

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ESTILL)	
COUNTY WATER DISTRICT NO. 1 FOR A)	CASE NO. 2019-00119
SURCHARGE TO FINANCE WATER LOSS)	
CONTROL EFFORTS)	

**MOTION FOR DECLARATORY ORDER REGARDING THE
FINALITY OF PROPOSED SURCHARGE**

Estill County Water District No. 1 (“Estill District”) moves for an Order from the Public Service Commission declaring that, pursuant to KRS 278.190(3), the proposed surcharge is final and is no longer subject to refund except as provided by the terms set forth in Estill District’s filed rate schedule.

In support of its motion, Estill District states:

1. On June 13, 2019, Estill District filed with the Commission its application for authority to assess a monthly surcharge to each of its customers for the purpose of financing water loss control measures. Estill District proposed to use the proceeds of this surcharge solely for water loss control measures reviewed and approved by the Commission. It further proposed strict reporting and accounting measures on the collection and use of the surcharge proceeds to ensure full accountability and transparency. Estill District also gave notice to the Commission that the proposed surcharge would take effect on July 15, 2019. The application contained a tariff sheet that set forth the proposed surcharge.

2. Prior to August 29, 2019, the Commission took no action to suspend the proposed surcharge or to “notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission” as 807 KAR 5:001, Section 16(9) requires.

3. On July 29, 2019, Estill District advised the Commission of defects in the notice of the proposed surcharge that Estill District had caused to be published. To resolve any uncertainty regarding the proposed surcharge's status, Estill District republished notice of the proposed surcharge in accordance with 807 KAR 5:001, Section 17, with the first publication of the revised notice occurring on August 1, 2019 and moved the Commission to grant Estill District a deviation from the requirements of 807 KAR 5:001, Section 17 and to accept Estill District's application as filed as of July 29, 2019.

4. On August 29, 2019, the Commission entered an Order in which it found that Estill District's application met the requirements of 807 KAR 5:001 on August 1, 2019 and was filed as of that date. In its Order, the Commission reduced the 30-day review period set forth in KRS 278.180 to 20 days; declared that the proposed surcharge was effective, subject to refund, on August 22, 2019; authorized collection of the surcharge;¹ and directed Estill District to file a tariff sheet setting forth the terms of the proposed surcharge.

5. On September 24, 2019, Estill District filed a tariff setting forth the terms of the proposed surcharge, which the Public Service Commission accepted by letter dated October 16, 2019.

6. Since August 29, 2019, the Commission has not entered any order either approving the proposed surcharge or denying the proposed surcharge in whole or in part.

7. KRS 278.190(3) provides:

At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and the commission shall give to the hearing and decision of such questions preference over

¹ The Commission specifically found that "[a]llowing Estill District to collect the proposed surcharge subject to refund is reasonable and will allow customers to be protected in the event the surcharge is not approved; it also will allow Estill District to begin accumulating capital reserves to address its water loss issues in the event the surcharge is approved." Order of August 29, 2019 at 3.

other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules.

8. The Commission has interpreted KRS 278.190(3) as requiring that “the Commission complete its investigation and render a final decision within 10 months of the filing of the proposed rate” and “[t]he Commission’s failure to render a decision within this period will result in the proposed rates becoming effective.”²

9. As the Commission has failed to issue a final decision on the proposed surcharge within 10 months of the filing of Estill District’s application, the proposed surcharge has by operation of law become final and is no longer subject to refund as provided in the Order of August 29, 2019.

10. Estill District requests that the Commission issue a declaratory order recognizing that the proposed surcharge as final and thus end the uncertainty regarding the status of the collected surcharge proceeds.

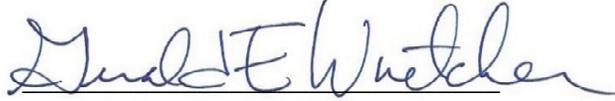
11. Estill District acknowledges that, while the proposed surcharge is final by operation of law, the terms of the rate schedule apply. These terms limit the use of the surcharge proceeds to those uses that the Commission expressly authorizes, impose specific recordkeeping and reporting requirements upon Estill District, and mandate the refund of any unexpended surcharge proceeds if Estill District fails to comply with the rate schedule’s terms.

WHEREFORE, Estill County Water District No. 1 requests an Order declaring that, pursuant to KRS 278.190(3), the proposed water loss reduction surcharge is final and is no longer subject to refund except as provided by the terms set forth in Estill District’s rate schedule.

² *Proposed Adjustment of The Wholesale Water Service Rates of the City of Falmouth*, Case No. 2006-00403 (Ky.PSC June 27, 2007) at 1-2.

Dated: June 2, 2020

Respectfully submitted,

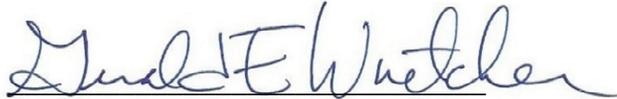


Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3017
Fax: (859) 259-3517
gerald.wuetcher@skofirm.com

Counsel for Estill County Water District No. 1

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Estill County Water District No. 1's electronic filing of this Motion is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on June 2, 2020; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that that within 30 days following the termination of the state of emergency declared in Executive Order 2020-215, this Notice of Intent in paper medium will be delivered to the Public Service Commission.



Gerald E. Wuetcher