

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
THE APPLICATION OF KENTUCKY-AMERICAN) CASE NO. 2017-00313
WATER COMPANY FOR A QUALIFIED)
INFRASTRUCTURE PROGRAM RIDER)

MOTION FOR RECONSIDERATION

Kentucky-American Water Company (“KAW”) hereby moves the Commission to reconsider its August 23, 2017 Order in this matter. KAW asks the Commission to fully consider the policy implications and practical effects of its decision requiring KAW’s tariff proposal to be processed as a general base rate case. Dozens of water utilities in Kentucky (including KAW) are in serious need of pipeline replacement programs coupled with a fair, efficient, and reasonable method of cost recovery. The Commission’s August 23, 2017 Order hinders those utilities’ ability to apply for, obtain approval, and implement such programs because it forces all those utilities to file general base rate cases and incur the accompanying significant burden and expense. Therefore, with all due respect, KAW asks the Commission to reconsider its Order and allow this case to proceed as a tariff case rather than a general base rate case.

The Supreme Court of Kentucky has specifically held that the Commission has the plenary authority to approve surcharges for pipeline replace programs *outside* a general base rate case. In 2010, in the case of *Kentucky Public Service Commission v. Commonwealth of Kentucky, ex rel. Jack Conway*,¹ one of the issues before the Court was whether the Commission

¹ *Kentucky Public Service Comm’n v. Conway*, 324 S.W.3d 373 (Ky. 2010).

has the authority to approve a gas utility’s surcharge for the cost recovery of a program designed to accelerate the replacement of gas distribution mains. The Court could not have been clearer in its pronouncement that the Commission *does* have such authority in the opening paragraph of the decision:

We granted discretionary review of these cases to decide whether the Kentucky Public Service Commission (PSC) had the plenary authority to allow a utility to adjust its rates by imposing a surcharge or rider aimed at recovering costs associated with the utility’s program to accelerate improvement of its gas distribution mains. We hold that so long as the rates established by the utility were fair, just, and reasonable, the *PSC has broad ratemaking power to allow recovery of such costs outside the parameters of a general rate case* and even in the absence of statute specifically authorizing recovery of such costs.”²

The Court further held, “we find nothing in the statutes that mandates that this rider or the calculation of the actual monetary surcharge could only be approved through a general rate case.”³ It also held, “[I]n fact, we find nothing in the statutes that would prohibit ‘single-issue ratemaking’ – contrary to the Attorney General’s arguments.”⁴

Therefore, without question, the Commission has the authority to process this case outside the parameters of a general base rate case, and, thus, without requiring the voluminous and burdensome filing requirements required in general base rate cases. The real question is whether, from a policy perspective, the Commission should process this case as a tariff case (as proposed by KAW) or as a general base rate case. As set forth below, the best and most insightful policy is to process this case as a tariff case, thus creating an expedient and cost-effective path for Kentucky water utilities to follow in addressing their critical pipeline needs.

The Commission’s August 23, 2017 Order is premised on the finding “that Kentucky-American’s application requests the establishment of a surcharge for effectively all of Kentucky-

² *Id.*, p. 374 (emphasis added).

³ *Id.*, p. 381.

⁴ *Id.*, p. 382.

American's customers and constitutes a general adjustment in existing rates"⁵ But KAW's application is not an adjustment of existing rates. It seeks the establishment of a *new* surcharge without any change to existing base rates. Under similar facts, the Commission has held that such proposed surcharges are *not* general rate adjustments and can therefore be decided outside of a rate case. In *In the Matter of: Delta Natural Gas Company, Inc. Experimental Alternative Regulation Plan*, the utility proposed revised tariff sheets that would establish a rate recovery mechanism without changing base rates. The Attorney General moved to dismiss the case on the basis that it was, in reality, a base rate case, and the utility had not complied with general base rate case procedures. In denying the Attorney General's motion, the Commission stated:

Based upon its review of the proposed Alternative Regulation Plan and the pertinent provisions of KRS Chapter 278, the Commission finds that Delta's application is not a request for general rate adjustment, but a request for the establishment of a new rate. While Delta's proposal will create a mechanism that may result in additional charges assessed to Delta's customers and thus is a rate, it will not alter the utility's existing general service rates. Administrative Regulation 807 KAR 5:001, Section 10⁶ requires a utility to file an application only for a general rate adjustment in existing rates. It does not require an application for the assessment of a new charge or rate. Administrative Regulation 807 KAR 5:011,⁷ Sections 6 and 9, expressly permit a utility to amend its tariff by filing revised rate schedules when such amendments do not involve a general adjustment of existing rates. Neither KRS 278.180 nor KRS 278.190 expressly require the filing of a rate application.⁸

807 KAR 5:011 is the Commission's tariff regulation. KAW's filing in this case is in perfect accordance with that regulation as it: proposed a new tariff as contemplated by Section 6(2);⁹ provided notice to the public as required by Section 8;¹⁰ and provided sufficient statutory

⁵ August 23, 2017 Order, p. 3.

⁶ 807 KAR 5:001, Section 10 has since been recodified at 807 KAR 5:001, Section 16, which is the Section setting forth rate case filing exhibits. But the language in that section is the same as it was when the *Delta* case was decided; it only requires a rate case application for a general rate adjustment in "existing" rates.

⁷ 807 KAR 5:011 is the Commission's tariff regulation.

⁸ *In the Matter of: Delta Natural Gas Company, Inc. Experimental Alternative Regulation Plan*, Case No. 1999-00046, May 10, 1999 Order, p. 2. (Underline emphasis in original.)

⁹ See Exhibit LCB-2 to Linda C. Bridwell's August 4, 2017 Direct Testimony.

notice as required by Section 9 and KRS 278.180, which, when read together, require 30 days' notice to the Commission of a new rate. Recognizing that its proposal would likely draw opposition from intervenors and require an investigation, KAW's August 4, 2017 proposed tariff actually provided nearly five months of notice before its proposed effective date of January 1, 2018. For the same reasons, KAW did not oppose and in fact agreed with the Attorney General's August 11, 2017 Motion for a Procedural Schedule in this matter. Therefore, just like in *Delta*, KAW has proposed a new tariff that may be considered by the Commission outside the parameters of general base rate case.

KAW recognizes that the Commission decided *Delta* in 1999 and that its holding was later rendered moot by Delta's subsequent filing of a general base rate case into which Delta's tariff proposal was incorporated. KAW further recognizes the decisions cited in footnote 13 of the Commission's August 23, 2017 Order discussed *Delta* and reached a different conclusion than reached in *Delta*. But except for the *Bullitt Utilities* case, all of those decisions were made *before* the Kentucky Supreme Court issued its 2010 decision in *Kentucky Public Service Commission vs. Conway* in which, as discussed above, the Court held that the Commission has the authority to approve the exact same type of surcharge as proposed by KAW outside of a rate case. That holding was and remains the final and controlling pronouncement on the Commission's authority to process a proposed surcharge outside a rate case.

In *Bullitt Utilities*, the Commission was faced with a convoluted set of facts, a utility in an emergency situation, and the Commission provided no explanation as to why it reached the conclusion that a "surcharge is request for a general adjustment of existing rates."¹¹ The net

¹⁰ See Exhibit 13 to KAW's August 4, 2017 Application which is a copy of the notice provided to customers and KAW's August 10, 2017 Affidavit of Customer Notice filed in this matter.

¹¹ *Application of Bullitt Utilities, Inc. for a Certificate of Convenience and Necessity and Surcharge for Same*, Case No. 2014-00255, December 23, 2014 Order, p. 3.

effect of all of this is that the Commission appears to have taken differing positions on the issue of whether a proposed new surcharge is akin to a general adjustment of existing rates. However, at least in this matter, public policy suggests that the Commission should exercise its plenary authority and process this case a tariff case so that, at least in the water utility sphere, Kentucky water utilities will have the most efficient regulatory procedure to address their serious needs of line loss and aging infrastructure.

As recently as March 2017, the Commission has shown a keen interest in addressing unacceptable levels of water loss among Kentucky water utilities. Indeed, in a March 21, 2017 press release,¹² the Commission stated the following and quoted the Chairman extensively:

In recent months, the PSC has placed a greater emphasis on addressing excessive water loss. Utilities have been placed on notice that water loss levels above 15 percent - the amount allowed by PSC regulations for the purpose of setting rates – will draw ongoing scrutiny and may lead to further action by the PSC.

About 50 utilities under PSC jurisdiction incur water losses in excess of 15 percent, with about a third of those in excess of 30 percent.

“The PSC certainly recognizes that the short-term cost of the infrastructure investments needed to reduce excessive water loss may exceed the cost of the wasted water itself,” Schmitt said. “But, over the long term, a high level of water loss creates an unsustainable situation for a utility.

“That is why the PSC is going to work with affected water utilities to identify sources of funding and technical assistance that could reduce the financial burden on ratepayers,” he said. “There is little question this problem needs to be addressed.”

Additionally, as recently as last week at the Kentucky Rural Water Association annual conference, the Commission’s Vice Chairman indicated in his presentation the Commission would review favorably water utilities’ proposals for infrastructure surcharge mechanisms when justified.

Given the Commission’s stated need to address excessive water line loss and the aging

¹² A copy of the March 21, 2017 press release is attached.

and deteriorating condition of water utility distribution infrastructure described in detail in Brent O'Neill's Direct Testimony in this case, the Commission should consider the following question: what is the best and most efficient way the Commission can encourage and facilitate a solution? The answer is clear. The Commission should allow water utilities to file tariff cases for infrastructure programs and cost recovery thereof. KAW's proposal does just that.

KAW does not suggest that a water utility should be permitted to make a simplistic filing for a surcharge and that it should be approved blindly. Instead, any such filing must be robust and should be: (1) modeled on existing infrastructure programs with which the Commission has had successful experience, while being tailored to that particular water utility's unique needs; (2) supported by ample evidence demonstrating the need for and benefits of the proposal with accompanying transparent information showing the methodology and amount of the proposed surcharge; (3) allow for sufficient investigation by the Commission including input from intervenors; and (4) meet all of the PSC's tariff requirements for customer and statutory notice. If a proposal meets all of these criteria, then an additional requirement for compliance with the Commission's extensive rate case filing requirements equates to placing unnecessary form over substance.

KAW's proposal meets all of these criteria. First, as explained by Ms. Bridwell, KAW has modeled its proposed Qualified Infrastructure Program ("QIP") after the various successful pipeline replacement programs implemented by Kentucky natural gas utilities. The Commission and its Staff have familiarity with the success of those programs including the associated cost recovery.

Second, KAW has tailored its QIP to its unique needs. As explained by Mr. O'Neill, the QIP is based on an exhaustive study of KAW's existing distribution system that clearly

demonstrates the need for and benefits of an accelerated replacement schedule. The QIP will specifically and systematically address those components of the system having the greatest need. Additionally, KAW's Application Exhibits 1 – 12, Ms. Bridwell's testimony, and the proposed tariff sheet collectively demonstrate exactly how the surcharge would be calculated and exactly what the surcharge would be for all affected customer classes for 2018. In essence, KAW has already provided a revenue requirement analysis. All workpapers supporting those calculations were filed with the Application.

Third, KAW's proposed tariff was filed on August 4, 2017 with an effective date of January 1, 2018 to allow sufficient time for a thorough investigation including intervenor input. KAW agreed with the Attorney General's Motion for a Procedural Schedule for just such an investigation. And fourth, KAW has complied with the required tariff requirements for customer and statutory notice.

Having met all those requirements, it is unnecessary for KAW or any other water utility and their customers to incur the additional significant expense and burden of complying with all of the requirements of a general base rate case. A KAW general base rate case typically has, at a minimum: 49 separate filing exhibits (some of which require extensive detail over periods as long as ten years related to various operational and financial issues); cost of service expert testimony; cost of capital expert testimony; depreciation expense expert testimony; and extensive testimony of KAW employees on a wide variety of topics. None of that information is necessary to decide KAW's QIP proposal.¹³ For a rate case, KAW generally begins its preparation efforts

¹³ In addition to this information being unnecessary, the Commission's rate case requirements regulation, 807 KAR 5:001, Section 16, presents a significant practical problem. There is one set of filing requirements for a base rate case supported by a historical test period (at subsection 4) and a different set of filing requirements for base rate cases supported by a forecasted test period (at subsections 6, 7, and 8) with explicit information required for a statutorily defined base period and a statutorily defined forecasted test period. None of those periods exist in KAW's proposal which is based on projected spending in calendar year 2018.

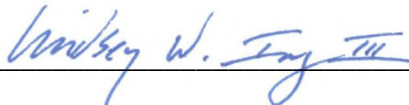
at least six months before the application is filed.

KAW recognizes that the Commission's August 23, 2017 Order suggests that KAW may seek a deviation from rate case filing requirements. Respectfully, KAW has already requested such a deviation (albeit not on an item-by-item basis) which the Commission rejected because it was made in blanket form. Nothing in the Commission's deviation regulations requires deviation requests to be made on a sub-section by sub-section basis, so KAW asks the Commission to reconsider its decision on that issue to the extent necessary. But more importantly, for the reasons stated above, the Commission has before it an opportunity to send a clear message to water utilities that needed pipeline replacement programs and accompanying cost recovery surcharges will be processed in the most efficient manner possible *without* the chilling effect of having to comply with and commit the resources required of a general base rate case. The Commission should capitalize on that opportunity to create sound policy on this issue. And if the Commission continues to believe this case cannot be processed as a tariff case, then KAW asks the Commission to reconsider its position on whether KAW's requested blanket deviation should be granted, especially since KAW supplied all of that rate case information in its most recent base rate case which concluded just over a year ago. Thus, for the same policy reasons discussed above, such a blanket deviation is appropriate and would enable all water utilities to better address their infrastructure needs.

WHEREFORE, KAW respectfully requests reconsideration of the Commission's August 23, 2017 Order. To the extent the Commission believes that oral argument on this motion would be helpful, KAW stands ready to participate.

Date: September 7, 2017

Lindsey W. Ingram III
L.Ingram@skofirm.com
Monica H. Braun
Monica.braun@skofirm.com
STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000
Fax: (859) 259-3503

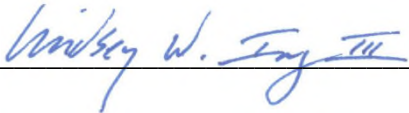
BY: 

Attorneys for Kentucky-American Water Company

CERTIFICATE

This certifies that Kentucky-American Water Company's electronic filing is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing has been transmitted to the Commission on September 7, 2017; that paper copies of the filing will be delivered to the Commission within two business days of the electronic filing; and that no party has been excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

By 

Attorneys for Kentucky-American Water Company



Matthew G. Bevin
Governor

Charles G. Snavely
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Michael J. Schmitt
Chairman

Robert Cicero
Vice Chairman

Daniel E. Logsdon Jr.
Commissioner

NEWS RELEASE

Contact: Andrew Melnykovich
502-782-2564 or 502-564-3940
502-330-5981 (cell)
Andrew.Melnykovich@ky.gov

PSC Supports Efforts to Save Water by Plugging Leaks

Backs EPA "Fix a Leak Week" while focusing on reducing leaks in water systems

FRANKFORT, Ky. (March 21, 2017) – Because wasting water is like pouring money down the drain, the Kentucky Public Service Commission (PSC) is urging both water utilities and their customers to identify and repair leaks in their systems.

"Leaks, whether they are on the utility's side of the meter or on the customer's side, lead to water bills that are higher than necessary," PSC Chairman Michael Schmitt said. "An average home can lose about 10,000 gallons to leaks each year – an amount equal to roughly two months of normal usage."

The PSC is joining with the U.S. Environmental Protection Agency (EPA) and utility regulators across the nation to promote Fix a Leak Week, which began Monday and ends Sunday.

The EPA estimates that more than a trillion gallons of water are lost nationally every year through leaks in residential plumbing. The EPA's WaterSense® program aims to reduce that loss by encouraging water users to address leaks and to also reduce consumption by installing more efficient plumbing fixtures.

As part of that effort, the PSC encourages Kentuckians to take the following steps:

- Check for leaks. Look for dripping faucets, showerheads, sprinklers, and other fixtures. Also check for toilets with silent leaks by putting a few drops of food coloring into the tank, waiting 10 minutes, and seeing if color appears in the bowl before you flush. Don't forget to check irrigation systems and spigots too.
- Twist and tighten hose and pipe connections. To save water without a noticeable difference in flow in your bathroom, twist on a WaterSense labeled faucet aerator.
- Replace the fixture if necessary. Look for WaterSense labeled models, which are independently certified to use 20 percent less water and perform as well as or better than standard models.

In many cases, fixture replacement parts pay for themselves quickly and can be installed by handy do-it-yourselfers or local plumbing professionals. Irrigation professionals certified through a WaterSense labeled program can also check your systems for leaks. Visit www.epa.gov/watersense for more information.

-more-

PSC Supports Efforts to Save Water by Plugging Leaks – Page 2

While the cost of a leaky faucet or toilet is readily seen in higher water usage and a higher water bill, the cost of leaks in a water utility's system are not as obvious, PSC Chairman Schmitt said.

"A utility that is losing excessive amounts of water from its distribution system is paying to produce or purchase water that never flows through a customer's meter," he said. "The cost of that wasted water ultimately flows through to ratepayers."

In recent months, the PSC has placed a greater emphasis on addressing excessive water loss. Utilities have been placed on notice that water loss levels above 15 percent - the amount allowed by PSC regulations for the purpose of setting rates – will draw ongoing scrutiny and may lead to further action by the PSC.

About 50 utilities under PSC jurisdiction incur water losses in excess of 15 percent, with about a third of those in excess of 30 percent.

"The PSC certainly recognizes that the short-term cost of the infrastructure investments needed to reduce excessive water loss may exceed the cost of the wasted water itself," Schmitt said. "But, over the long term, a high level of water loss creates an unsustainable situation for a utility."

"That is why the PSC is going to work with affected water utilities to identify sources of funding and technical assistance that could reduce the financial burden on ratepayers," he said. "There is little question this problem needs to be addressed."

The PSC is an independent agency attached for administrative purposes to the Energy and Environment Cabinet. It regulates more than 1,500 gas, water, sewer, electric and telecommunication utilities operating in Kentucky and has approximately 75 employees.

-30-

FOLLOW THE PSC ON TWITTER @KYPSC

QUESTIONS OR PROBLEMS REGARDING YOUR UTILITY SERVICE?

CALL THE PSC CONSUMER HOTLINE: 800-772-4636