

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**COMMENTS OF FARMDALE WATER DISTRICT
IN RESPONSE TO JUNE 26, 2020 ORDER**

Farmdale Water District (“Farmdale District”), by counsel, hereby submits its Comments in response to the Kentucky Public Service Commission’s (“Commission”) invitation to provide a response on the issues concerning the procedural application of surcharges and the Commission’s continued oversight of surcharges. Farmdale District’s Comments are as follows:

1. **Farmdale District’s Recently Approved Surcharge.** The Commission recently authorized Farmdale District to assess a surcharge to fund its unaccounted-for water loss reduction efforts.¹ In its Order, the Commission opened a separate case to monitor the surcharge proceeds collections and expenses and imposed several reporting requirements and other conditions on Farmdale District.

¹ *Electronic Alternative Rate Adjustment Filing of Farmdale Water District*, Case No. 2020-00021, Order (Ky. PSC July 7, 2020).

2. **Commission's Plenary Power.** Farmdale District acknowledges the Commission's plenary power over utility rates and service pursuant to KRS 278.040 and other applicable statutes, including the power to authorize a utility to assess surcharges and to oversee the utility's receipt and expenditure of the surcharge proceeds.

3. **Restricted Purpose.** The Commission's Order authorizing Farmdale District to assess a monthly surcharge limits the use of the surcharge proceeds to funding "unaccounted-for water loss reduction efforts." The funds must be held in a separate interest-bearing account. The surcharge receipts cannot be co-mingled with other utility funds. The Order requires Farmdale District to develop a Water Loss Reduction Plan and to obtain Commission approval of the Plan. Farmdale District understands and agrees that these strict controls are necessary to ensure accountability and to build public confidence in the use of the surcharge proceeds.

4. **Prior Approval.** Farmdale District acknowledges that it cannot spend the surcharge proceeds on any project or for the purchase of any equipment without first obtaining Commission approval. Farmdale District believes that obtaining prior Commission approval is a reasonable and appropriate restriction to ensure that the surcharge proceeds are expended for the intended purpose of reducing unaccounted-for water loss.

5. **Refunds.** Farmdale District acknowledges that it is collecting funds from its customers in advance of spending these funds on Commission approved projects. In essence, it is holding these surcharge funds in a constructive trust for the benefit of its customers. Farmdale District readily acknowledges that the Commission has the inherent authority to order Farmdale District to refund any or all surcharge funds that are not appropriately spent. Furthermore, the Commission has the authority to terminate the collection of future surcharges if Farmdale District does not strictly comply with the Commission's Order. Without this authority, the Commission cannot properly exercise its oversight role.

6. **Reporting Requirements are Appropriate.** Farmdale District believes the recently imposed reporting requirements for its water loss reduction surcharge, including the periodic activity reports and periodic water loss reports, are reasonably necessary and appropriate methods of Commission oversight. Farmdale District understands these reporting requirements are in place to closely monitor the surcharge proceeds earmarked for water loss reduction projects that are meant to reverse Farmdale District's history of water loss. Farmdale District will comply with these reporting requirements until all surcharge proceeds are expended.

7. **Procedural Application.** The Commission uses the phrase "provide a brief on the issues concerning the procedural application of the surcharge..." in Ordering paragraph 1 of its June 26, 2020 Order. Farmdale District is uncertain of

the meaning of the phrase “procedural application of the surcharge.” Suffice it to say, however, that the procedural method by which the Farmdale District surcharge was approved by the Commission is clearly distinguishable from the method the surcharge was “approved” for Estill District. For Farmdale District, the Commission issued an Order in an ARF case authorizing Farmdale District to assess the monthly surcharge. This approval is in sharp contrast to the “approval” that occurred for Estill District. In Estill District’s case, the Commission has **never** issued a final decision approving the proposed surcharge. The “approval” for Estill District occurred by operation of law pursuant to KRS 278.190(3) because more than ten (10) months elapsed after the filing of the proposed surcharge rate without the Commission having rendered a final decision. Because of these procedural differences, Farmdale District does not see the need to “weigh-in” or “take sides” on whether the Commission should grant the declaratory relief sought by Estill District.

8. Farmdale appreciates the opportunity to provide Comments in response to the Commission’s June 26, 2020 Order in the above-referenced Estill District case.

WHEREFORE, Farmdale District respectfully requests that the Commission accept these Comments in response to the Commission's June 26, 2020 Order.

Dated: July 16, 2020

Respectfully submitted,



Katelyn L. Brown
Stoll Keenon Ogden PLLC
500 West Jefferson Street, Suite 2000
Louisville, Kentucky 40202
Telephone: (502) 568-5711
Fax: (502) 333-6099
katelyn.brown@skofirm.com

Damon R. Talley
Stoll Keenon Ogden PLLC
P.O. Box 150
Hodgenville, KY 42748-0150
Telephone: (270) 358-3187
Fax: (270)358-9560
damon.talley@skofirm.com

Counsel for Farmdale Water District

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8 and the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085 regarding electronic filings, I certify that Farmdale Water District's filing was electronically transmitted to the Public Service Commission on July 16, 2020; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and Farmdale Water District will file original paper copies of this filing within 30 days of the lifting of the state of emergency.



Katelyn L. Brown