272 (Ky. PSC Dec. 1, 2011).

⁵ *The Application of Monroe County Water District to Increase Certain Non-Recurring Charges*, Case No. 2003-00318 (Ky. PSC Sept. 11, 2003).

⁶ Second Supplement to Application (filed July 11, 2017) (reporting current level of rate case expenses); Third Supplement to Application Notice of Filing (filed Sept. 25, 2017) (reporting changes to employee compensation due to recent hirings and wage adjustments).

District's statement of test period expenses and proposed adjustments to those expenses and recommended rates that would produce overall revenues of \$1,939,741, an increase of \$142,664 or 8.35 percent. It recommended that Monroe District be authorized non-recurring charges that were consistent with the revised calculations contained in the First Supplement to Application. Commission Staff took issue with the service lives that Monroe District assigned to its assets and recommended, *inter alia*, that a 62.5-year service life be used to calculate depreciation expense for Monroe District's water transmission and distribution mains instead of the current 50-year service life. Implementation of the recommendation to increase the service life of water mains would reduce adjusted test period depreciation expense by \$35,495.⁷

On July 14, 2017, Monroe District filed an objection to the recommendation to increase the service life assigned its water mains, but accepted Commission Staff's other findings and recommendations. Notwithstanding this objection, Monroe District offered to waive its right to a hearing and accept Commission Staff's recommended rates on the condition that any Order approving the Commission Staff-recommended rates be limited to a single finding that Monroe District required overall revenues of \$1,939,741. Monroe District requested that, if the Commission chose not to accept its offer of conditional waiver, a hearing be held on the appropriate service life for Monroe District's water mains and a procedural schedule be established to permit discovery upon Commission Staff.

In his comments on the Report, the AG agreed with Commission Staff's recommendation that Monroe District be awarded less than the requested revenue increase. He criticized Commission Staff for failing to provide sufficient information as to why the professional engineer's report on Monroe District's assigned service lives, which Monroe District included in

⁷ Monroe District proposed adjusted test period depreciation expense of \$174,234 for water transmission and distribution mains. Commission Staff recommended a depreciation expense for water transmission and distribution mains of \$138,739. Commission Staff Report at 23 and 30. As Monroe District expects to place an additional \$2,957,755 of water transmission and distribution mains into service in early 2018, the reduction in revenue over a ten-year period due to the proposed changed in service life will be \$468,760.

its Application, was not credible and he encouraged Commission Staff to supplement the record on this issue.⁸ He agreed with Commission Staff's recommendation that Monroe District's employee salary and benefits should be evaluated as a total package and on per employee basis and that such compensation be compared with that of other similarly situated utilities. The AG objected, however, to any evaluation that involved the comparison of Monroe District's employee compensation package to that of an electric cooperative. The AG did not request a hearing but asked that no limits be placed on the scope of any hearing if one were held.

On August 18, 2017, the Commission denied Monroe District's offer of conditional waiver and ordered a hearing on Monroe District's application. By the same Order, it denied Monroe District's request for a procedural schedule to permit discovery on Commission Staff and to limit the issues to those involving the parties' objections and to any finding or recommendation contained in the Report to which the Commission was considering modifications. While identifying "the level of employee benefits" and "appropriate service lives assigned to its [Monroe District's] plant asset account groups" as issues on which evidence would be taken, the Commission found that "an evidentiary hearing should be held on all issues."⁹ Monroe District petitioned for reconsideration of this Order and specifically requested that the Commission clarify the factual issues remaining to be resolved and limit the hearing to those issues. On September 18, 2017, the Commission denied the petition.

On September 18, 2017, Commission Staff notified the parties that Mr. Scott Lawless, the Commission Staff member responsible for the Report's findings and recommendations related to the overall revenue requirement, was no longer in the Commission's employ and that Ms. Ariel Miller would testify in his place. Mr. Lawless was responsible for Commission Staff's

⁸ Attorney General's Comments on Commission Staff Report at 7.

⁹ Order of August 18, 2017 at 2 and 3.

recommendations related to the service life assigned to Monroe District's water mains and the reasonableness of its employee compensation.

The Commission held two days of hearings on Monroe District's application. On September 27, 2017, it heard testimony from Monroe District witnesses Jana Dubree, Richard O. Ross, Mark Williams, Robert A. Stigall, and Brent Billingsley. On October 25, 2017, it heard testimony from Monroe District witness Melissa Melton and Commission Staff witnesses Ariel Miller and Jason Green. Following each hearing, post-hearing requests for information were issued to Monroe District. These were timely answered.

On October 31, 2017, the Commission established a schedule for the submission of post-hearing requests for information and written briefs. It also directed Monroe District to address in its post-hearing brief how the Commission should "decide future cases where the applicant in an alternative rate filing case disputes the recommended useful life of an asset by Commission Staff which is based upon a published depreciation schedule." On November 17, 2017, following Monroe District's service of requests for information upon Commission Staff in accordance with the Order of October 31, 2017, the Commission modified its Order of October 31, 2017 to preclude such requests.

Argument

1. Monroe District's use of a 50-year service life for its water distribution and transmission mains is reasonable and is supported by substantial evidence.

In its Application, Monroe District proposed a pro forma test period depreciation expense of \$343,064. Of this amount, approximately \$174,234 was directly related to depreciation on Monroe District's water distribution and transmission mains. Monroe District determined this level using a 50-year service life for those water mains. Its use of a 50-year service is supported

by the testimony of its professional engineer and is consistent with published depreciation schedules, Commission precedent, and Monroe District's longstanding accounting practices.

At the hearing and in a sworn statement attached to Monroe District's Application,¹⁰ Robert Stigall testified in support of Monroe District's assignment of a 50-year service life to its water main. Mr. Stigall is licensed as a professional engineer in Kentucky and Tennessee. He holds a bachelor's degree in civil engineering from Vanderbilt University. Since 1983 he has performed engineering services for several water systems in Kentucky and Tennessee. Monroe District has retained Mr. Stigall since 1986 for various engineering services. He has been involved in the design and construction of major portions of Monroe District's water distribution system, has closely observed Monroe District's construction practices, and is very familiar with the materials and equipment used in Monroe District's water distribution system as well as its operational and maintenance practices. He is experienced in estimating service life of water utility assets, having previously prepared and provided information regarding the useful life of typical water system components. The Commission has recently reviewed and approved water projects that Mr. Stigall designed.¹¹

Mr. Stigall testified that he reviewed the service life assigned to Monroe District's water distribution and transmission mains and that in his opinion a 50-year service life accurately reflected the mains' probable service life. In reaching his decision, he considered numerous factors including the local climate, soil conditions, and local topography, as well as Monroe

¹⁰ Application at Tab 22.

¹¹ See *Electronic Application of Crittenden-Livingston County Water District For Authorization to Enter An Assistance Agreement With the Kentucky Infrastructure Authority and for A Certificate of Public Convenience and Necessity to Construct A Water Storage Facility*, Case No. 2016-00292 (Ky. PSC Oct. 6, 2017); *Application of Monroe County Water District for Authorization to Enter An Assistance Agreement With the Kentucky Infrastructure Authority and for A Certificate of Public Convenience to Construct A Water Treatment Facility, Elevated Storage Tank, and Water Transmission and Distribution Mains*, Case No. 2015-00315 (Ky. PSC Mar. 18, 2016).

District's operation and maintenance practices, design and construction practices. He also took into account his experience with similar water distribution facilities in the general region.¹²

Monroe District's use of a 50-year service life is consistent with the published depreciation guides that the Commission regularly uses.¹³ The National Association of Regulatory Utility Commissioners' ("NARUC") *Depreciation Practices for Small Water Utilities* ("the NARUC Guide"), a guide intended to assist state regulatory commissions in establishing depreciation rates for small water utilities and one which the Commission has extensively relied upon since 2012,¹⁴ has established a range of average service lives for water utility assets. For water transmission and distribution mains, this range is between 50 and 75 years.¹⁵ The Commission and Commission Staff noted in Monroe District's last general rate proceeding that the use of a 50-year service life reflected the NARUC Guide's recommendations.¹⁶

The Commission on Rural Water's *Guide for the Support of Rural Water-Wastewater Systems* ("Rural Water Guide"), which the Kentucky Commission has used to establish the

¹² Affidavit of Robert Stigall at 3; VR 09/25/2017; 16:12:45

¹³ In addition to the two guides listed below, the United States Environmental Protection Agency has also provided guidance to small water systems regarding the useful life of transmission and distribution mains. Office of Water, Environmental Protection Agency, EPA 816-R-03-016 *Asset Management: A Handbook for Small Water Systems* (Sept. 2003). It has advised that the expected useful life of transmission and distribution mains ranges between 35 and 40 years. *Id.* at 9. Monroe District use of a 50-year service life for its water mains exceeds the Environmental Protection Agency's recommended service life.

¹⁴ A review of Commission Orders referencing the NARUC Guide indicates that the Commission began consistently referring to the NARUC Guide as a basis for evaluating a water utility's assignment of service lives in December 2012. *See Application of Pendleton County Water District For An Adjustment In Rates Pursuant To the Alternative Rate Filing Procedure For Small Utilities*, Case No. 2012-00433 (Ky. PSC Dec. 20, 2012); *Application of Crittenden-Livingston Water District For An Adjustment In Rates Pursuant To the Alternative Rate Filing Procedure For Small Utilities*, Case No. 2012-00390 (Ky. PSC Dec. 20, 2012).

¹⁵ NARUC Guide at 11.

¹⁶ *See infra* notes 24-26 and accompanying text.

service lives for water district assets,¹⁷ also recognizes a 50-year service life as appropriate for water distribution and transmission mains. This publication establishes a service life of 40 to 75 years for plastic water transmission mains and a service life of 25 to 50 years for plastic water distribution mains.¹⁸

The use of a 50-year service life for water mains is also consistent with past Commission determinations. Until the Commission's Engineering Division was abolished and its engineers transferred to other agencies,¹⁹ Commission Staff engineers routinely found a 50-year service life for water transmission and distribution mains to be reasonable and recommended its use to establish a water utility's depreciation expense. In the last 18 months in which the Commission's engineers reviewed the service lives assigned to a water utility's mains, they generally accepted the assigned service life of 50 years or, if the water district assigned a shorter service life to its water mains, recommended the assignment of a 50-year service life.²⁰ In each case, the Commission accepted those recommendations when establishing rates.

¹⁷ See, e.g., *Application of Symsonia Water District For Approval of A Certificate of Public Convenience and Necessity For Construction of Water Facilities, Financing And Increased Rates For Water and Sewer Service*, Case No. 2012-00517 (Ky. PSC Sept. 3, 2017). See also *Application of Pendleton County Water District For An Adjustment In Rates Pursuant To the Alternative Rate Filing Procedure For Small Utilities*, Case No. 2012-00433 (Ky. PSC Dec. 20, 2012) at 4, n.10 (noting that the Commission's use of NARUC Guide to "determine service lives does not preclude the use of other surveys of the average lifetimes for the major water and wastewater system components" such as the *Rural Water Guide*).

¹⁸ *Rural Water Guide* at 246.

¹⁹ Prior to November 2016, the Commission employed engineers to assist in the review to rate case submissions and render opinions regarding the service lives of water utility assets. On November 18, 2016, Governor Bevin ordered the abolishment of the Commission's Division of Engineering. Executive Order 2016-832. The General Assembly subsequently confirmed this reorganization. 2017 Ky. Acts Ch. 56. Engineers assigned at that time to the Commission's Division of Engineering were assigned to other positions within Kentucky State Government.

²⁰ *Alternative Rate Adjustment Filing of Wood Creek Water District For A Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2015-00428 (Ky. PSC July 16, 2016); *Alternative Rate Adjustment Filing of Laurel County Water District No. 2 For A Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2015-00341 (Ky. PSC Mar. 14, 2016); *Alternative Rate Adjustment Filing of McKinney Water District*, Case No. 2015-00331 (Ky. PSC Mar. 3, 2016); *Alternative Rate Adjustment Filing of Harrison County Water Association*, Case No. 2015-00308 (Ky. PSC Feb. 12, 2016); *Alternative Rate Adjustment Filing of Black Mountain Utility District*, Case No. 2015-00088 (Ky. PSC Nov. 9, 2015); *Alternative Rate Adjustment Filing of Kirksville Water Association*, Case No. 2015-00097 (Ky. PSC Sept. 25, 2015). See also *Alternative Rate Adjustment Filing of Webster County Water District For A Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2015-00065 (Ky. PSC filed Feb. 26, 2015) (Commission engineers recommended 50 year service life for water mains but utility elected to withdraw its application).

The Commission has previously recognized and approved Monroe District’s use of a 50-year service life for its water mains. In Case No. 2011-00272,²¹ Monroe District proposed as part of its application for rate adjustment the use of a 50-year service life for its water transmission and distribution mains. In its application in that proceeding, Monroe District expressly noted that the proposed 50-year service life was based upon Commission Staff’s recommendation.²² (Commission Staff assisted Monroe District in preparing its application.²³) When reporting to the Commission on the application in that proceeding, Commission Staff noted that Monroe District’s depreciation expense “reflect[s] depreciation lives recommended by the National Association of Regulatory Commissioners,” including a 50-year service life for transmission and distribution mains.²⁴ In its Order of December 1, 2011, the Commission found that the Commission Staff’s findings and recommendations “are supported by the evidence of record . . . [and] reasonable”²⁵ and expressly adopted them.²⁶

The use of a 50-year service life for water mains is not uncommon among water utilities in Kentucky or Tennessee. Brent Billingsley, a certified public accountant who has performed audits on several water utilities, testified at the hearing that his clients assigned a 50-year or shorter service life to their water mains.²⁷ Mr. Stigall similarly testified that in his experience a 50-year service life was generally the longest service life assigned to the water mains similar to those that Monroe District used.²⁸

²¹ *Application of the Monroe County Water District for the Approval of the Proposed Increase in Rates for Water Service*, Case No. 2011-00272 (Ky. PSC filed Aug. 15, 2011).

²² Case No. 2011-00272, Application, Exhibit 4 at Item I (“Depreciation: This adjustment reflects revised depreciation lives recommended by Commission Staff”).

²³ Monroe County Water District’s Response to Proposed Change to Depreciation Accounting Methodology and Comments and Objections to Findings and Recommendations Contained in Staff Report (“Response to Staff Report”), Exhibit A at 3 (filed July 14, 2017).

²⁴ *Id.* at 9.

²⁵ *Id.* at 3.

²⁶ *Id.* at 5.

²⁷ VR: 09/27/2017; 17:16:00.

²⁸ VR: 09/27/2017; 16:22:17; VR: 09/27/2017; 16:27:48

In summary, the evidence of record amply supports Monroe District's assignment of a 50-year service life to its water distribution and transmission mains. A trained and experienced professional engineer who is very familiar with the design, construction, operation and maintenance of Monroe District's water distribution system, as well as the climate, topography and soil of the area in which it is situated, testified that a 50-year service life was reasonable and consistent with the experience of other systems. A 50-year service life is within the range of average service lives that the NARUC Guide and *Rural Water Guide* have found reasonable and appropriate. It is the same service life that other, similarly situated water utilities have assigned to their water mains and that the Commission's engineers and the Commission have very recently found to be reasonable.

2. Little credible evidence supports Commission Staff's recommendation to assign a 62.5-year service life to Monroe District's water transmission and distribution mains.

Commission Staff has recommended that the Commission assign a 62.5 year service life to Monroe District's water mains. At the hearing, Commission Staff witness Miller testified that this recommendation was based upon the following: (1) The majority of the water mains have been in service for almost 50 years; (2) Monroe District has no immediate plans for a major water main replacement; (3) Monroe District's water mains were properly installed and are generally well maintained; (4) Approximately 95 percent of Monroe District's water mains are polyvinyl chloride; and (5) Commission precedent required the assignment of a 62.5 year-service life.²⁹

As to the first assumption, there are no records to support Commission Staff's claimed age of Monroe District's water mains. In a sworn statement submitted to the Commission in July

²⁹ VR: 10/25/2017; 14:33:42.

2017,³⁰ Monroe District General Manager Richard O. Ross stated that at least 60 percent of Monroe District's mains have been constructed since 1986 and are less than 30 years old and that approximately 26 percent of its water mains are less than 15 years old. Monroe District has only been in existence since April 1975 and did not acquire any facilities until December 1978. These facts suggest that Monroe District's oldest water mains have roughly 20 percent of their service life remaining.

Second, as to the lack of immediate plans for main replacement, Monroe District's oldest mains still have significant life remaining. While Monroe District acknowledges that long-range planning is a good business practice, it has operated, like many other small water systems, on a shorter time horizon. It is not required to have an asset management plan and has not yet developed a plan to manage or replace its water main. For the past ten years, its attention has been primarily focused on resolving its source of supply problem which threatened to leave large portions of its territory without adequate water.³¹ It is currently constructing a new water treatment plant and addressing the challenges related to operating this new facility.

As to the installation and maintenance of Monroe District's water mains, Commission Staff has offered no explanation as why good maintenance and installation practices will necessarily mandate a longer service life. Commission Staff has based its recommendation upon the NARUC Guide. The range of average service lives set forth in NARUC Guide, however, is a range "for water facilities designed and installed and maintained in accordance with good water works practice."³² Given that a 50-year service life is within the NARUC Guide's range of average service lives for water mains, good maintenance and installation practices should have

³⁰ Response to Commission Staff Report, Exhibit B (filed July 14, 2017).

³¹ See Case No. 2015-00315, Application of Monroe County Water District, Direct Testimony of Mark Williams (Exhibit 27) at 5-8 (filed Feb. 18, 2015).

³² NARUC Guide at 10.

little or no effect on the assignment of a service life. Simply put, whether a water main is assigned a service life of 50 years or 75 years, the NARUC Guide assumes that the water main has been well maintained and properly installed.

Commission Staff also fails to explain the significance of the high percentage of polyvinyl chloride water mains in Monroe District's system. The NARUC Guide does not distinguish between water mains based upon their composition. While Commission Staff introduced a study regarding the possible long-term service life of polyvinyl chloride mains, Ms. Miller testified that she did not rely upon this study to prepare the Report³³ and had only become aware of it shortly before the hearing. Mr. Stigall testified that, as polyvinyl chloride mains have not yet been in use for 50 years, sufficient evidence to support a longer service life for polyvinyl chloride mains did not yet exist and is widely disputed within the water industry. Several studies have disputed the claims of longer service lives for polyvinyl chloride mains.³⁴ If anything, the lack of historical data on the durability of polyvinyl chloride mains suggests the need for a more conservative approach when assigning service lives for ratemaking purposes.

Noticeably absent from the Report and Commission Staff testimony is any explanation as to how the four factors discussed above led to the specific finding that the service life for Monroe District's water mains should be extended by 12.5 years. Why was 12.5 years selected as opposed to 10 years or 20 years? How did each of these factors contribute to the additional time? Commission Staff offers no glimpse into its calculus for determining its recommended service life or how each factor contributed to that result.

³³ VR: 10/25/2017; 13:50:10.

³⁴ See, e.g., Albert Thomas; Bharadwaj R. K. Mantha; and Carol C. Menassa, *A Framework to Evaluate the Life Cycle Costs and Environmental Impacts of Water Pipelines*, Pipelines 2016: Out of Sight, Out of Mind, Not Out of Risk 1152-1163 (ASCE 2016).

Commission precedent appears to have played the strongest role in Commission Staff's recommendation. In the Report, Commission Staff noted that "[w]hen no evidence exists to support a specific life that is inside or outside the NARUC ranges, the Commission has used the mid-point of the NARUC ranges to depreciate utility plant."³⁵ After reviewing Monroe District's application and finding "no evidence in this proceeding to indicate that Monroe District's plant in service should be depreciated using depreciable lives that vary significantly from the NARUC mid-points," Commission Staff recommended the assignment of a 62.5 year service life.³⁶

Commission Staff's analysis of the evidence is flawed. In reviewing the Application, Commission Staff ignored Mr. Stigall's detailed statement in support of the use of a 50-year service life for Monroe District's water mains. Given that Mr. Stigall was very familiar with the construction, design, and history of Monroe District's water mains, his affidavit required at least some consideration. Commission Staff's action is especially puzzling given that Mr. Stigall's statement was more detailed than the analyses of service lives which the Commission's engineers had generally provided in similar cases and which the Commission had routinely accepted. Commission Staff, neither in its report or in testimony, has explained why Mr. Stigall's sworn statement, was deemed to lack any evidentiary value. In his comments, the AG has also noted Commission Staff's failure to "provide sufficient information to determine why a professional engineer's report is not credible."³⁷

Equally puzzling is Commission Staff's failure to make any effort to contact or interview Mr. Stigall or to otherwise inquire of him as to the basis for his opinion. Given the significant effect that Commission Staff's recommended change in service lives would have on Monroe District's revenue requirement, some investigation would appear to be warranted. In contrast,

³⁵ Commission Staff Report at 26.

³⁶ *Id.* at 30.

³⁷ Attorney General Comments on Commission Staff Report at 7 (filed July 14, 2017).

Commission Staff contacted Monroe District's auditor to inquire about a much smaller adjustment to the water district's annual audit fee and provided extensive discussion in the Report to explain why that proposed adjustment was reasonable.

Similarly, despite Monroe District's specific references in its Application to the Commission's actions in Case No. 2011-00272, Commission Staff offered no explanation in its Report or at the hearing as to why the Commission's finding in Case No. 2011-00272 regarding the use of a 50-year service life for water mains was no longer valid. It made no effort to identify the changes that had taken place in the preceding five years to render the 50-year service life invalid and to support lengthening by 25 percent the water mains' service life.

The "Commission precedent" referred in the Report does not support Commission Staff's recommendation. In the Report, Commission Staff argues that in the absence of evidence to support a utility's claimed service life, the mid-point of the NARUC Guide's range must be used regardless of whether the service life is within that range.³⁸ In support of this proposition, Commission Staff wrote:

In Case No. 2013-00154, the Commission found that Henderson County Water District ("Henderson District") was depreciating the cost of some main using a 40-year life and others using a 50-year life. Even though the 50-year life is within the NARUC range, the Commission found that the depreciable life assigned to all of Henderson District's mains should be 62.5 years, the mid-point of the NARUC range, since no evidence was presented to support the 40-year or 50-year lives.³⁹

The Commission, however, made no reference in its Order to the use of the mid-point of NARUC Guide's range in the absence of evidence to support service life that was within the NARUC Guide's range. Its order referred only to assets that had assigned service lives outside the NARUC Guide's range. Its decision to assign a service life of 62.5 years to the water

³⁸ Commission Staff Report at 26.

³⁹ *Id.* at 26-27 (footnote omitted).

utility's mains whose assigned service life was within the NARUC Guide's range was based not on the absence of any supporting evidence, but the expert opinion of a Commission Staff engineer who opined that the use of 62.5 years was more appropriate.

Commission Staff's reliance upon this "mid-point rule" ignores a number of recent cases in which Commission Staff engineers opined that use of a service life within the NARUC Guide's range was reasonable *per se* and could be used to establish depreciation expense.⁴⁰ In many of those cases, the utility had assigned a service life of 50 years to its water mains. Not only did Commission Staff accept these opinions and base its recommended rates upon the use of a 50-year service life, but the Commission adopted those opinions as its findings.

In its Report Commission Staff also misstates the findings in Case No. 2012-00309⁴¹ to suggest that a 50-year life is appropriate only when water main damage or decay is noted. It states:

In Case No. 2012-00309 the Commission found that Southern Water and Sewer District's ("Southern") mains should be depreciated using a 50-year life, the shortest life within the NARUC Guide's range, because the majority of its main had decayed at a more rapid rate than originally anticipated.⁴²

The Commission, however, made no such finding or referred to decaying water mains. It merely noted that the water utility had previously assigned a service life to its water mains below the range specified in the NARUC Guide and now proposed to assign a 50-year service life to those water mains.⁴³ Noting that the proposed service life was within the NARUC Guide's range, the Commission found the proposal reasonable and approved it.⁴⁴

⁴⁰ See note 20.

⁴¹ *Application of Southern Water and Sewer District for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2012-00413 (Ky. PSC July 12, 2013).

⁴² Commission Staff Report at 26.

⁴³ Case No. 2012-00412, Order of July 12, 2013 at 11.

⁴⁴ *Id.* at 12.

If a “mid-point rule” exists as Commission Staff suggests, it is contrary to KRS Chapter 13A. Such a rule or policy is not found in any administrative regulation. Unless set forth in a regulation, it is unlawful and unenforceable. KRS 13A.100(1) provides that an administrative agency authorized to promulgate administrative regulations must place “[e]ach statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body” into an administrative regulation. Any Commission order, therefore, that enforces or implements the policy is an unlawful order.

In summary, Commission Staff failed to produce sufficient credible evidence to support its recommendations regarding the appropriate service life for Monroe District’s water mains. It has failed to contradict or refute Mr. Stigall’s estimates or his qualifications to make such estimates. It has offered no convincing explanation for the need to revise the service life currently assigned to Monroe District’s water mains. Commission Staff’s recommendation should be based on solid, concrete evidence - hard facts and hard numbers. It is not. Therefore, it should be rejected.

3. The record contains no evidence to demonstrate that Commission Staff is qualified to render an expert opinion on the appropriate service life for Monroe District’s water distribution and transmission mains.

In the Report and in her testimony at hearing, Commission Staff witness Miller makes clear that her recommendation regarding the service life for Monroe District’s water mains relies solely on the average service life ranges set forth in the NARUC Guide.⁴⁵ She, however, did not merely determine whether a proposed service life was in the range specified in the NARUC Guide. She made an “engineering judgment” - rendering an opinion as to the specific point

⁴⁵ Commission Staff Report at 25.

within the NARUC Guide's range that was the appropriate service life and as to those points within the NARUC Guide's range which were not appropriate. The record does not reflect that she was qualified to render such an opinion.

The NARUC Guide specifies three methods by which the service life of an asset can be determined. These are: (1) the survivor curve method;⁴⁶ (2) the forecast or life span method;⁴⁷ and (3) engineering judgment.⁴⁸ The survivor curve method depends on detailed property records maintained over a significant period of years to develop survivor curves reflecting plant retirements. As noted in the Report and in Ms. Miller's testimony, this method is not practical for small utilities since most lack such detailed historical records.⁴⁹ The forecast or life span method is "basically an assumption that a given piece of property will be retired in a specific number of years after placement or that the actual date of retirement will be a certain date."⁵⁰ This method also requires considerable data and is therefore impractical for small water utilities such as Monroe District. In the absence of historical data, the NARUC Guide states that "**engineering judgment estimates** of service life expectancies may be appropriate."⁵¹

To assist in making engineering judgments, the NARUC Guide provides "a range of average service lives currently being used by water utilities throughout the country for water facilities designed and installed and maintained in accordance with good water works practice."⁵² It expressly states that these lives are intended only as a guide. It further states that "[d]etermination of service lives basically involves an analysis of the past and **engineering**

⁴⁶ NARUC Guide at 5.

⁴⁷ *Id.* at 9.

⁴⁸ *Id.* at 9-10.

⁴⁹ Commission Staff Report at 25.

⁵⁰ NARUC Guide at 9.

⁵¹ *Id.* (emphasis added).

⁵² *Id.* at 10.

estimates of the future effect of wear and tear, decay, action of the elements, inadequacy, obsolescence and public requirements.”⁵³

The NARUC Guide clearly provides that the decision regarding service lives requires advanced knowledge, training and expertise to determine a precise service life. While a lay person could easily determine if a proposed service life is within the NARUC Guide’s range by merely reading the Guide’s Table of Ranges (for example comparing a proposed service life of 50 years to the Guide’s specified range of 50 to 75 years), determining whether a particular point within the range is more reasonable than another point within the range (for example, the use of a 62.5 year-service life as opposed to a service life of 50 or 70 years) requires “engineering judgment” – expertise that results from education, training, and experience in engineering or a related field.

In her testimony, Ms. Miller expressed the opinion that the existing 50-year service life used to calculate depreciation expense for Monroe District’s water mains should be discarded and a 62.5-year service life be used instead. She made an engineering judgment. The record, however, fails to reflect that Ms. Miller possesses the necessary qualifications to render such an engineering judgment or to make an engineering estimate. There is no evidence of Ms. Miller having any training, education, experience, or special knowledge in the fields of engineering, construction or water facility operations. She acknowledges receiving little or no formal training in determining service lives or preparing depreciation studies. Her principal duties as a member of Commission Staff are as an accountant. Prior to the recent abolishment of the Commission’s Engineering Division, she had no role in determining the service life of utility assets. She merely applied the recommendations of the Commission’s engineers.

⁵³ *Id.* at 11 (emphasis added).

The Kentucky Rules of Evidence generally prohibit opinion testimony by non-experts.⁵⁴ KRE 702 permits opinion testimony to determine a fact in issue by “a witness qualified as an expert by knowledge, skill, experience, training, or education.”⁵⁵ While the Commission is not bound by the technical rules of evidence,⁵⁶ the Commission has generally required that those seeking to offer opinion testimony in highly technical areas demonstrate some knowledge, training or experience in those areas and, where no such demonstration has been made, has not accepted such testimony or has significantly limited the weight given to such testimony.⁵⁷ Specifically, the Commission has expressly found that the opinion testimony of a certified public accountant is insufficient evidence to support a water district’s proposed service life.⁵⁸

Both the NARUC Guide and KRE 702 clearly limit the scope of the opinion that Ms. Miller may render on the issue of the service life for water mains. While she is competent to testify as to whether Monroe District’s use of a 50-year service life for its water mains is within the NARUC Guide’s range, she lacks the qualifications to make an engineering judgment or offer an opinion as to the specific point within that range that is reasonable. The Commission, therefore, should afford no weight to her opinion on the use of a 62.5-year service life.

⁵⁴ KRE 701.

⁵⁵ See also *Stringer v. Commonwealth*, 956 S.W.2d 883, 891 (Ky. 1997) (“Expert opinion evidence is admissible so long as . . . the witness is qualified to render an opinion on the subject matter”).

⁵⁶ KRS 278.310. The Commission, however, has recognized that it may look to the rules of evidence as advisory in nature. *In the Matter of: Petition of Windstream Kentucky East, LLC for Arbitration of an Interconnection Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility*, Case No. 2009-00246 (Ky. PSC Nov. 24, 2009) at 7.

⁵⁷ See *The Application of Louisville Gas and Electric Company for Approval of Its 2002 Compliance Plan for Recovery By Environmental Surcharge*, Case No. 2002-00147 (Ky. PSC Feb. 11, 2003); *Investigation Into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Case No. 2003-00266 (Ky. PSC Aug. 13, 2003).

⁵⁸ *Application of Mountain Water District For An Adjustment of Water and Sewer Rates*, Case No. 2014-00342 (Ky. PSC Oct. 9, 2015) at 24.

4. Absent a showing of a change of circumstances, Commission Staff is estopped by the Commission’s Order of December 1, 2011 in Case No. 2011-00272 from asserting that the use of a 50-year service life for water transmission and distribution mains is unreasonable or improper.

The Commission has previously recognized that the doctrine of collateral estoppel may bar the re-litigation of an issue actually litigated and decided upon in an earlier Commission proceeding.⁵⁹ It bars further litigation when the issues in the two Commission proceedings are the same, a final decision or judgment on the merits was reached in the earlier proceeding, the estopped party had a fair opportunity to litigate the issue, and the issue in the prior proceeding was necessary to the final decision. The Commission has noted that the doctrine will not apply when a significant change of conditions or circumstances has occurred between two successive administrative hearings.⁶⁰

The doctrine of collateral estoppel bars relitigating the issue of appropriate service life for Monroe District’s water mains in this proceeding. The issue in the present case is exactly the same issue which the Commission decided in Case No. 2011-00272. The appropriate service life for these mains was critical to the Commission’s decision in Case No. 2011-00272 regarding Monroe District’s revenue requirement and the rates necessary to produce that revenue level.

Commission Staff has failed to identify any change of conditions or circumstances since Case No. 2011-00272 to justify relitigating the issue. It offers no evidence to support a change in the existing service life for the water mains nor does it offer any explanation as to why the

⁵⁹ See, e.g., *The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., Apollo Acquisition Company and American Water Works Company, Inc. for Approval of a Change of Control of Kentucky-American Water Company*, Case No. 2002-00317 (Ky. PSC Oct. 16, 2002) at 8; *An Adjustment of Rider AMRP of the Union Light, Heat and Power Company*, Case No. 2002-00107 (Ky. PSC Aug. 30, 2002).

⁶⁰ *Petition of Mountain Water District for Modification of Order in Case No. 2014-00342*, Case No. 2016-00062 (Ky. PSC Apr. 8, 2016) *General Rate Adjustment of the Rates of Kentucky Power Company*, Case No. 9061 (Ky. PSC Dec. 4, 1984).

Commission's earlier determination was in error or is no longer valid. In the absence of such change, there is no basis to re-open or re-examine the Commission's earlier determination.

- 5. To avoid disputes regarding the use of published guides in ratemaking proceedings to assign asset service lives, the Commission should ensure its use of such guides complies with existing laws and should adopt procedures to ensure its application of such guides will produce fair, accurate, and reasonable results.**

The Commission has directed Monroe District to address how future proceedings under the alternative rate filing procedures should address disputes in which an applicant for rate adjustment contests Commission Staff's recommendation regarding the service life of an asset and such recommendation is based upon a published depreciation schedule. Monroe District's suggestions are set forth below.

To the extent that the Commission or Commission Staff intends to rely upon a published depreciation guide to establish a utility asset's service life for ratemaking purposes, it should take steps to ensure the guide is generally recognized and accepted. As Monroe District has previously noted in this proceeding, the NARUC Guide is not incorporated into the Commission's regulations nor is its use sanctioned by any regulation or statute. Moreover, the NARUC Guide was not adopted after careful and thorough examination in an administrative case in which all affected stakeholders could comment and offer potential alternatives, but through a series of individual decisions in cases often involving a party that either lacked the resources to seriously examine the NARUC Guide or failed to comprehend the implications of its use.

Whether the Commission continues its use of the NARUC Guide or adopts or develops an alternative standard for assigning service lives is not an issue in this case. However, unless the published guide that the Commission and Commission Staff uses is generally accepted, its use will likely be an issue in numerous rate case proceedings involving small water utilities.

General acceptance will come only if the Commission establishes the legitimacy of its guide through a process such as an administrative case or that set forth in KRS Chapter 13A.

Clear and definite rules of interpretation of the published guide must be established. If the published guide establishes a range for an asset's service life, disagreements between Commission Staff and the parties are likely to occur over the appropriate point within that range. In the absence of expert testimony providing specific reasoning for the selection of a specific point, the Commission is likely to rely upon some rule of interpretation. That rule should be part of an administrative regulation. Otherwise, it will be arbitrarily used or ignored depending upon the inclination of the interpreter.

Applicants must be advised of the rules and procedures that the Commission intends to follow. Commission Staff has repeatedly taken the position that an applicant must present evidence regarding the service lives assigned to their assets and that failure to submit such evidence will result in the use of the mid-point of the NARUC Guide's range. This "rule" is not part of any regulation or statute. 807 KAR 5:076, which establishes the requirements for alternative rate filings, does not mention it. It does not appear on the application form for alternative rate filings. How then can an applicant know of this requirement? Unless its officials follow Commission rulings, which most small utility officials do not, the applicant will not know of the requirement until the Commission Staff report refers to it.

The Commission should establish written policies and procedures regarding the manner in which Commission Staff reviews and determines service lives in alternative rate filing cases. 807 KAR 5:076 places great emphasis on Commission Staff's review. Without written policies and procedures Commission Staff has considerable discretion in addressing the assignment of service lives. The Commission should detailed specific areas for Commission Staff's examination. It should provide specific guidance on the procedures for questioning utility

personnel. Any evidence gathered during Commission Staff's review should be placed into the proceeding's record no later than the submission of the Commission Staff's report.

Finally, if the Commission does not intend to employ qualified personnel, such as trained engineers, and if it intends to continue to rely upon a range of years for the assignment of an asset's service life, the Commission should accept the Applicant's proposed service life if that service life falls within the range established by the published guide.

6. Monroe District's test period expenses should be adjusted to reflect post-application personnel changes and a recent a cost-of-living wage adjustment.

Since filing its application, Monroe District has experienced changes in its staffing and wage levels. It has hired two new employees, a Laborer I and an Accounts Receivable Clerk I.⁶¹ Another employee, an Accounts Receivable Clerk I, has resigned.⁶² On July 10, 2017, Monroe District's Board of Commissioners approved a two percent cost-of-living wage adjustment for its employees.⁶³ The net effect of these personnel changes is to increase proforma test period Salaries and Wages – Employees from \$383,328 to \$415,903 or \$32,575; increase proforma test period Employee Pension and Benefits from \$133,216 to \$145,337, or \$12,121; and Taxes Other than Income from \$28,619 to \$31,817, or \$2,491. The total effect of these changes is to increase operating expense by \$47,187. These changes are known and measurable. Based upon past Commission precedent, the expenses associated with these personnel and wage changes are appropriate for recovery through rates.

At the hearing, Ms. Miller expressed concern that the hiring of the Laborer I was not intended to increase Monroe District's workforce, but to replace one of Monroe District's present

⁶¹ Third Supplement to Application Notice of Filing (filed Sept. 25, 2017).

⁶² Monroe District's Response to Attorney General's Post-Hearing Data Request, Question No. 1 (filed Oct. 16, 2017).

⁶³ Third Supplement to Application Notice of Filing, Exhibit 3 (filed Sept. 25, 2017).

employees who was expected to shortly retire. In such case, she asserted that employee's salary and benefits should not be reflected in Monroe District's pro forma expenses.

The record does not support exclusion of the new employee's wages and benefits. Monroe District has two field employees who are 60 years of age or older and one field employee who is in his late fifties. As of this date, none of these employees has formally advised Monroe District of his intent to retire or otherwise leave his employment. None has unofficially advised Monroe District of his intent to leave their employment or otherwise informed Monroe District's management of a definite date on which he plans to retire. At this date, Monroe District has no information to believe that these employees will not continue with their employee for at least two or more years.

Monroe District Manager Ross testified at the hearing that the hiring of the Laborer I serves two purposes. First, it fills an immediate need by providing Monroe District with a younger and more physically fit employee who can assist older field employees with more labor intensive and physically demanding tasks. Use of the new employee is expected to reduce overtime expenses as this employee's wage rate is significantly lower than more senior field workers. The extent of overtime savings is not known at this time and is dependent upon unknown events requiring overtime work.

The hiring of the Laborer I also allows Monroe District to implement a succession plan. While no existing employee has stated his intention to leave, Monroe District is aware that several of its employees are nearing retirement age. It has no assurance that any of these three employees may suddenly choose to retire. Good business practice dictates that Monroe District train and develop new employees now to ensure that such employees are capable of performing the duties and responsibilities of its older and more experienced field employees when those employees elect to retire. Mr. Ross stated that a minimum of six months is necessary to train an

employee to competently perform most routine tasks. Since Monroe District requires all of its field employees to become certified water distribution system operators and two years of training is a prerequisite to such certification, a successful succession program requires hiring successor employees at least two years prior to any expected retirement.

As the hiring of the Laborer I fills an immediate need and enables Monroe District to maintain a trained and competent workforce and avoid disruptions due to potential employee retirements, the Laborer I's wages and benefits are a reasonable expense necessary to provide service and should be recovered through rates.

7. As the level of compensation provided to Monroe District employees is reasonable and is not excessive by local and national industry standards, Monroe District should be permitted full recovery of employee compensation expenses in its rates.

Monroe District seeks recovery through rates of pro forma Salaries and Wages-Employees expense of \$415,903 and pro forma Employee Pension and Benefits expense of \$145,337. These expense levels are based upon actual test period expenses adjusted to reflect the current number of employees in Monroe District's workforce, its current wage rates and the current costs of employee benefits. The record clearly shows that Monroe District's wage rates are equal to or below those of similarly situated water utilities in Kentucky and throughout the United States. It further shows that Monroe District's wage rates are generally below overall national wage levels. Likewise, the record shows that the expenses associated with Monroe District's total employee compensation package are not excessive but are below the national average.

A. Monroe District's pro forma wages are generally below state and national averages for water utilities.

To support the reasonableness of its current wage rates, Monroe District compared the pro forma wages of its employees to the average annual wages of employees of other water

utilities with similar job titles reported in surveys conducted by Kentucky Rural Water Association (“KRWA”), Kentucky League of Cities (“KLC”), and American Water Works Association (“AWWA”).⁶⁴ When compared to other water utilities in Kentucky, Monroe District compared favorably. For all but two job titles, Monroe District’s wages were less than the statewide average reported in the most recent KRWA survey. Similarly, the wages for more than half of its job titles were lower than the statewide average reported in the KLC survey. Where a Monroe District’s job title exceeded the state average, the Monroe District employee in that position generally had significant work experience, considerable time in position, or special qualifications that explained the higher annual wages.⁶⁵ Monroe District’s pro forma wages for all job titles were below the national average and median annual wages for rural systems participating in the AWWA survey.

Monroe District also performed a comparison of the annual and hourly wages of its employee job titles with the National Industry-Specific Occupational Employment and Wage Estimates.⁶⁶ The Bureau of Labor Statistics conducts a semiannual mail survey designed to produce estimates of employment and wages for specific occupations and then produces occupational estimates for various industry classifications. Monroe District used the reported data from the May 2016 National Industry-Specific Occupational Employment and Wage Estimates specific to NAICS 221300 (Water, Sewage and Other Systems) which is an industry within Sector 22 (Utilities). It identified occupational titles within the Water, Sewage and Other Systems Industry that are comparable to its employee positions and then compared the national annual and hour wages for these occupational titles with annual and hourly wages for the

⁶⁴ Monroe District’s Response to Commission Staff’s Second Post-Hearing Request for Information, Question 6, Exhibit C (filed Nov. 17, 2017).

⁶⁵ See Monroe District Hearing Exhibit 6.

⁶⁶ Monroe District’s Response to Commission Staff’s Second Post-Hearing Request for Information, Question 6 (filed Nov. 17, 2017).

Monroe District job position. The results of this comparison showed that Monroe District employees are earning wages that are below the national average for similar positions and, in some cases, significantly below the national average.

At the hearing the AG and the Commission devoted considerable attention to Monroe District's process for annual wage adjustments and the reasonableness of recent wage adjustments. Monroe District policy provides for two wage evaluations annually. The first evaluation, performed in January, involves an employee performance review that may result in a wage increase depending upon the individual employee's job performance. The second evaluation, performed in July, involves a cost-of-living adjustment review to determine whether all employees' wages should be adjusted to reflect the effects of inflation. Monroe District witnesses testified that, notwithstanding a written policy requiring written evaluations, no written performance evaluations of employees had been conducted in recent years and that individual employee performance wage evaluations had resulted in all employees generally receiving a wage increase. They also testified that in recent years Monroe District's Board of Commissioners had annually awarded cost-of-living wage adjustments of two percent, which in some instances exceeded the rate of inflation. During the hearing, concerns were expressed that the performance evaluations were meaningless and that the reasonableness of the recent wage adjustments questioned.

Monroe District's failure to properly conduct employee performance reviews does not require the disallowance of wage adjustments awarded during or subsequent to the test period. The Commission has previously held that a wage adjustment will not be disallowed if the pro forma wage level is reasonable.⁶⁷ In the present case, record shows that Monroe District's pro

⁶⁷ *Application of Caldwell County Water District for Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2016-00054 (Ky. PSC July 21, 2016).

forma wage levels generally do not exceed the average wage levels for water utilities in Kentucky. While the Commission now requires a utility seeking a rate adjustment to include in its application “a performance-based validation method to justify raises,” Monroe District’s decisions to award such wage adjustments occurred prior to the Commission’s announcement of such requirement.⁶⁸ No statute or regulation presently requires written performance reviews as part of a water district’s employee evaluation process.

Monroe District has taken actions to address the Commission’s concerns. On October 9, 2017, its Board of Commissioners revised its policy to mandate the use of the annual increase in the nonseasonally adjusted Consumer Price Index for all urban consumers, U.S. city average, all items (“CPI-U”), published by the Bureau of Labor Statistics, to determine annual cost-of-living adjustments to employee wage rates. It further directed that its performance evaluation policy should be strictly followed. Henceforth, an employee’s supervisor will prepare a written evaluation on each supervised employee for each evaluation period. After the supervisor has met with the employee to discuss the evaluation and the employee had been provided the opportunity to respond, the General Manager will review the evaluation. Written copies of the evaluation will be maintained in Monroe District’s files. The Board will use the evaluation in determining whether the employee’s performance for the evaluation period warrants an increase in the employee’s wage rate and if so, the amount of such increase.⁶⁹

⁶⁸ *Electronic Application of North Mercer Water District for Rate Adjustment Made Pursuant to 807 KAR 5:076*, Case No. 2016-00325 (Ky. PSC May 19, 2017) at 3-4.

⁶⁹ Monroe District’s Response to Commission Staff’s Post-Hearing Request for Information, Question 2 (filed Nov. 16, 2017).

B. Based upon a comparison of Monroe District's total employee compensation levels with other entities, Monroe District's employee compensation costs are reasonable and should be fully recovered through rates.

Monroe District provides its employees with several benefits in addition to wages. It provides a defined contribution retirement plan for its employees to which it annually deposits an amount equal to the employee's annual wages. It provides each employee with single person health insurance coverage at no cost to the employee and with single person dental insurance for which it assumes 75 percent of the cost. It also provides limited life insurance coverage at no cost.

In its report, Commission Staff found the cost associated with these benefits was reasonable and recommended full recovery through rates. Commission Staff's determination was made after an examination of Monroe District's total employee compensation costs, not merely the costs of the individual benefits. Explaining its approach, Commission Staff stated:

[T]he reasonableness of the cost of an employee compensation package provided by any entity, regulated or not, should be evaluated in its totality recognizing that the combination of the individual components included in an employee benefit package often vary widely from one business entity to another. One entity may provide higher wages with limits on other benefits when compared to another entity that offers lower wages while providing better insurance coverages or retirement benefits to remain competitive for employee services. As a result, evaluating the level of one benefit of a compensation package in isolation, such as wages or health insurance, without giving consideration to the level of all other benefits included with the package is neither fair, just, nor reasonable.⁷⁰

Commission Staff sought to compare Monroe District's average cost of wages and benefits per employee with two other utilities – North Mercer Water District and Nolin Rural Electric Cooperative Corporation – to assess the reasonableness of employee compensation, including

⁷⁰ Commission Staff Report at 15.

benefits. Using information from these utilities' recent rate proceedings, Commission Staff determined that Monroe District's benefits were significantly lower and found them reasonable.

In his comments, the AG agreed with Commission Staff's approach but took issue with the inclusion of Nolin Rural Electric Cooperative Corporation in the comparison group.⁷¹ He argue that the use of an electric cooperative's employee compensation costs was not appropriate given that its operations, size, and delivered product differed significantly from that of a water district. He urged the Commission to limit its comparison to North Mercer Water District.⁷²

While Monroe District agrees with Commission Staff and the AG on this issue, it sought to further demonstrate the reasonableness of its employee costs. In the absence of readily available information regarding utilities' employee compensation costs, Monroe District compared its cost per hour worked with employer cost per hour for employee compensation averages developed by the Bureau of Labor Statistics.⁷³ More specifically, it compared its cost per hour for employee compensation with the national average for four employer categories. These categories were: Civilian Sector; Private Industry; Private Sector Service-Providing; and Private Industry (Trade, Transportation and Utilities). The "Civilian Sector" includes all workers in the private nonfarm economy excluding households and the public sector excluding the federal government. The "Private Industry" grouping includes all workers except those employed by local, state or federal governments. The "Private Sector Service-Providing" category is a subgroup of "Private Industry" and includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises;

⁷¹ Attorney General's Comments on Commission Staff Report at 5.

⁷² *Id.* at 7.

⁷³ Monroe District's Response to Commission Staff's Second Post-Hearing Request for Information, Question 6 (filed Nov. 17, 2017). *See also* Bureau of Labor Statistics, USDL-17-0770, Employer Costs for Employee Compensation – March 2017.

administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration. The category “Trade, Transportation, and Utilities” is a subset of “Private Sector Service- Providing.”

As shown in Table 1 below, Monroe District’s employee costs are significantly below these national employer categories. Monroe District’s cost per employee hour is only \$28.15 as compared to the next lowest category of Private Industry Service-Providing, which has an average hourly cost of \$31.83 per employee hour worked. It is approximately 25 percent less than the Civilian Sector Average of \$35.28 per employee hour and is approximately 23 percent lower than the average per hour employee cost for “Trade, Transportation and Utilities” employers.

TABLE 1					
Cost Per Hour Worked					
COMPENSATION COMPONENT	All Civilian¹	Private Industry Workers²	Private Industry - Service Providing²	Private Industry - Utilities²	Monroe County Water District
Total Compensation	\$35.28	\$38.96	\$31.83	\$34.61	\$28.15
Wages & Salaries	\$24.10	\$26.50	\$22.41	\$23.80	\$16.75
Total Benefits	\$11.18	\$12.46	\$ 9.42	\$10.81	\$11.40
Paid Leave	\$ 2.49	\$ 2.96	\$ 2.57	\$ 2.49	\$ 2.49
Supplemental Pay	\$ 1.07	\$ 1.52	\$ 1.48	\$ 1.00	\$ 0.89
Insurance	\$ 3.09	\$ 3.38	\$ 3.68	\$ 3.09	\$ 4.76
Retirement & Savings	\$ 1.92	\$ 1.69	\$ 2.17	\$ 1.46	\$ 1.41
Legally Required Benefits	\$ 2.61	\$ 2.90	\$ 3.30	\$ 2.77	\$ 1.82
¹ Employer Costs for Employee Compensation – March 2017, Table 1.					
² <i>Id.</i> , Table 12					

Monroe District also prepared a comparison of each compensation component as a percentage of total compensation used Bureau of Labor Statistics information.⁷⁴ This

⁷⁴ Monroe District’s Response to Commission Staff’s Second Post-Hearing Request for Information, Question 6 (filed Nov. 17, 2017).

comparison is shown in Table 2 below. It shows that Monroe District’s wage and salaries compose a much smaller portion of total compensation than the four categories. This comparison confirms Commission Staff’s position that employers may provide employees with greater costing fringe benefits to compensate for lower wages. As shown in Table 2, a greater percentage of Monroe District’s total compensation is in the form of employee benefits, such as health insurance, than is that of the four national categories.

TABLE 2					
Percent of Total Compensation					
COMPENSATION COMPONENT	All Civilian Workers¹	Private Industry Workers²	Private Industry - Service Providing²	Private Industry – Utilities²	Monroe County Water District³
Total Compensation	100.00	100.00	100.00	100.00	100.000
Wages & Salaries	68.30	68.00	68.60	68.80	59.551
Total Benefits	31.70	32.00	31.40	31.20	40.449
Paid Leave	7.10	7.60	7.90	7.20	8.854
Supplemental Pay	3.00	3.90	3.90	2.90	3.171
Insurance	8.80	8.70	8.40	8.90	16.923
Retirement & Savings	5.40	4.30	4.00	4.20	5.024
Legally Required Benefits	7.40	7.50	7.20	8.00	6.478
¹ Employer Costs for Employee Compensation – March 2017, Table 1. ² <i>Id.</i> , Table 12. ³ Because of rounding, the components comprising “Total Benefits” does not equal the stated total.					

The evidence clearly shows that Monroe District’s total employee compensation costs are not excessive, compare reasonably well with other water utilities locally and nationally, and should be fully recoverable through rates as a reasonable expense.

C. Disallowance of Monroe District’s employee health Insurance costs based upon the Commission’s policy requiring an employee contribution to the cost of employer-provided health insurance would be unlawful and unreasonable.

In its Report, Commission Staff noted the recent implementation of a Commission policy requiring ratemaking adjustments to disallow a portion of the cost of employer-provided health

insurance coverage if the utility fails to require its employees to contribute at least 21 percent of cost of single health insurance coverage without regard to the level of the total employee compensation.⁷⁵ Since announcing this policy in Case No. 2016-00174⁷⁶ on March 1, 2017, the Commission has applied consistently applied it to deny recovery through rates of a portion of a utility's employee health insurance expenses. In the current proceeding, Commission Staff has recommended against the application of this policy because of the relatively low cost of the total compensation package Monroe District provides to its employees.

Aside from the reasons expressed in the Report for not applying the Commission's policy, application of the Commission's policy in this proceeding would also be unlawful and unreasonable. First, the consistent and uniform application of this policy is contrary to KRS Chapter 13A. The policy is not found in any administrative regulation. Unless set forth in a regulation, it is unlawful and unenforceable. KRS 13A.100(1) provides that an administrative agency authorized to promulgate administrative regulations must place "[e]ach statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body" into an administrative regulation. Any Commission order, therefore, that enforces or implements the policy is unlawful.

Second, there is insufficient evidence to support the policy's underlying assumption. The policy is based upon an estimate of the Bureau of Labor Statistics that on the average employees of private industry contribute approximately 21 percent of the cost of premiums for employer-provided health insurance coverage.⁷⁷ Other reputable organizations, however, have found lower

⁷⁵ Commission Staff Report at 13-14.

⁷⁶ *Electronic Application of Licking Valley Rural Electric Cooperative Corporation For A General Rate Increase*, Case No. 2016-00174 (Ky. PSC March 1, 2017).

⁷⁷ Case No. 2016-00174, Order of Mar. 1, 2017 at 10. *See also* Bureau of Labor Statistics, USDL-16-1493, *Employee Benefits in the United States – March 2016* (July 22, 2016) ("2016 BLS Estimates") at 10.

levels of employee contributions. For example, the Kaiser Family Foundation, a nationally recognized non-profit organization that focuses on national health issues and that annually conducts a survey of private and nonfederal public employers regarding employer-sponsored health benefits, found that average contribution for single coverage was only 18 percent. The record of Commission proceedings in which the policy has been applied does not indicate that any evidence was taken on this issue. Absent from the orders in these proceedings is any discussion of the basis for the use of the Bureau of Labor Statistics estimate or findings supporting such the estimate's use.

Assuming that the Bureau of Labor Statistics estimates are correct and appropriate for use, the use of a contribution rate for private firms is inappropriate for entities such as Monroe District. As a water district, Monroe District is a political subdivision of the Commonwealth and is considered a governmental entity.⁷⁸ The Bureau of Labor Statistics has developed separate estimates for regarding the contribution rates of employees of state and local governments. These estimates show a much lower contribution rate – only 13 percent - for such employees.⁷⁹ The Bureau of Labor Statistics has cautioned against applying private firm data to government employees.⁸⁰ Applying estimates for private firms ignores the constraints and restrictions that apply to Monroe District as a governmental entity but do not apply to private firms.

Assuming that estimates involving private firms may be used for governmental entities such as Monroe District, the use of the 21 percent employee contribution rate ignores the existence of a separate Bureau of Labor Statistics estimate for employees of utilities. In its National Compensation Survey, the Bureau of Labor Statistics estimated that employees of

⁷⁸ See, e.g., *Louisville Extension Water Dist. V. Diehl Pump & Supply Co., Inc.* 246 S.W.2d 585 (Ky. 1952).

⁷⁹ 2016 BLS Estimates at 10.

⁸⁰ *Id.* at 3 (“Incidence of employee benefits in state and local government should not be directly compared to private industry. Differences between these sectors stem from factors such as variation in work activities and occupational structures.”).

utilities contributed on the average of 16 percent of the cost of employer-provided health insurance coverage.⁸¹ No explanation has been issued as to why this estimate is not better suited for use in rate proceedings.

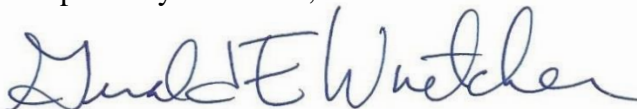
Finally, any effort to apply the Commission's policy to Monroe District in this proceeding would violate Monroe District's right to due process. Monroe District was not provided an opportunity to question the underlying bases and assumptions of the Commission's policy. No witnesses were presented who could address its questions. Its efforts to conduct discovery on this issue were denied.

Conclusion

The evidence in the record fully supports the Monroe District's requested rates. More specifically, it supports Monroe District's assignment of a 50-year service life to its water distribution and transmission mains and the reasonableness of its employee compensation expenses. Accordingly, Monroe District respectfully requests that the Commission approve its proposed rates for service.

Dated: December 8, 2017

Respectfully submitted,



Gerald E. Wuetcher
gerald.wuetcher@skofirm.com
Mary Ellen Wimberly
maryellen.wimberly@skofirm.com
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000
Fax: (859) 259-3517

Counsel for Monroe County Water District

⁸¹ Bureau of Labor Statistics, Bulletin 2785 National Compensation Survey: Employee Benefits in the United States, March 2016 (Sept. 2016), Table 10: Medical care benefits: Share of premiums paid by employer and employee, private industry workers, March 2016.

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Monroe County Water District's December 8, 2017 electronic filing of this Post-Hearing Brief is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on December 8, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this Application will be delivered to the Commission on or before December 12, 2017.

A handwritten signature in blue ink, reading "Gerald E. Wuetcher", written over a horizontal line.

Gerald E. Wuetcher