

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF HYDEN-)
LESLIE COUNTY WATER DISTRICT FOR) CASE NO. 2020-00141
AN ADJUSTMENT OF RATES PURSUANT TO)
807 KAR 5:076)**

MOTION FOR DEVIATION

Hyden-Leslie County Water District (“Hyden-Leslie District”) moves the Public Service Commission for leave to deviate from 807 KAR 5:076, Section 9, to permit Hyden-Leslie District’s use of the year ending December 31, 2018 (“Calendar Year 2018”) as the test period to determine the reasonableness of its proposed rates. In support of its motion, Hyden-Leslie District states:

1. On May 7, 2020, Hyden-Leslie District filed with the Public Service Commission an application for rate adjustment. This application is made pursuant to 807 KAR 5:076, which provides “a simplified and less expensive procedure for small utilities to use to apply to the [Public Service C]ommission for rate adjustments.”

2. In its application, Hyden-Leslie District proposes the Commission use Hyden-Leslie District’s operations for the Calendar Year 2018 to determine the reasonableness of the proposed rates.

3. 807 KAR 5:076, Section 9 provides: “The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measurable changes, that coincides with the reporting period of the applicant’s annual report for the immediate past year.”

4. On March 31, 2020, in compliance with 807 KAR 5:006, Section 4(2), Hyden-Leslie District submitted its annual financial and statistical report for the year ending December 31, 2019 (“Calendar Year 2019”) to the Public Service Commission.

5. 807 KAR 5:076, Section 9 requires that the reasonableness of Hyden-Leslie District’s proposed rates be determined using Hyden-Leslie District’s historical operations for Calendar Year 2019.

6. A deviation from 807 KAR 5:076, Section 9 to permit the use of Hyden-Leslie District’s historical operations for Calendar Year 2018 is appropriate for the following reasons:

a. Hyden-Leslie District is experiencing significant financial problems. From 2013 to 2018, it had a total utility operating income of (\$2,963,747) and net income before contributions of (\$3,771,362). In 2019 its total utility operating income was (\$816,788). Its present rates for water service are inadequate to meet its obligations under the loan agreements with its principal lenders.

b. In 2019 Hyden-Leslie District obtained a commitment from the Kentucky Infrastructure Authority (“KIA”) for a 30-year loan of \$2,735,000 at 0.5 percent interest to permanently finance the cost of a waterworks improvement project constructed in 2014 (“2014 Waterworks Project”).¹ Hyden-Leslie District had previously executed several short-term notes with the Kentucky Rural Water Finance Corporation (“KRWFC”) to temporarily finance the cost of this project until permanent financing could be arranged. KIA has conditioned its proposed loan upon Hyden-Leslie District obtaining no later than November 1, 2020 an adjustment in its rates

¹ *Application of the Hyden-Leslie County Water District for Authority to Issue Securities and Issuance of a Certificate of Public Convenience and Necessity to Construct an Improvements Project Pursuant to KRS 278.020 and 278.300*, Case No. 2013-00388 (Ky. PSC Feb. 6, 2014).

for water service that will produce sufficient revenues to permit Hyde-Leslie District to meet the debt service requirements of its existing debt instruments and of the proposed KIA loan.

c. In Case No. 2019-00412,² the Public Service Commission declined to approve Hyden-Leslie District's application for authorization to enter a proposed 30-year loan with KIA until Hyden-Leslie District had obtained an adjustment of its rates for water service. In its Order of February 20, 2020, the Public Service Commission directed Hyden-Leslie District to apply for a rate adjustment no later than August 20, 2020.

d. As part of its effort to obtain interim financing for the 2014 Waterworks Projects pending approval of the proposed KIA loan, Hyden-Leslie District entered an assistance agreement with KRWFC for a short-term loan. This agreement, which the Public Service Commission approved, also requires Hyden-Leslie District to apply for a rate adjustment no later than August 20, 2020.

e. To satisfy these requirements, Hyden-Leslie District's Board of Commissioners on January 30, 2020 authorized its General Manager to take all actions necessary for the preparation and filing of an application for a rate adjustment with the Public Service Commission on or about May 1, 2020. Shortly thereafter, Hyden-Leslie District entered an agreement with Kentucky Rural Water Association ("KRWA") for the preparation of an application for rate adjustment. After consultation with its legal counsel and KRWA, Hyden-Leslie District elected the use of Calendar Year 2018 as the test period for its application.

f. The use of Calendar Year 2018 as the test period was necessary to meet the conditions for obtaining the proposed KIA loan. When KRWA was retained to prepare the rate

² *Electronic Application of Hyden-Leslie County Water District for Authorization to Enter A Short-Term Assistance Agreement with Kentucky Rural Water Finance Corporation to Refund an Existing Loan and To Subsequently Enter A Long-Term Assistance Agreement with The Kentucky Infrastructure Authority*, Case No. 2019-00412 (Ky.PSC filed Nov. 30, 2019).

application, work had not yet begun on Hyden-Leslie District's annual report or audit for Calendar Year 2019. Neither the report nor the audit was expected to be completed before March 31, 2020. KRWA estimated that preparation of an application would require approximately eight weeks. Assuming that Public Service Commission review of an application for rate adjustment would require between 150 and 210 days, Hyden-Leslie District reasoned that use of Calendar Year 2019 as the test period would not allow sufficient time to obtain the necessary rate adjustment and that Calendar Year 2018 should be used instead.

7. Hyden-Leslie District will incur significant hardship if the requested deviation is denied. The time necessary to prepare a revised application based upon a Calendar Year 2019 test period significantly reduces the likelihood of a final decision on the requested rate adjustment before November 1, 2020 and significantly increases the likelihood that Hyden-Leslie District will not meet the conditions for the proposed KIA loan and will lose the opportunity to permanently finance the 2014 Waterworks Project under very favorable conditions.

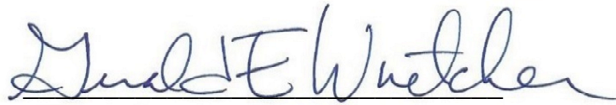
8. Use of Calendar Year 2018 as the test period will not impede or adversely affect the Public Service Commission's review of Hyden-Leslie District's application. The Public Service Commission has access to Hyden-Leslie District's financial information for Calendar Year 2019 to confirm that Calendar Year 2018 is representative of Hyden-Leslie District's current operations. Hyden-Leslie District's annual report for Calendar Year 2019 has been filed with the Commission and Hyden-Leslie District's application includes its general ledger and accounting journal adjustments for Calendar Year 2019 operations. If additional information is required, such information can be obtained through requests for information or an onsite inspection of Hyden-Leslie District's records.

9. Hyden-Leslie District's request is consistent with prior Public Service Commission permitting deviations from this requirement.³

WHEREFORE, Hyden-Leslie County Water District requests that the Public Service Commission permit it to deviate from the requirements of 807 KAR 5:076, Section 9, and accept its application for rate adjustment.⁴

Dated: May 11, 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

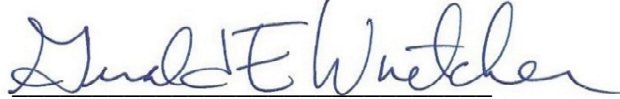
Counsel for Hyden-Leslie County Water District

³ See, e.g., *Application of Western Lewis-Rectorville Water & Gas District for Rate Adjustment For Small Utilities Pursuant To 807 KAR 5:076*, Case No. 2014-00266 (Ky.PSC Aug. 7, 2014); *Application of East Pendleton County Water District For An Alternative Rate Adjustment*, Case No. 2013-00103 (Ky.PSC May 13, 2013); *Application of Southern Water And Sewer District For An Adjustment In Rates Pursuant To The Alternative Rate Filing Procedure For Small Utilities*, Case No. 2012-00309 (Ky.PSC Sep. 14, 2012); *Application of Graves County Water District For An Adjustment In Rates Pursuant To The Alternative Rate Filing Procedure For Small Utilities*, Case No. 2012-00278 (Ky.PSC July 18, 2012); *Application of Ledbetter Sewer District For An Adjustment In Rates Pursuant To The Alternative Rate Filing Procedure For Small Utilities*, Case No. 2012-00057 (Ky.PSC Feb. 23, 2012); *The Application of Overland Development, Inc. For A Rate Adjustment Pursuant to The Alternative Rate Filing Procedure for Small Utilities*, Case No. 10140 (Ky.PSC Mar. 2, 1988).

⁴ On May 8, 2020, the Public Service Commission's Executive Director advised Hyden-Leslie District by letter that its application met minimum filing requirements and was accepted for filing. Notwithstanding the Executive Director's action, Public Service Commission has on numerous occasions held that an applicant using alternative rate filing procedures must use as its test period the same time period as its most current annual report on file at the time of an application's submission. *Supra* note 3. In reliance upon those decisions, Hyden-Leslie District respectfully submits this Motion.

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Hyden-Leslie County Water District'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 May 11, 2020; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that within 30 days following the end of the state of emergency announced in Executive Order 2020-215 this Motion in paper medium will be delivered to the Public Service Commission..

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

Gerald E. Wuetcher