

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF OHIO)
COUNTY WATER DISTRICT FOR AN) CASE NO. 2020-00167
ALTERNATIVE RATE ADJUSTMENT)

**APPLICATION FOR REHEARING
OF ORDER OF DECEMBER 3, 2020**

Pursuant to KRS 278.400, Ohio County Water District (“Ohio District”) applies for rehearing of the that portion of the Public Service Commission’s (“Commission”) Order of December 3, 2020 containing the erroneous finding that Ohio District’s filed rate schedules do not contain a late payment penalty and that Ohio District has lacked lawful authority to assess such a penalty since 2005.¹ This finding is based upon the erroneous assumption that Ohio District deleted this penalty from its filed rate schedule with filing of a tariff sheet on December 8, 2005 (“2005 Tariff Sheet”). The tariff sheet on its face did not comply with KRS 278.180 and 807 KAR 5:011 and was, therefore, null and void at the time of its filing. Consequently, it could not terminate Ohio District’s authority to assess a late payment penalty. The Commission did not consider that the late payment penalty was expressly approved in 2001 or that Ohio District’s authority to assess the penalty affirmed in November 2005 in the very Order with which Ohio District sought to comply when submitting the 2005 Tariff Sheet.

¹ This application is timely filed in accordance with KRS 278.400 and KRS 446.030(1)(a). KRS 278.400 provides that a party may apply for rehearing of an order within 20 days after service of that order. “Service of a commission order is complete three (3) days after the date the order is mailed.” If an order is transmitted electronically to a party, the order is considered mailed “on the date the transmission of the order is completed.” KRS 278.370. Accordingly, service of the Order of December 3, 2020 was completed on December 6, 2020. The twentieth day after the service was completed was December 26, 2020, which is a Saturday. Pursuant to KRS 446.030(1)(a), when that last day of the period allowed by statute for filing a document is a Saturday, the period is extended until the end of the next day “which is not Saturday, a Sunday, a legal holiday, or a day on which the public office . . . is actually and legally closed.” Therefore, the period in which Ohio District may file an application for rehearing includes December 28, 2020.

1. Ohio District's 2005 Tariff Filing is without legal effect and did not terminate Ohio District's authority to assess the late payment penalty.

Commission's records indicate that Ohio District has possessed the legal authority to assess a 10 percent late payment fee since at least 1983. Between 1983 and 1998, it submitted tariff sheets on five different occasions which set forth a ten percent penalty for failure to timely pay a monthly bill for water service. See Exhibits A through E. In Case No. 2001-010, the Commission expressly authorized Ohio District to assess a late payment penalty of 10 percent when approving Ohio District's application to increase certain nonrecurring charges and to revise its tariff.² See Exhibit F. On February 26, 2001 the Commission found the proposed non-recurring charges, including the late payment penalty, to be "equal to the expenses incurred to provide the associated services" and "fair, just, and reasonable."³ On March 6, 2001, Ohio District filed a new tariff sheet ("2001 Tariff Sheet") setting forth the charges that the Commission had approved. See Exhibit G.

Two and a half years later, Ohio District again applied to the Commission for revisions to certain nonrecurring charges. Its late payment penalty was not one of these revised charges. On November 18, 2005, the Commission in Case No. 2005-00425⁴ approved the proposed revisions. See Exhibit H. In its Order, the Commission does not mention Ohio District's late payment penalty; it does not refer to any request to discontinue or remove any existing fee or charge; and it does not direct Ohio District to cease charging any existing fee or charge. After listing the approved revised charges, the Commission states: "All other rates, charges, and policies not specifically mentioned herein shall remain the same as those in effect under authority of the

² *Application of Ohio County Water District to Increase Certain Non-Recurring Charges and to Revise Its Tariff*, Case No. 2001-010 (Ky. PSC Feb. 26, 2001).

³ *Id.* at 1.

⁴ *Application of Ohio County Water District to Increase Certain Non-Recurring Charges and to Revise Its Tariff*, Case No. 2005-00425 (Ky. PSC Nov. 18, 2005).

Commission prior to the effective date of this Order.”⁵ In effect, it affirmed Ohio District’s authority to assess the previously approved late payment penalty.

In compliance with the Commission’s Order of November 18, 2005, Ohio District on December 8, 2005 submitted the 2005 Tariff Sheet, which listed the approved charges at their newly approved level, to replace the 2001 Tariff Sheet. See Exhibit I. The 2005 Tariff Sheet omitted four charges that appeared on the prior sheet: Field Collection Charge, Late Payment Penalty, Meter Relocation Charge, and Re-Connection Charge (After Hours). The 2005 Tariff Sheet was deficient in several ways: (1) it failed to identify the changes from the 2001 Tariff Sheet; (2) it did not contain any symbols indicating the changes from the prior tariff sheet; (3) it failed to state a date of issuance; (4) it failed to state an effective date for the revisions; and (5) it did not list the case number or date of the order authorizing the revised charges.

According to Ohio District’s General Manager, the omission of the four charges was inadvertent, not intentional. See Exhibit J. Ohio District had received assistance from a third party in preparing the application in Case No. 2005-00425. The same third party then prepared the 2005 Tariff Sheet reflecting the increased nonrecurring charges as required by the Order of November 18, 2005. No one recognized that the four charges from the 2001 Tariff Sheet that were unaffected by the Order of November 18, 2005 had been omitted. Ohio District made no attempt to delete references to a late payment penalty on other pages of its tariff. These references remain today.⁶ It has continued to report its collection of late payment penalties in its annual reports to the Commission.

KRS Chapter 278 provides two methods by which an existing lawful rate may be changed. First, KRS 278.260(1) permits the Commission upon its own motion or upon complaint of an

⁵ *Id.*, Appendix A.

⁶ Ohio County Water District Tariff, P.S.C. Ky No. 1, Original Sheets Nos. 12, 13, and 16 (effective Feb. 26, 2001).

interested person, to investigate the reasonableness of any utility rate. If, after a hearing, the Commission determines that “any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of” any provision of KRS Chapter 278, it “shall by order prescribe a just and reasonable rate to be followed in the future.”⁷

Secondly, KRS 278.180 permits a utility to change its existing rates. It provides in pertinent part:

[N]o change shall be made by any utility in any rate except upon thirty (30) days’ notice to the commission, **stating plainly the changes proposed to be made and the time when the changed rates will go into effect.** However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days.⁸

To change an existing rate, a utility must clearly identify the proposed changes and when it proposes to place those changes in effect. It must also provide the Commission with 30 days’ notice of the change.

807 KAR 5:011, which the Commission promulgated to implement KRS 278.180, further prohibits any change to or cancellation or withdrawal of a tariff provision except “upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9” of that regulation.⁹ Section 6 required all revisions in tariff sheets to be identified¹⁰ and to be marked with a symbol in the margin indicating the change made.¹¹

⁷ KRS 278.270.

⁸ KRS 278.180(1) (emphasis added).

⁹ 807 KAR 5:011, Section 6(1) (2006 ed.) All references to 807 KAR 5:011 refer to the regulation in effect in 2005. A copy of the regulation as it existed in 2005 is attached as Exhibit K. This version of the regulation was promulgated in 1984 and was not amended until 2013. 807 KAR 5:011 was amended twice in 2013 and again in 2014.

¹⁰ 807 KAR 5:011, Section 6(4) (2006 ed.).

¹¹ 807 KAR 5:011, Section 6(2) (2006 ed.).

In its finding that “Ohio District has not had a late fee in its tariff for the past 15 years”¹² and its reference to “Ohio District’s illegal assessment of late payment fees,”¹³ the Commission assumed that the 2005 Tariff Sheet was legally effective and that the absence of the late payment penalty from the sheet effectively terminated Ohio District’s authority to assess the penalty. It neither closely examined the 2005 Tariff Sheet nor reviewed the circumstances surrounding the tariff sheet’s submission. Had it done so, the Commission would have found that the removal of the late payment penalty from Ohio District’s filed rate schedules was not in accordance with either statutory method to change a rate. The late payment penalty’s removal from Ohio District’s filed rate schedules was not the result of a Commission order or a tariff filing that complied with KRS 278.180 and 807 KAR 5:011.

The 2005 Tariff Sheet failed to comply with KRS 278.180 and 807 KAR 5:011 in several respects. First, it failed to plainly state the proposed changes. 807 KAR 5:011, Section 6(2) required that “[a]ll revisions in tariff sheets . . . contain a symbol in the margin indicating the change made.”¹⁴ It specified symbols for increases and reductions in rates, as well as for the discontinuance of a rate or administrative regulation. None of the rates listed on the sheet are shown indicated as rate increases. The 2005 Tariff Sheet contains no notations to indicate that charges listed on the 2001 Tariff Sheet have been discontinued. There is no evidence to suggest that Ohio District provided an accompanying letter listing or explaining the proposed changes. Other items missing from the 2005 Tariff Sheet include an effective date, a date of issue and a reference to the order authorizing the proposed revisions.

¹² Order of December 3, 2020 at 5.

¹³ *Id.* at 6.

¹⁴ 807 KAR 5:011, Section 6(4) (2005) states: “The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this administrative regulation. **Such revisions must be identified as required herein.** [emphasis added].”

As it related to the late payment penalty, the 2005 Tariff Sheet also failed to provide the statutorily required 30 days' notice to the Commission of the change. The tariff sheet was filed on December 8, 2005.¹⁵ On December 14, 2005, the Commission accepted the tariff sheet, declared its listed rates effective as of November 18, 2005, and cancelled the 2001 Tariff Sheet effective November 18, 2005.¹⁶ See Exhibits G and I. It is impossible for the Commission to have received the required statutory notice for the discontinuance of the late payment fee if the effective date for the discontinuance was 20 days prior to the filing of the notice of the discontinuance (the filing of the 2005 Tariff Sheet). While the Commission may reduce the notice period for rate reductions,¹⁷ it does not have the authority to give retroactive effect to a rate change.¹⁸ Moreover, any reduction in the required notice period required a request from the utility and a Commission order.¹⁹ No such request was made. No such order was issued.²⁰

In *City of Russellville v. Public Service Commission of Kentucky*, No. 2003-CA-002132, 2005 WL 385077 (Ky. Ct. App. 2005), the Kentucky Court of Appeals held that the Commission properly declared, as void, the rate filing of a municipal utility that did not comply with KRS 278.180 and 807 KAR 5:011 despite having first accepted the filing and declaring it effective. The Court of Appeals concluded that the Commission's initial actions did not preclude its final actions because the municipal utility's failure to comply with statutory and regulatory requirements

¹⁵ See <https://psc.ky.gov/trf4/TRFListFilings.aspx?Mode=3> (enter Tariff ID TFS2005-02023).

¹⁶ Letter from Dennis Brent Kirtley, Tariff Review Branch Manager, Kentucky Public Service Commission, to Walt Beasley, Ohio County Water District, subj: Non-recurring Charges per Order in Case no. 2005-00425 (Dec. 14, 2005).

¹⁷ KRS 278.180(2) ("The commission, upon application of any utility, may prescribe a less time within which a reduction in rates may be made.").

¹⁸ See *Purchased Gas Adjustment of Martin County Gas, Inc.*, Case No. 2009-00099 (Ky. PSC Mar. 31, 2009) at 3 (finding request to make proposed rates effective two months prior to the filing of proposed rates constituted prohibited retroactive ratemaking). See also *Cincinnati Bell Telephone Co. v. Kentucky Public Service Com'n*, 223 S.W.3d 829 (Ky. Ct. App.) (holding that the Commission may not retroactively establish rates).

¹⁹ *Union Light Heat & Power Co. v. Pub. Serv. Com'n, Ky.*, 271 S.W.2d 361, 365 (1954) ("the commission, like a court, acts and speaks only through its written orders").

²⁰ That the 2005 Tariff Sheet was made effective as of the date of the Commission's Order in Case No. 2005-00425 suggests that the Commission viewed the 2005 Tariff Sheet as only reflecting the changes approved in that proceeding and was unaware of how the 2005 Tariff Sheet might affect other existing charges and fees.

prevented the rate filing from becoming a “filed rate.” Until compliance with statutory and regulatory requirements is achieved, the Court of Appeals found an improperly filed rate has no legal effect.

The Commission has applied this same principle on several occasions to hold that a utility’s failure to comply with KRS 278.180 or 807 KAR 5:011 will render its tariff filing void and without any legal effect.²¹

Because it did not comply with KRS 278.180 and 807 KAR 5:011, the 2005 Tariff Sheet never became effective and therefore could not terminate the late payment penalty or otherwise displace that penalty from Ohio District’s filed rate schedules. Moreover, in so far as the provisions of the Commission’s Order in Case No. 2001-010 establishing the late payment penalty have not expired, been revoked or modified by the Commission, or suspended or vacated by a court, they remain in effect and provide Ohio District with the legal authority to assess the penalty in the specific absence of a tariff sheet stating the penalty.²²

2. Acknowledgement that Ohio District remains authorized to assess a late payment penalty will require additional revisions to the Order of December 3, 2020.

When establishing Ohio District’s rates in its Order of December 3, 2020, the Commission removed \$71,306 of late payment penalties from Other Revenues and increased Revenue Required

²¹ See *Application of Gallatin County Water District for the Approval of Increased Monthly Rates and For Approval of an Increase in its Meter Connection Fee*, Case No. 2011-000378 (Ky. PSC Oct. 21, 2011) (refusing to give effect to a revised tariff sheet because the tariff sheet was unsigned and therefore not in compliance with 807 KAR 5:011); *Application of Farmdale Development Corporation for a Rate Adjustment*, Case No. 2011-00048 (Ky. PSC Mar. 7, 2011) (refusing to give effect to a revised tariff sheet because the tariff sheet was unsigned and therefore not in compliance with 807 KAR 5:011); *Northern Kentucky Water District’s Proposed Additions to Subdistrict F and Notification of Modifications to Previously Approved Construction Projects*, Case No. 2009-00262 (Ky. PSC July 13, 2009) (refusing to give effect to a revised tariff sheet because the tariff sheet was unsigned and therefore not in compliance with 807 KAR 5:011); *Application of Bullock Pen Water District for a Certificate of Public Convenience and Necessity to Construct Proposed Water Works Improvement Project and for Approval of Proposed Plan of Financing, Increase in Rates, nonrecurring Charges, and Tariff Revisions*, Case No. 2008-00170 (finding proposed fee for payments by credit card and debit card void because of failure to comply with 807 KAR 5:011).

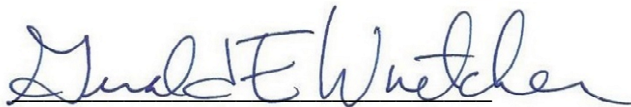
²² See KRS 278.390 (“Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.”)

from Rates by a similar amount.²³ It based this action on the assumption that Ohio District would no longer have any revenue from such penalties. If the Commission determines that its finding regarding Ohio District's authority to assess such penalties was in error and that Ohio District has continued to possess the legal authority to assess such penalties since November 2005, Ohio District's rates must be modified to reflect the revenue from late payment penalties. In lieu of modifying the rates awarded in the Order of December 3, 2020, the Commission could take other actions to adjust for the effect of revisions to its findings regarding Ohio District's legal authority to assess such penalties since November 2005.²⁴

WHEREFORE, Ohio County Water District requests that the Commission grant this application for rehearing, modify the findings in its Order of December 3, 2020 regarding Ohio District's authority to assess a late payment penalty, and take any other actions necessary in light of those modified findings.

Dated: December 28, 2020

Respectfully submitted,



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Fax: (859) 259-3517
gerald.wuetcher@skofirm.com

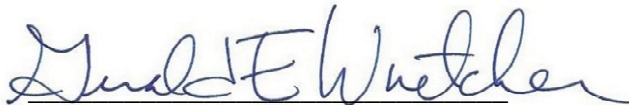
Counsel for Ohio County Water District

²³ Order of December 3, 2020 at 6.

²⁴ See, e.g., *Electronic Application of Hyden-Leslie County Water District for an Alternative Rate Adjustment*, Case No. 2020-00141 (Ky. PSC Nov. 6, 2020) at 20-23; *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates*, Case No. 2020-00160 (Ky. PSC Dec. 8, 2020) at 5.

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Ohio County Water District's electronic filing of this Application 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 December 28, 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 Motion in paper medium will be delivered to the Public Service Commission.

A handwritten signature in blue ink that reads "Gerald E. Wuetcher". The signature is written in a cursive style with a horizontal line underneath the name.

Gerald E. Wuetcher

EXHIBIT LIST

Exhibit	Description/Title
A	Tariff Sheet – Effective 02/13/1983 – Cancelled 09/16/1986
B	Tariff Sheet – Effective 09/16/1986 – Cancelled 01/25/1992
C	Tariff Sheet – Effective 01/25/1992 – Cancelled 08/16/1992
D	Tariff Sheet – Effective 08/16/1992 – Cancelled 06/14/1998
E	Tariff Sheet – Effective 06/14/1998 – Cancelled 02/26/2001
F	Case No. 2001-010 – Order of 02/26/2001
G	Tariff Sheet – Effective 02/26/2001 – Cancelled 11/18/2005
H	Case No. 2005-00425 – Order of 11/18/2005
I	Tariff Sheet – Effective 11/18/2005
J	Affidavit of Walt Beasley, General Manager of Ohio District
K	807 KAR 5:011 (2006 Version)
L	City of Russellville v. Public Service Commission of Kentucky, No. 2003-CA-02132 (Ky. Ct. App. Feb. 18, 2005)

EXHIBIT A

OHIO COUNTY WATER DISTRICT

RULES AND REGULATIONS

Section 4.

That bills will be dated and mailed on the 15th of each month. Said bills will state that they are to be paid within ten days. If said bills are not paid on or before said date, a 10% penalty shall be added to the bill and if said bill and penalty are not paid on or before the 20th day from and after the date of the mailing of the bills, water service shall be discontinued and disconnected and the Water District shall apply the water meter deposit hereinafter provided for against the unpaid bill and penalty charges and the balance due shall be collected by any customary and legal means available to the Water District. Subject to 807 KAR 5:006 Section 11 3a For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cut-off shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer saying that, in the opinion of the person making the certification discontinuance of the service will aggravate an existing illness or infirmity on the

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

DATE OF ISSUE 03- 29- 66
Month Day Year

DATE EFFECTIVE 11 01 80
Month Day Year

FEB 13 1983

ISSUED BY *[Signature]*
Name of Officer

CHAIRMAN
Title

PURSUANT TO 807 KAR 5:011
HARTFORD, KENTUCKY 42347

BY: *[Signature]*
Address

C1-87

EXHIBIT B

OHIO COUNTY WATER DISTRICT

Cancelling P.S.C. Ky. No. _____

Sheet No. _____

RULES AND REGULATIONS

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

SFP 16 1986

SECTION 4

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)

BY: J. Geoghegan

That bills will be dated and mailed on the 15th. of each month. Said bills will state that they are to be paid within ten days. If said bills are not paid on or before said date, a 10% penalty shall be added to the bill and if said bill and penalty are not paid on or before the 20th day from and after the date of the mailing of the bills, water service shall be discontinued and disconnected and the Water District shall apply the water meter deposit hereinafter provided for against the unpaid bill and penalty charges and the balance due shall be collected by any customary and legal means available to the Water District. Subject to 807 KAR 5:006 Section 11 3a for nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cut-off shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer saying that, in the opinion of the person making the certification discontinuance of the service will aggravate an existing illness or infirmity, the affected premises, service shall be discontinued until the affected resident can make other living arrangements or until ten days elapse from the utility's notification.

DATE OF ISSUE October 20, 1986
Month Day Year

DATE EFFECTIVE September 16, 1986
Month Day Year

ISSUED BY Bill B. Bunday
Name of Officer

Title

Address

C-1-92

EXHIBIT C

RECEIVED FOR OHIO COUNTY WATER DISTRICT
OHIO COUNTY AND ADJOINING CO.
P.S.C. Ky. No. 2

DEC 17 1991

Sheet No. 7

OHIO COUNTY WATER DISTRICT

P.S.C. RESEARCH DIVISION
PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

Cancelling P.S.C. Ky. No.

Sheet No.

RULES AND REGULATIONS

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)

SECTION 4:

BY: *J. Longhena*

That bills will be dated and mailed on the 25TH of each month. Said bills will state that they are to be paid within ten days. If said bills are not paid on or before said date, a 10% penalty shall be added to the bill and if said bill and penalty are not paid on or before the 20th day from and after the date of the mailing of the bills, water service shall be discontinued and disconnected and the Water District shall apply the water meter deposit hereinafter provided for against the unpaid bill and penalty charges and the balance due shall be collected by any customary and legal means available to the Water District. Subject to 807 KAR 5:006 Section 11 3a for nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cut-off shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer saying that, in the opinion of the person making the certification discontinuance of the service will aggravate an existing illness or infirmity, the affected premises, service shall be discontinued until the affected resident can make other living arrangements or until ten days elapse from the utility's notification.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

DATE OF ISSUE DECEMBER 12 1991
Month Day Year

DATE EFFECTIVE JANUARY 25 1992
Month Day Year

ISSUED BY James C. Porter
Name of Officer

CHAIRMAN HARTFORD, KY 42347

PURSUANT TO 807 KAR 5:011, SECTION 9 (1)

BY: George Salter
PUBLIC SERVICE COMMISSION MANAGER

C8-92

EXHIBIT D

FOR Ohio County

P.S.C. Ky. No. 2

Revised Sheet No. 7

Cancelling P.S.C. Ky. No. _____

Sheet No. _____

Ohio County Water District

RULES AND REGULATIONS

Bills will be dated and mailed on the 25th of each month. Bill will state that they are to be paid within ten days. If bills are not paid on or before said date, a 10% penalty shall be added to the bill. If bill and penalty is not paid on or before the 28th day of the mailing date of the original unpaid bill service will be disconnected and the district shall apply the water deposit hereinafter provided for against the unpaid bill. Penalty charges and the balance due shall be collected by any customary and legal means available pursuant to 807 KAR 5:006 Sections 8(3)(a) and 14(2).

The utility shall not discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay. The customer shall be given at least 5 days written notice, but the cut-off date shall not be effected before 27 days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer saying that, in the opinion of the person making the certification discontinuance of the service will aggravate an existing illness or infirmity, the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until 30 days elapse from the utility's termination date.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

AUG 16 1992

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)

BY: Sharon Datta
PUBLIC SERVICE COMMISSION MANAGER

DATE OF ISSUE 7 13 92
Month Day Year

DATE EFFECTIVE _____
Month Day Year

ISSUED BY Judy Harbaugh
Name of Officer

Asst. Office Mgr
Title

130 Washington /
Hartford Ky.
Address

8/92

EXHIBIT E

FOR Ohio County

P.S.C. Ky. No. 2

Revised Sheet No. 7

Cancelling P.S.C. Ky. No.

 Sheet No.

Ohio County Water District

RULES AND REGULATIONS

Bills will be dated and mailed on the 25th. of each month. Bill will state that they are to be paid by the 10th. of the following month. If bills are not paid on or before said date, a 10% penalty shall be added to the bill. If bill and penalty is not paid on or before the 28th. day of the mailing date of the original unpaid bill service will be disconnected and the district shall apply the water deposit hereinafter provided for against the unpaid bill. Penalty charges and the balance due shall be collected by any customary and legal means available pursuant to 807 KAR 5:006 Sections 8(3) (a) and 14 (2).

The utility shall not discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay. The customer shall be given at least 5 days written notice, but the cut-off date shall not be effected before 27 days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer saying that, in the opinion of the person making the certification discontinuance of the service will aggravate an existing illness or infirmity, the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until 30 days elapse from the utility's termination date.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

JUN 14 1998

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)

BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

DATE OF ISSUE <u>5</u> <u>11</u> <u>1998</u>			DATE EFFECTIVE _____		
Month	Day	Year	Month	Day	Year
ISSUED BY <u>Judy Harbaugh</u>			BY _____		
Name of Officer			PUBLIC SERVICE COMMISSION MANAGER		
<u>Asst Mgr.</u>			Title		
			<u>130 E. Washington</u>		
			Address		
			<u>Hartford, Ky. 42347</u>		

2/10/01

EXHIBIT F

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF OHIO COUNTY)
WATER DISTRICT TO INCREASE CERTAIN) CASE NO. 2001-010
NON-RECURRING CHARGES AND TO)
REVISE ITS TARIFF)

O R D E R

On January 10, 2000, Ohio County Water District ("Ohio County") applied for authority to increase certain non-recurring charges and to revise its tariff. Ohio County has provided adequate evidence of the individual expenses incurred to provide the services associated with the proposed charges.

The Commission, having reviewed the record and being sufficiently advised, finds that:

1. The proposed charges are equal to the expenses incurred to provide the associated services.
2. The charges and policies set forth in Appendix A to this Order are fair, just, and reasonable and should be approved.
3. The revised tariff meets the requirements and should be accepted.

IT IS THEREFORE ORDERED that:

1. The charges in Appendix A are approved for services rendered on and after the date of this Order.
2. The proposed tariff filed by Ohio County is approved as filed.

Done at Frankfort, Kentucky, this 26th day of February, 2001.

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2001-010 DATED FEBRUARY 26, 2001

The following rates, charges, and policies are prescribed for the customers in the area served by Ohio County Water District. All other rates, charges, and policies not specifically mentioned herein shall remain the same as those in effect under authority of the Commission prior to the effective date of this Order.

Special Non-Recurring Charges

Connection/Turn-on Charge	\$20.00
Connection/Turn-on Charge (after hours)	30.00
Field Collection Charge	20.00
Late Payment Penalty	10%
Meter Relocation Charge	Actual Cost
Meter Re-read Charge	20.00
Meter Test Charge	35.00
Reconnection Charge	40.00
Service Call/Investigation Charge	20.00
Service Call/Investigation Charge (after hours)	30.00
Leak Adjustment Rate	1.53 per thousand gallons

EXHIBIT G

FOR Ohio County, Kentucky
Community, Town or City

P.S.C. KY. NO. 1

Original SHEET NO. 7

CANCELLING P.S.C. KY. NO. _____

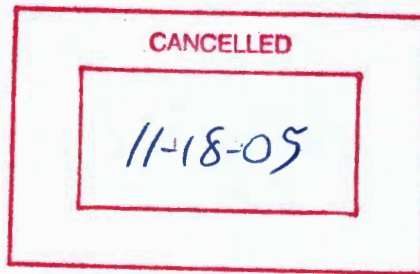
SHEET NO. _____

Ohio County Water District
(Name of Utility)

RATES AND CHARGES

D. SPECIAL NON-RECURRING CHARGES:

Connection/Turn-on Charge	\$20.00
Connection/Turn-on Charge (after hours)	\$30.00
Field Collection Charge	\$20.00
Late Payment Penalty	10%
Meter Relocation Charge	Actual Costs
Meter Re-read Charge	\$20.00
Meter Test Charge	\$35.00
Re-connection Charge	\$40.00
Re-connection Charge (after hours)	\$50.00
Returned Check Charge	\$10.00
Service Call/Investigation	\$20.00
Service Call/Investigation (after hours)	\$30.00



*NOTE---Regular working hours for the utility's Maintenance Staff is 8:00am to 4:00pm Monday through Friday, excluding holidays. Upon customer request, and subject to availability of Maintenance Staff, services may be performed outside regular working hours at the after hours rate.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

FEB 26 2001

PURSUANT TO 807 KAR 5.011,
SECTION 9(1)

BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

DATE OF ISSUE _____

DATE EFFECTIVE _____

Month / Date / Year

ISSUED BY Jim Porter
(Signature of Officer)

TITLE General Supt

ISSUED BY THE AUTHORITY BY AN ORDER OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY IN

CASE NO. _____ DATED _____

EXHIBIT H

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF OHIO COUNTY)
WATER DISTRICT TO REVISE CERTAIN)
NON-RECURRING CHARGES) CASE NO. 2005-00425

O R D E R

On October 13, 2005, Ohio County Water District ("Ohio County") applied for authority to revise certain non-recurring charges. Ohio County has provided adequate evidence of the individual expenses incurred to provide the services associated with the proposed charges.

The Commission, having reviewed the record and being sufficiently advised, finds that:

1. The proposed charges are equal to the expenses incurred to provide the associated services.
2. The charges set forth in the Appendix to this Order are fair, just, and reasonable and should be approved.

IT IS THEREFORE ORDERED that:

1. The charges in the Appendix are approved for services rendered on and after the date of this Order.
2. Within 20 days of the date of this Order, Ohio County shall file with the Commission signed revised tariff sheets showing the charges approved herein.

Done at Frankfort, Kentucky, this 18th day of November, 2005.

By the Commission

ATTEST:


Executive Director

Case No. 2004-00425

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2005-00425 DATED November 18, 2005

The following rates, charges, and policies are prescribed for the customers in the area served by Ohio County Water District. All other rates, charges, and policies not specifically mentioned herein shall remain the same as those in effect under authority of the Commission prior to the effective date of this Order.

Non-Recurring Charges

Connection/Turn-on Charge	\$ 35.00
Meter Re-read Charge	35.00
Meter Test Charge (5/8" Meter)	65.00
Meter Test Charge (1" Meter)	Actual Cost
Re-Connection Charge	65.00
Returned Check Charge	25.00
Service Call/Investigation	35.00
Service Call/Investigation (After Hours)	45.00

EXHIBIT I

FOR Ohio County, Kentucky
 Community, Town or City
 P.S.C. KY. NO. 1
 Original SHEET NO. 7
 CANCELLING P.S.C. KY. NO. 7
 New SHEET NO. 7

Ohio County Water District
 (Name of Utility)

CONTENTS

D. SPECIAL NON-RECURRING CHARGES:

Connection/Turn-on Charge	\$ 35.00
Meter Re-read Charge	35.00
Meter Test Charge (5/8" Meter)	65.00
Meter Test Charge (1" Meter)	Actual Cost
Re-Connect Charge	65.00
Returned Check Charge	25.00
Service Call/Investigation	35.00
Service Call/Investigation (After Hours)	45.00

NOTE---Regular working hours for the utility's Maintenance Staff is 8:00 am to 4:00 pm Monday through Friday, excluding holidays. Upon customer request, and subject to availability of Maintenance Staff, services may be performed outside regular working hours at the after hours rate.

DATE OF ISSUE _____
 Month / Date / Year
 DATE EFFECTIVE _____
 Month / Date / Year
 ISSUED BY [Signature]
 (Signature of Officer)
 TITLE Chairman
 BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
 IN CASE NO. _____ DATED _____

**PUBLIC SERVICE COMMISSION
 OF KENTUCKY
 EFFECTIVE
 11/18/2005
 PURSUANT TO 807 KAR 5:011
 SECTION 9 (1)**

By [Signature]
 Executive Director

EXHIBIT J

COMMONWEALTH OF KENTUCKY))
) SS:
COUNTY OF OHIO))

AFFIDAVIT OF WALT BEASLEY

Walt Beasley, being duly sworn, states:

1. I am the General Manager of Ohio County Water District (“Ohio District”) and have held that position since July 2001.

2. On October 13, 2005, Ohio District applied to the Kentucky Public Service Commission (“the Commission”) to increase certain non-recurring charges. In its application, Ohio District did not request any change or revision to its late payment penalty. When preparing its application, Ohio District requested assistance from the Kentucky Rural Water Association (“KRWA”). KRWA personnel were primarily responsible for calculating the cost of the non-recurring services at issue and preparing the application.

3. On November 18, 2005, the Commission in Case No. 2005-00425 approved the proposed charges and directed Ohio District to submit within 20 days a revised tariff sheet showing the approved charges.

4. To prepare the revised tariff sheet, Ohio District relied upon KRWA personnel. On December 8, 2005, Ohio District filed with the Commission a Revised Sheet No. 7 that listed the approved charges. Revised Tariff Sheet No. 7 was intended to replace the existing version of Sheet No. 7, which Ohio District had filed with the Commission in 2001. Revised Tariff Sheet No. 7 omitted the following charges listed on the 2001 version of the tariff sheet: Field Collection Charge, Late Payment Penalty, Meter Relocation Charge, and Re-Connection Charge (After Hours). The omission was inadvertent and not intentional. At no point did Ohio District intend to discontinue these charges. Until the issuance of the Commission’s Order of December 3, 2020, Ohio District was unaware that the amount of the late payment penalty was no longer listed in its filed tariff.


WALT BEASLEY

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 28th day of December 2020.


Notary Public

My Commission Expires: 10/2/2022

Notary ID: 6088802

EXHIBIT K

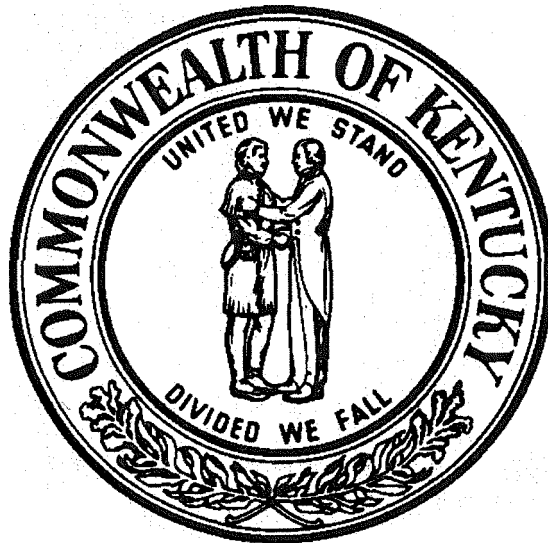
**2006
KENTUCKY
ADMINISTRATIVE
REGULATIONS
SERVICE**

VOLUME 9

RECEIVED
OCT 16 2006

BY:.....

STOLL KEENON OGDEN
Lexington, Kentucky



**Containing Kentucky Administrative Regulations
In Effect as of July 15, 2006**

Legislative Research Commission

TITLE 807, CHAPTER 5 - UTILITIES

(c) By publication in a periodical distributed to all members of the cooperative; and

(8) A copy of the notice given pursuant to subsection (7) of this section.

Section 2. To change rates to reflect an increase or decrease in its wholesale supplier's rates, a distribution cooperative shall file with the commission an original and five (5) copies, and with the Attorney General's Office of Rate Intervention one (1) copy, of the following information:

(1) The tariff incorporating the new rates and specifying an effective date no sooner than the effective date of the wholesale supplier's rate change; and

(2) The information required by Section 1(2) through (8) of this administrative regulation.

Section 3. Contents of Notice. Notice given pursuant to Section 1(7) of this administrative regulation shall include the following information:

(1) The name, address, and phone number of the cooperative;

(2) The existing rates and the revised rates for each customer class;

(3) The effect of the rate change, stated both in dollars and as a percentage, upon the average bill for each customer class;

(4) A statement, as appropriate, that:

(a) The rate reduction is being made at the sole discretion of the utility, pursuant to KRS 278.455(1); or

(b) The rates are being revised to reflect a change in wholesale rates pursuant to KRS 278.455(2); and

(5) A statement that a person may examine the rate application at the main office of the utility or at the office of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky. (25 Ky.R. 2989; Am. 26 Ky.R. 385; eff. 8-20-99.)

807 KAR 5:011. Tariffs.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

Section 1. Definitions. For purpose of this administrative regulation: "Commission" means the Public Service Commission.

Section 2. General. All utilities under the jurisdiction of the commission shall file with the secretary two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and administrative regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and administrative regulations, the utility's office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.

Section 3. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.

(2) The pages of a tariff shall be eight and one-half (8 1/2) by eleven (11) inches in size.

(3) Utilities shall publish tariffs in loose-leaf form using one (1) side of the paper only, with not more than one (1) schedule to the page.

(4) The front cover page of a tariff shall contain the following:

(a) Name of the utility and location of principal office.

(b) Statement of kind of service offered.

(c) General statement of territory served.

(d) Date of issue and date tariff is to become effective.

(e) Signature of the officer of the utility authorized to issue tariffs.

(f) Identifying designation in the upper right-hand corner as required by Section 5 of this administrative regulation.

(5) The second and succeeding pages shall contain:

(a) All the rules and administrative regulations of the utility.

(b) Rate schedules showing all rates and charges for the several classes of service.

(c) Signature of the officer of the utility authorized to issue tariffs.

(d) Date of issue and date tariff is to become effective.

(e) Identifying designation in upper right-hand corner as required by Section 5 of this administrative regulation.

(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:

(a) Applicable: show territory covered by tariff.

(b) Availability of service: show classes of customers affected, such as domestic, commercial, etc.

(c) Rates: list all rates covered by tariff.

(d) Minimum charge: state amount of charge and quantity allowed.

(e) Delayed payment charge: state if penalty or discount.

(f) Term: if contracts are made for certain periods, give length of term.

(g) Special rules: if any special rules and administrative regulations are in effect covering this tariff, list same hereunder.

(7) The secretary of the commission will furnish standard forms of tariffs on request.

Section 4. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communities must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of _____, or see Tariff Sheet No. 2B for applicability.)

(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)

(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)

(4)(a) Each page of the tariff shall bear the Commission Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper right-hand corner, a further designation, such as "Original Sheet No. 1," "Original Sheet No. 2," etc.

(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.

(c) Tariffs may be further divided into sections, and so designated if required by their size and contents.

(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.

Section 5. Designation of Tariffs. All tariffs must bear in the upper right-hand corner of the front cover page the commission number thereof. Subsequent tariffs filed as provided by Sections 6 and 9 of this administrative regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the commission number of the tariff cancelled, changed or modified by it.

Section 6. Change or Withdrawal of Rate Schedules Administrative Regulations. (1) No tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9 of this administrative regulation.

(2)(a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:

- (C) To signify changed administrative regulation.
- (D) To signify discontinued rate, administrative regulation or test.
- (I) To signify increase.
- (N) To signify new rate and/or new test.
- (R) To signify reduction.
- (T) To signify a change in text.

(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.

(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.

(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:

(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 7 of this administrative regulation.

(b) By issuing and filing on at least twenty (20) days' notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 9 of this administrative regulation.

(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this administrative regulation. Such revisions must be identified as required herein.

Section 7. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and administrative regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "Issued by authority of an order of the Public Service Commission in Case No. _____ dated _____, 19____."

Section 8. Notices. Notices shall be given by the utility in the following manner:

(1) Advance notice, abbreviated newspaper notice. Utilities with gross revenues greater than \$1,000,000 shall notify the commission in writing of Intent to File Rate Application at least four (4) weeks prior to filing. At or about this time application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon which may be used to obtain a copy from applicant of the full schedule of increases or rate changes.

(2) Notice to customers of proposed rate changes. If the applicant has twenty (20) or fewer customers, typewritten notice of the proposed rate changes and the estimated amount of increase per customer class shall be placed in the mail to each customer no later than the date on which the application is filed with the commission and, in addition, a sheet shall be posted at its place of business containing such information. Except for sewer utilities which must give a notice by mail to all of their customers pursuant to KRS 278.185, all applicants with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at their place of business and, in addition, notice thereof:

(a) Shall be included with customer billings made on or before the application is filed with the commission; or

(b) Shall be published by such date in a trade publication or newsletter going to all customers; or

(c) Shall be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in their service area, the first publication to be made prior to the filing of the application with the commission. Each such notice shall contain the following language:

The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such

action may result in rates for consumers other than the rates in this notice.

(3) Notice as to intervention. The notice made in compliance with subsection (2) of this section shall include a statement to the effect:

(a) That any corporation, association, body politic or person may by motion within thirty (30) days after publication or mailing of notice of the proposed rate changes request leave to intervene;

(b) That the motion shall be submitted to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, and shall set forth the grounds for the request including the status and interest of the party; and

(c) That intervenors may obtain copies of the application and testimony by contacting the applicant at a name and address to be stated in the notice. A copy of the application and testimony shall be available for public inspection at the utility's offices.

(4) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. If notice is given by subsection (2)(a) or (b) of this section and if the notice contains a clear and concise explanation of the proposed change in the rate schedule applicable to each customer, no notice under Section 2 of 807 KAR 5:051 shall be required. Otherwise, such notice shall be given.

(5) Notice of hearing. Where notice pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of hearing.

(6) Extensions of time. Applications for extensions of time shall be made to the commission in writing and will be granted only upon a showing of compelling reason.

Section 9. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and administrative regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and administrative regulations under KRS 278.190.

(2) All information and notice required by these rules shall be furnished to the commission at the time of the filing of any proposed revisions in rates or administrative regulations, and the twenty (20) days' statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed if the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor.

Section 10. Nonrecurring Charges. Nonrecurring charges are charges to customers due to a specific request for certain types of service activity for which, when the activity is completed, no additional charges may be incurred. Such charges are intended to be limited in nature and to recover the specific cost of the activity. Nonrecurring charges include reconnection charges, late payment fees, service order changes and hook-on or tap fees. This section allows a utility to seek a rate revision for a nonrecurring charge outside a general rate proceeding. In addition to the specific information required pursuant to the above sections, the following information must be submitted to the commission when a utility makes a filing to increase miscellaneous or nonrecurring service charges outside a general rate case:

(1) Each requested rate revision must be accompanied by:

(a) A specific cost justification for the proposed rates and a full description of the equipment or service provided under tariff (807 KAR 5:001, Section 6(2)(c)). The proposed rates should at least cover incremental costs, and a reasonable contribution to overhead. Incremental costs are defined as those costs which would be specifically incurred in the provision of this service.

(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation. In addition to the notice requirements contained in Section 8 of this administrative regulation, the utility shall also mail a copy of its filing to the Attorney General's Con-

TITLE 807, CHAPTER 5 - UTILITIES

sumer Protection Division. The Attorney General will then have ten (10) days to notify the commission in writing if it requests a hearing in a particular case.

(c) A detailed statement explaining why the proposed changes could not have been included in the most previous general rate case, and why current conditions prevent deferring the proposed changes until the next general rate request.

(d) An impact statement identifying the group of customers affected by the proposed tariff. The impact statement shall identify potential as well as existing customers.

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period.

(2) If the additional revenue to be generated from the proposed tariff revisions exceeds by five (5) percent the total revenues provided by all miscellaneous and nonrecurring charges for a recent twelve (12) month period, the utility must file, in addition to the information set out in subsection (1)(a) of this section, the following: An absorption test showing that the additional net income generated by the tariff filing will not result in an increase in the rate of return (or other applicable valuation methods) to a level greater than that which was allowed in the most recent rate case. Any general rate increases received during the twelve (12) month period must be annualized. Any significant cost changes may be included but must be documented as part of the filing.

(3) No more than two (2) such tariff filings under this procedure shall be made between general rate cases. Additional tariff filings for nonrecurring charges will be processed according to general rate case procedures.

When these requirements are met, such a filing may be made by letter with supporting documentation and will not require the information normally required pursuant to the commission's general rate case administrative regulation, 807 KAR 5:001, Section 9.

Section 11. Change of Ownership; Adoption Notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and administrative regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making its own all rates, rules, classifications and administrative regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.

(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.

(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with Public Service Commission Adoption Notice No. 1.

(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Sections 2 through 5 of this administrative regulation with proper identifying designation. (Example: Public Service Commission No. 1 cancels Public Service Commission Adoption Notice No. 1.)

(5) Within ten (10) days after the filing of an adoption notice, as required by subsection (2) of this section, by a public utility which then had other tariffs on file with the commission said utility shall issue and file in its own name rate schedules and administrative regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and administrative regulations of the predecessor utility then in effect and adopted by it, or such other rates and administrative regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, Public Service Commission, No. 11, cancels Original Sheet No. 2A, also cancels Public Service Commission Adoption Notice No. 6; or Public Service Commission No. 12 cancels Public Service Commission No.

11, also cancels Public Service Commission Adoption Notice No. 6.)

(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and administrative regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and administrative regulations of the predecessor utility, such tariff or revision shall be subject to Sections 9 and 10 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations and Statutes. Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:

(1) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and administrative regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.

(2) Copies of the Kentucky Revised Statutes applicable to the utility.

(3) A copy of the administrative regulations governing such utility adopted by the commission.

(4) A suitable placard, in large type, giving information to the public that said tariffs, rules and administrative regulations and statutes are kept there for public inspection.

Section 13. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this administrative regulation applicable to tariffs containing rates, rules and administrative regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

Section 14. Deviations from Rules. In special cases, for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

Section 15. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:

- (1) Form of cover sheet for tariffs.
- (2) Form for filing rules and administrative regulations.
- (3) Form for filing rate schedules.
- (4) Form of certificate of notice to the public of change in tariff where no increase of charges results.
- (5) Form of certificate of notice to the public of change in tariff which results in increased charges.
- (6) Form of adoption notice.

FORM OF COVER SHEET FOR TARIFFS

P.S.C. NO. _____

CANCELS P.S.C. NO. _____

(NAME OF COMPANY)

(LOCATION OF COMPANY)

Rates, Rules and Administrative Regulations for Furnishing
(SERVICE RENDERED)

at

(LOCATION SERVED)

FILED WITH PUBLIC SERVICE COMMISSION
OF KENTUCKY

Issued _____, 19__ Effective _____, 19__

Issued by: (Name of Utility)

By:

FORM FOR FILING RULES &
ADMINISTRATIVE REGULATIONS
(Page 2 of Tariff)

Name of Utility:

TITLE 807, CHAPTER 5 - UTILITIES

RULES & ADMINISTRATIVE REGULATIONS

To the Public Service Commission, Frankfort, Ky.

Date of Issue:
Effective Date:

Issued by:

Name:
Title:

FORM FOR FILING RATE SCHEDULES
(Page 3 of Tariff)

For: (Community, Town or City)
P.S.C. NO.:
(Original) Sheet No.
(Revised)

Name of Issuing Corporation:
Cancelling P.S.C. No.:
(Original) Sheet No.
(Revised)

CLASSIFICATION OF SERVICE

APPLICABLE: (Show territory covered by tariff.)
AVAILABILITY OF SERVICE: (Show classes of customers affected, such as domestic, commercial, etc.)
RATES: (List all rates covered by tariff.)
MINIMUM CHARGE: (State if penalty or discount.)

DATE OF ISSUE: (Month, Day, Year)
DATE EFFECTIVE: (Month, Day, Year)
ISSUED BY: (Name of Officer, Title, Address)
ISSUED BY AUTHORITY OF P.S.C. ORDER NO.:

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC OF CHANGE IN TARIFF WHERE NO INCREASE OF CHARGES RESULTS
(2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing (Kind of Service) _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19____, issued *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____, to become effective _____, 19____, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:

On the _____ day of _____, 19____, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.

I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges to any customer.

Given under my hand this _____ day of _____, 19____.
Address:

*If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as _____ Revision of Original Sheet No. _____ P.S.C. No. _____, cancelling _____ P.S.C. Adoption Notice No. _____.

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC OF CHANGE IN TARIFF WHICH RESULTS IN INCREASED RATES
(2 Copies Required)

Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19____, issued its *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____ to become effective _____, 19____, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:

On the _____ day of _____, 19____, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.

**On the _____ day of _____, 19____, typewritten or printed notice of the proposed rates or administrative regulations was mailed to each of the _____ customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.

Given under my hand this _____ day of _____, 19____.
Address:

*If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as Revision of Original Sheet No. _____ P.S.C. No. _____, or Original Sheet No. _____ P.S.C. No. _____ cancelling _____ P.S.C. Adoption Notice No. _____.

**If Notice is given by publication as provided in Section 8, use the following:

That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the _____ day of _____, 19____, there was delivered to the _____, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior to the effective date of said change, a notice of the proposed rates or administrative regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in accordance with Section 9(2), of said administrative regulation.

FORM OF ADOPTION NOTICE
P.S.C. Adoption Notice No.
ADOPTION NOTICE

The undersigned (Name of Utility) _____ of _____ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements containing rates, rules and administrative regulations for furnishing (Nature of Service) _____ service at _____ in the Commonwealth of Kentucky, filed with the Public Service Commission by (Name of Predecessor) _____ of _____, and in effect on the _____ day of _____, 19____, the date on which the public service business of the said (Name of Predecessor) _____ was taken over by it.

This notice is issued on the _____ day of _____, 19____, in conformity with Section 10 of P.S.C. Tariff administrative regulations adopted by the Public Service Commission.

By:
(8 Ky.R. 797; Am. 1148; eff. 6-2-82; 11 Ky.R. 69; eff. 8-4-84.)

EXHIBIT L

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-002132-MR

CITY OF RUSSELLVILLE, KENTUCKY

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 02-CI-01177

PUBLIC SERVICE COMMISSION
OF KENTUCKY;
EAST LOGAN WATER DISTRICT,
INCORPORATED; AND
NORTH LOGAN WATER DISTRICT

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, GUIDUGLI AND McANULTY, JUDGES.

GUIDUGLI, JUDGE: The City of Russellville appeals from an opinion and order of the Franklin Circuit Court affirming a final order of the Kentucky Public Service Commission. The Public Service Commission's order voided a rate increase on the sale of water by Russellville to various water districts. For the reasons stated herein, we affirm the opinion and order of the Franklin Circuit Court.

The City of Russellville provides water service to local retail customers and to several water districts. On May 24, 1999, the city council of Russellville passed an ordinance seeking to increase its water and sewer service rates. On March 20, 2001, it filed a cost-of-service study with the Public Service Commission ("PSC") for the purpose of justifying a rate increase from \$1.55 to \$2.45 per 1,000 gallons of water sold. The water districts to which Russellville sold water received a copy of the study and a letter advising them of the proposed change.

On April 23, 2001, the PSC sent to Russellville a letter acknowledging receipt of the study. The letter included a copy of the study stamped with language indicating that the rate increase had been approved. A subsequent e-mail from the PSC to Russellville confirmed that Russellville was authorized to implement the proposed rate increase on or after April 21, 2001.

On July 9, 2001, the water districts filed a complaint with the PSC alleging that Russellville failed to comply with PSC regulations for rate increases. They also alleged that the proposed rate was violative of the parties' contract and did not represent the actual cost of service. Pending resolution of the complaint, the water districts established an escrow account into which the proposed increase was paid. On October 5, 2001,

the PSC rendered an order stating that "it appears that Russellville's April 21, 2001 rate increase is filed pursuant to KRS 278.180."

On July 3, 2002, the PSC rendered a final order voiding the \$2.45 rate. As a basis for the order, the PSC opined that Russellville failed to comply with KRS 96.355(1)(a), which it interpreted as requiring Russellville to enact an ordinance or otherwise approve the rate before filing a rate change (the "ordinance theory").

Russellville appealed to the Franklin Circuit Court. Upon taking proof, the court concluded that the PSC improperly interpreted KRS 96.355(1)(a) as requiring a city to follow specific procedural guidelines before filing for a rate change. It went on to find unlawful the PSC's requirement that Russellville enact an ordinance precisely identifying the proposed rate increase before applying for the increase, since no PSC regulation exists which requires this action. However, the circuit court affirmed the final order of the PSC based upon several other legal reasons which will be addressed below. This appeal followed.

Russellville argues that the trial court erred in affirming the PSC's order voiding the rate increase. While noting that the trial court properly found the PSC's "ordinance theory" to be unsupported by the law, it argues that the court

incorrectly concluded that the water districts were denied due process of law. Russellville also maintains that the new rate became effective on April 21, 2001, and cannot be changed retroactively by the PSC. In support of this argument, it points to the "filed rate doctrine", which precludes a collateral attack on rates filed with a regulatory agency. It seeks an order reversing the order of the Franklin Circuit Court and finding the April 21, 2001, rate to be effective until it was lawfully replaced by another rate on July 3, 2002.

Having closely examined the record and the law, we find no basis for reversing the order of the Franklin Circuit Court. On Russellville's first claim of error, i.e., that the trial court erred in concluding that the water districts were denied due process of law, we find no error. The trial court found that Russellville failed to comply with the notice provisions of KRS 278.180 and 807 KAR 5:011(8), and that these violations resulted in harm to the water districts because they apparently did not believe that \$2.45 per 1,000 gallons was the filed rate.

KRS 278.180 states,

(1) Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its

discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.

(2) The commission, upon application of any utility, may prescribe a less time within which a reduction of rates may be made.

807 KAR 5:011 also sets forth a number of notice requirements, including the requirement that the districts receive notice of their right to intervene before the PSC to challenge the proposed rate.

The circuit court concluded that Russellville's notice to the water districts was not adequate and did not comport with the statutory and regulatory requirements. This conclusion is presumptively correct, and the burden rests with Russellville to overcome it. City of Louisville v. Allen, Ky., 385 S.W.2d 179 (1964). They have not met this burden. Though they cite to minutes of meetings indicating that the districts were aware of the possibility of a rate change, and contend that any statutory and regulatory violations were minor oversights, they do not direct out attention to anything in the record upon which we may conclude that the circuit court erred in determining that the statutory and regulatory notice requirements were not satisfied.

And as the PSC properly notes, Russellville makes no claim that it filed the requisite information. As such, we find no error on this issue.

Russellville also argues that the rate approved by the PSC to be effective on April 21, 2001, was at all relevant times the "filed rate" and could not be changed retroactively by the PSC. It maintains that in June, 2001, the PSC accepted a formal tariff setting forth this rate, and that its October 5, 2001, order recognized that the rate was the filed rate for the service. Russellville relies on the filed rate doctrine, which precludes a collateral attack on rates filed with a regulatory agency. It argues that this doctrine requires a rate challenge to have effect, if at all, prospectively and not retroactively. It argues that the PSC had no legal basis for its July 3, 2002, final order voiding the \$2.45 rate, since the new rate already was final and therefore not subject to retroactive change.

Having thoroughly reviewed this matter and especially, the oral arguments presented herein, it is obvious that the PSC and its employees are primarily responsible for the dilemma we find here. Russellville failed to comply with statutory and regulatory notice requirements. But the PSC erred in giving Russellville the perception that its proposed rate increase would be certified and would become the "filed rate." The PSC tariff review branch erred in issuing the April 21, 2001, letter which

indicated "an accepted copy [of Contract filing No. C 62-6416 of wholesale rate increase to the districts] is enclosed for your files" because the letter also indicated that the "file tariff" pages setting out the rates to be charged to the districts were not attached. Without the "file tariff" pages enclosed, Russellville had failed to comply with the statutory and regulatory notice requirement and its proposed rate increase could not be approved. The PSC compounded its error by issuing the October 5, 2001, order which stated in relevant part:

Upon review of the record, it appears that Russellville's April 21, 2001 rate increase is the filed rate pursuant to KRS 278.160. Moreover, even if the technical notice requirements upon which [the water districts] rely apply to a city, failure to comply with them would not render a rate unfair, unjust, and unreasonable. Nevertheless, because [the water districts] object to the rate itself, as well as to the form of the notice they received, the disputed amounts should not at this time be paid directly to Russellville, particularly as it has suggested the creation of an escrow account. (Emphasis added).

Russellville maintains that once the PSC accepted and approved its request as the "filed rate", then nothing could be done to retroactively invalidate that rate. It relies heavily on Chandler v. Anthem Ins. Companies, Inc., 8 S.W.3d 48 (Ky.App., 1999), to argue that once a rate becomes the filed rate then that rate is not subject to collateral attack or retroactive change even if procured by unfair, false, misleading

or deceptive practices. In the Anthem case, this Court defined filed rate and explained some of its history as follows:

The insurance companies maintain that, even if the Attorney General's allegations are true, the "filed rate doctrine" shields them from liability. In general terms, the filed rate-or filed tariff-doctrine provides that tariffs duly adopted by a regulatory agency are not subject to collateral attack in court. This preclusion is said to ensure both that regulatory rates are nondiscriminatory (rate-payers who bring suit will not obtain rates more favorable than those who do not), and that the agency's "primary jurisdiction" in the area of its expertise is upheld. Woodland Ltd. v NYNEX Corp., [27 F.3d 17 (2nd Cir. 1999)]. The doctrine received one of its earliest expressions in Keogh v. Chicago & Northwestern Ry., 260 U.S. 156, 43 S.Ct. 47, 67 L.Ed. 183 (1922). In that case, a Minnesota manufacturer and shipper sought damages from an association of railroads for having collusively set excessive shipping fees in violation of the antitrust laws. The Supreme Court ruled that, even if the alleged conspiracy could be proved, the shipper had no cause of action for damages because the Interstate Commerce Commission had approved the allegedly excessive rates and had determined them to be reasonable and non-discriminatory. To recognize the plaintiff's claim, Justice Brandeis explained, would require a court to second-guess the Commission and would thus tend to undermine the regulatory scheme adopted by Congress.

The legal rights of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate, as between carrier and

shipper. The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier.

Keogh v. Chicago & Northwestern Ry., supra, at 163, 43 S.Ct. at 49, 67 L.Ed. 183 at (citation omitted). The purpose of the field rate doctrine, in other words,

Is to preserve the authority of the legislatively created agency to set reasonable and uniform rates and to insure that those rates are enforced, thereby preventing price discrimination.

Sun City Taxpayers' Association v. Citizens Utilities Company, 847 F.Supp. 281, 288 (1994) (citations omitted).

The filed rate doctrine, therefore,

Prohibits a ratepayer from recovering damages measured by comparing the filed rate and the rate that might have been approved absent the conduct in issue.

Id. at 288.

. . .

We agree with the appellees that the filed rate doctrine although not heretofore applied in Kentucky by name, has nevertheless been recognized in Kentucky in principle. See Boone County Sand and Gravel Company, Inc. v. Owen County Rural Electric Cooperative Corporation, Ky.App., 779 S.W.2d 224 (1989) (holding that the appellant was liable for undercharges based upon the filed rate despite the appellee's apparent negligence in not charging the correct amount); see also Big Rivers Electric Corporation v. Thorpe, 932 F.Supp. 460, 464-65 (W.D.Ky.1996) (noting in the context of

regulated utilities, that Kentucky's statutory and case law "clearly set[s] forth the underlying principles of the filed rate doctrine ...").

Anthem, 8 S.W.3d at 51-53. The Anthem Court concluded that the filed rate doctrine bars ratepayers from seeking damages for approved but allegedly improper rates.

We believe the real issue herein is whether or not Russellville's proposed rate increase became the filed rate. If it did, then the districts are bound by it even though it was improperly granted by the PSC. But our review does not lead us to the conclusion that the proposed rate actually became the filed rate.

The April 21, 2001, letter clearly states that the filed tariff pages setting out the rates to be charged was not attached. The statutory and regulatory scheme requires the tariff pages to be included for any increase request. Thus, we deem the April 21, 2001, letter as notice that the rate increase would be accepted if and when Russellville complied with all mandatory regulations. Also, the October 5, 2001, order does not state that the April 21, 2001, rate increase is the filed rate pursuant to KRS 278.160, but only that it appears to be such. By using the word "appears" the order has no binding effect in effectuating the filed rate. We believe the use of the word "appears" clearly reflects the PSC admission of its

mistake in issuing the letter prior to receiving the filed tariff pages and prior to Russellville's full compliance with the applicable laws and regulations. While we acknowledge that the PSC and not Russellville caused this regrettable situation in which either Russellville or the districts will suffer a substantial economic loss, we believe Russellville's failure to comply with its statutory and regulatory obligations and its failure to file the required tariff pages cannot be ignored. Had Russellville filed the necessary tariff pages with its application and then the PSC issued the April 21, 2001, letter without additional conditions to be fulfilled, the result would have been different.

For the foregoing reasons, we affirm the opinion and order of the Franklin Circuit Court affirming the final order of the Kentucky Public Service Commission.

ALL CONCUR.

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