

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF HYDEN-) CASE NO. 2021-00071
LESLIE COUNTY WATER DISTRICT)

APPLICATION FOR REHEARING

Hyden-Leslie County Water District (“Hyden-Leslie District” or “the District”) applies for rehearing of certain matters contained in the Order of August 4, 2021 (“the Order”). More specifically, it seeks rehearing on (1) the striking of Rule 9.d; (2) the replacement of Rule 11.j (Meter Placement) with a Commission substitute; (3) the striking of portions of application for service; and (4) the striking of Rule 3.b.

Rule 9.d – Denial of Service to Persons Residing with Former Customer

Rule 9.d sought to prevent households from evading their financial responsibilities by having different adult household members who benefited from the previous unpaid water service apply for water service in lieu of a delinquent customer who incurred an unpaid debt with the District for water service, is residing with new applicant, and will benefit from the requested service. 807 KAR 5:006, Section 15(1)(d) permits a water utility to refuse service to an applicant with an outstanding indebtedness for water service as a means to collect delinquent bills.¹ This right of refusal can be rendered meaningless if another adult member of the same household – a person who had not previously contracted for water service with the District and whose is acting on behalf of or in concert with the delinquent customer – applies for water service to the same household.

¹ “[A] utility shall not be required to furnish new service to a person contracting for service who is indebted to the utility for service furnished or other tarified charges until that person contracting for service has paid his indebtedness.”

Rule 9.d sought to end this practice by extending financial responsibility for the outstanding debt for water service to the adult members of household for purposes of 807 KAR 5:006, Section 15(1)(d). Liability for the outstanding indebtedness could be impute to an applicant and service denied if: (1) the applicant lived in the delinquent customer’s household when was service was discontinued for nonpayment; (2) the applicant must have been at least 18 years of age (and thus had the legal capacity to contract) at the time the unpaid service was provided to the delinquent customer’s household and the applicant received the benefit of the water service; and (3) the delinquent customer must be residing in the applicant’s household for which water service has been requested. The District intended to use the proposed rule **solely as a basis to deny service** and had no intention of using the proposed rule as the basis for legal action against household members who had not executed a written agreement for water service.

In the Order, the Commission found the proposed regulation “too ambiguous and potentially too far-reaching in the ability to deny service for persons who are not acting as an agent for a delinquent customer and the ability to hold those persons responsible for past due balances.”² It referred to the lack of “any proof of agency in order to hold a person liable for past-due balances” as a serious defect in the proposed rule.³

In light of the Commission’s concerns, Hyden-Leslie District proposes to revise Rule 9.d as follows:

Service will not be supplied or continued to any premises if at the time of application for service the Applicant is merely acting as an agent of a present or former customer who is indebted to the District for service previously supplied at the same or other premises until payment of such indebtedness shall have been made. Absent evidence to the contrary, an applicant will be presumed to be agent of a former customer if (1) the applicant lived in the customer’s household when was service was discontinued for nonpayment; (2) the applicant was at least 18 years of age at the time the unpaid

² Order at 4.

³ *Id.*

service was provided to the former customer's household and the applicant received the benefit of the service; and (3) the former customer is residing in the premises for which the applicant is requesting water service.

The revised rule will not extend legal liability for unpaid service to members of a delinquent customer's household or serve as the basis for any legal collection action against any household member.

The revised rule permits the District to refuse service based upon a delinquent customer's indebtedness only if an applicant is acting as an agent for the delinquent customer. The District must have sufficient evidence to reasonably conclude that an agency relationship exists to deny service. As it relates to members of a delinquent customer's household, the revised rule establishes stringent conditions under which an agency relationship can be presumed to exist. This presumption, however, is rebuttable and must be considered in light of any evidence to the contrary.⁴

The revised rule is consistent with prior Commission decisions holding a delinquent customer's indebtedness debt may serve as the basis for denial of an application for service by a member of the delinquent customer's household. For example, in Case No. 10233,⁵ the Commission applied an electric cooperative's tariffed rule that provided that "[i]f an application is received by a person residing with a delinquent member at the premises where power was supplied to the delinquent member, the application will be denied on the grounds that the applicant

⁴ Moreover, the District's action is not dispositive. If service is denied, an applicant can file a complaint with the Commission. In this manner, the proposed rule is no different from those that the Commission referred to in its Order that permitted denial if the utility determined an applicant was acting as an agent for a former customer.

⁵ *Walter Callihan and Goldie Callihan v. Grayson Rural Electric Cooperative Corporation*, Case No. 10233 (Ky. PSC May 1, 1989) at 10.

is applying as the agent of the delinquent member” to deny service to a delinquent customer’s spouse.⁶ Several utilities currently have similar provisions in their tariffs.⁷

The Commission recently observed that “many [smaller] utilities merely give up on amounts owed and make little attempt to recover the monies”⁸ and has expressed concerns about Hyden-Leslie District’s accrual of bad debt expense and write-off practices.⁹ In response to the Commission’s statements, Hyden-Leslie District proposed Rule 9.d to more aggressively pursue and collect unpaid debts. It has revised that rule to add the concerns expressed in the Order but still permit its use to bad debts. It requests approve revised Rule 9.d to provide the District with a tool to reduce its level of bad debts.

Replacement of Rule 11.j – Meter Placement

In the Order, the Commission struck Rule 11.j, which addressed the placement of water meters, and substituted a requirement that Hyden-Leslie District install individual pumps on the customer’s side of a meter if water service cannot be provided at a pressure of 30 pounds per square inch (“psig”) to an applicant for service or existing customer. In mandating this action, the Commission not only misconstrued the purpose of the proposed rule but acted contrary to KRS 278.030 and KRS 278.280. Furthermore, the substitute rule appears to conflict with Kentucky Division of Water (“KDOW”) regulations and, if followed, would subject the District to administrative action from the Department of Environmental Protection.

Proposed Rule 11.j provides that “[n]o meter shall be located on a customer’s service line at a point that does not deliver a minimum pressure of 30 pound per square inch at the meter point.”

⁶ *Id.* at 2, fn. 2.

⁷ *See, e.g.*, Tariff of Blue Grass Energy Cooperative Corp. PSC KY No. 1a, Original Sheet No. 1a (Eff. Sep. 1, 2010); Tariff of Farmers Rural Electric Cooperative Corporation. PSC KY No. 10, Original Sheet No. 10.001 (Eff. Apr. 4, 2018) Tariff of Salt River Electric Cooperative Corporation, P.S.C. No. 12, Original Sheet No. 13 (Eff. Sep. 1, 2010); Tariff of Shelby Energy Cooperative, Inc. PSC KY No. 9, Original Sheet No. 205 (Eff. Oct. 1, 2013).

⁸ *Emergency Docket Related to COVID-19*, Case No. 2020-00085 (Ky. PSC Sept. 21, 2020) at 12.

⁹ *Electronic Application of Hyden-Leslie County Water District for An Alternative Rate Adjustment*, Case No. 2020-00141 (Ky. PSC Nov. 7, 2020) at 23.

It sets a minimum standard for locating the delivery point of service. 807 KAR 5:066, Section 12(2) requires a utility to consult with a customer prior to the installation of the meter “as to the most practical location.”¹⁰ The proposed rule merely places applicants and existing customers on notice of the limitations on a meter’s placement.

The record does not support the Commission’s conclusion that Rule 11.j concerns “limiting the provision of service.”¹¹ The proposed rule merely specifies the range of locations on the customer’s service at which a customer may request its meter be located. It does not address Hyden-Leslie District’s obligation to extend service or grant a right to deny service to any applicant or customer. Rule 11.j cannot serve as a basis for the denial of service. The rule’s sole purpose is to ensure compliance with 807 KAR 5:066, Section 5(1), which provides that “[i]n no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig.”

The proposed rule is not intended to avoid the District’s statutory obligation¹² to make reasonable extensions of service within its territory. Hyden-Leslie District has acknowledged in this proceeding its statutory obligation to make reasonable extensions of service, as well as its obligation to take all necessary actions to it provides water service a pressure of no less than 30 psig.¹³ The District has also recognized the possibility of its denial of a request for an extension of service if it cannot provide water service to an applicant within the pressure requirements of 807 KAR 5:066, Section 5 and the measures necessary to provide service within those

¹⁰ See also Proposed Tariff, Rule 11.b.

¹¹ Order at 4.

¹² See, e.g., *City of Bardstown v. Louisville Gas & Elec. Co.*, 383 S.W.2d 918, 920 (Ky.1964) (“We conceive that the duty of a public utility under the general public utility statutes is to render adequate, efficient and reasonable service . . . within the scope or area of service provided for in its certificate of convenience and necessity It can be compelled to make any reasonable extension of its service facilities within its certificated scope or area of service.”)

¹³ Letter from Gerald Wuetcher, counsel for Hyden-Leslie District, to Linda C. Bridwell, Executive Director, Public Service Commission (Apr. 26, 2021) (hereinafter “Letter”) at 3.

requirements are so expensive as to render the extension unreasonable.¹⁴ Its position on this point is consistent with Commission decisions on this issue.¹⁵

In striking Rule 11.j, the Commission exceeds its legal authority under KRS 278.030 and KRS 278.280. KRS 278.030(2) permits a utility to “establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.” Implicit in KRS 278.030 is a grant of authority to the Commission to deny proposed rules that are unreasonable. The Order, however, contains no finding that Rule 11.j is unreasonable or an explanation why the rule is unreasonable. Without a such finding, the Commission may not prevent the rule from taking effect.

In the Order, the Commission not only strikes down proposed Rule 11.j, but directs a substitute be inserted into the District’s tariff. This substitute imposes a new method for how the District is to provide water service. It addresses not only applications for service, but service to existing customers, requiring the District to install individual pumps on the customer’s side of the water delivery point if a pressure of 30 psig cannot otherwise be maintained at the water delivery point. Currently, the District, when faced with a low-pressure condition, has applied a systemic approach to correct the condition.¹⁶

¹⁴ *Id.*

¹⁵ *See Wilmer and Pauline Conn v. Fleming County Water Association*, Case No. 2010-00049 (Ky. PSC June 21, 2011) (“While an extension of service is not necessarily required to generate revenues equal to or in excess of the cost of service, any extension that results in costs that are significantly greater than the revenues likely to be generated will not generally be deemed to be reasonable.”). *See also* OAG 75-719 (stating that the reasonableness of a proposed extension “can be measured in terms of the certificated area, the new area to be served, the need and cost of such extension, the financial impact (including return in revenue) of the extension upon the public service company, and the impact upon the total service available to the general public in the certificated area. The interest of a few must be carefully weighed against the interest of the general public in the certificated area of service.”)

¹⁶ Letter at 3 (“Mr. Turner [the District’s General Manager] acknowledged that the water district has a duty to provide service at a pressure of 30 psi or greater to existing customers. If water service pressure falls below 30 psi at the delivery point, the water district must act to bring the service into compliance with Commission regulations. Mr. Turner noted that currently a low-pressure area exists within Hyden-Leslie District’s system and the water district has ordered a booster station and will install the booster station upon its delivery.”)

KRS 278.280(1) permits the Commission to modify a utility's existing methods or practices and to substitute others in their place. It provides:

Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that the rules, regulations, practices, equipment, appliances, facilities or service of any utility subject to its jurisdiction, or the method of manufacture, distribution, transmission, storage or supply employed by such utility, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation.

Before the Commission may order a substitute practice or method, KRS 278.280(2) requires a hearing with notice to the utility, a finding regarding the existing practice or method and a finding regard the reasonableness and appropriateness of the substitute practice.

The Commission failed to comply with KRS 278.280(1) when directing the change to the District's practices and methods. No hearing was held on the Commission substitute or on the District's current practices to address low pressure conditions. The Commission failed to provide any notice to the District that the District's current practices dealing with low pressure conditions was "unjust, unreasonable, unsafe, improper, inadequate or insufficient."¹⁷ Moreover, the record is devoid of any evidence to suggest that the District's current practice is unjust, unreasonable, unsafe, improper, inadequate or insufficient. The Commission refers to no customer complaint

¹⁷ In this regard, the Commission also violated the District's right to due process. Due process required that the District be "given a meaningful opportunity to be heard." *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 593 (Ky. Ct. App. 1982) (citing *Boddie v. Connecticut*, 401 U.S. 371 (1971)). A meaningful opportunity to be heard exists only if the District is given notice of the issues and an opportunity to present evidence and argument on those issues. The District was "entitled . . . to know the issues on which an administrative decision will turn and to be apprised of the factual material on which an administrative agency relies for decision so that he may rebut it." *Bowman Transportation v. Arkansas-Best Freight System*, 419 U.S. 281, 287 (1974). The Commission was required to take such actions as to make the District "aware, prior to issuance of the [C]ommission order, of the issue[s] under consideration and the action[s] contemplated." *Public Service Commission v. Warren County Water District*, 642 S.W.2d 594, 595 (Ky. Ct. App. 1982).

regarding low-pressure, no denial of service due to low pressure conditions or no Commission Staff inspection report citing the District for low-pressure conditions.¹⁸ There is also no evidence that the substitute rule (or practice) “will better ensure that all customers requesting service from Hyden-Leslie District will reasonably be provided pressure of at least 30 psi.”

The substitute rule is more likely to lower service quality. By requiring quick and inexpensive fixes that address only one customer’s circumstances, the rule discourages a water utility from making needed systemic investments, such as the upsizing of water lines, installation of booster pumps, and construction of additional water storage facilities, to improve system low pressure conditions. The substitute rule forces a customer to accept an individual pump on its property, potentially ruining the property’s aesthetics and lowering the property’s value. It disproportionately requires that customer to bear the burden of low-pressure conditions while not imposing similar burdens upon the customer’s neighbors who may be served from the very same water lines. Should a customer prefer that the utility remedy the systemic problem rather than employ the Commission’s preferred “band-aid solution,” the utility may hide behind the substitute rule and argue that the Commission has deemed service with the installation of a pump as adequate and no further action is required.

The substitute rule appears to conflict with KDOW regulations by requiring the installation and use of individual pumps on the customer’s side of the delivery point when the District is unable to furnish service at 30 psig at the delivery point. 401 KAR 8:100 requires that a public water system design, construct and maintain its facilities in accordance with the *Recommended Standards for Water Works*, 2012 Edition. Section 8.11.2 of Recommended Standards of Water Works (2012 ed.). provides: “Individual booster pumps shall not be allowed for any individual

¹⁸ In its most recent inspection of Hyden-Leslie District, Commission Staff noted no pressure problems and found the District in compliance with 807 KAR 5:066, Section 5.

residential service from the public water supply mains.” Hyden-Leslie District’s compliance with the substitute rule will place the District out of compliance with KDOW regulations and subject it to administrative sanctions from the Energy and Environment Cabinet.¹⁹ The substitute rule also appears to conflict with 807 KAR 5:066, Section 3(1), which requires a water utility to conform to all legal requirements of the Energy and Environment Cabinet for construction and operation of its water system pertaining to sanitation and potability of the water.

In summary, the Commission exceeded its statutory authority in striking Rule 11.j and substituting a different rule that requires the installation of individual pumps when the District cannot provide water service at the delivery point at a minimum pressure of 30 psig. It failed to make the necessary findings to support striking the proposed rule or imposing the substitute rule. It further failed to provide notice of its intent to proposed substitute rule or to hold a hearing on the District’s current practices regarding low pressure conditions. Furthermore, the record lacks any evidence that the substitute rule will reduce or resolve low pressure conditions. In fact, it is likely to discourage and delay necessary system improvements to correct low pressure conditions and conflicts KDOW regulations. For these reasons, the Commission should rescind its Order imposing the substitute rule and approve Rule 11.j as originally proposed.

Water User Agreement

In the Order, the Commission found several questions on the water user agreement, whether any of the adult household members are indebted to the District for water service at the service address or other address, were unrelated to the provision of service and prohibited the District from requiring applicants for service to provide that information. The District respectfully requests that the Commission modify the Order of August 4, 2021 to permit it to request that an

¹⁹ Hyden-Leslie District has submitted a written request to the Department of Environment Protection for a written interpretation as to whether the installation of pumps on the customer’s side of the delivery point as required by the substitute rule will violate KDOW regulations.

applicant for service identify any adult household members who are indebted to the District for water service at the service address or other address. Such information is necessary for the District to ascertain whether an applicant is acting as agent for a delinquent customer, to meet the District's fiscal responsibility to collect unpaid debts, and its statutory duty to ensure that no customer is given an unreasonable preference or advantage.

Rule 3.b – Requirement for New Contract

The District requests that the Commission reconsider its decision to strike proposed Rule 3.b which provides:

Any change in the identity of the Customer at a Premises requires a new contract for water service. The District may, after reasonable notice, discontinue water service until a new contract for service has been executed.

The Commission found that the provision was “unnecessary for the continued provision of service to its customers.” The Commission’s reference to “continued provision of service” in its Order of August 4, 2021 suggests that the Commission misinterpreted “change in identity” to mean something other than an existing customer vacating or departing the served premises and being replaced by another person.

Rule 3.b addresses occurrences in which a change in possession or legal ownership of the served premises occurs. A customer transfers ownership of the premise receiving service to an unrelated party and the unrelated party takes possession of premises without any notice to the District. A tenant vacates the premises at the end of his or her lease and is followed by another tenant without notice to the District. Without the District receiving notice, a family member inherits property from or is gifted title to property by another family member and takes possession of the property.

In each of these cases, the party in possession of the premises lacks a written agreement with the District and very likely has not posted the deposit required of new customers. Requiring the successor to execute a written contract of is reasonable and necessary. The District must know the identity of its customers for billing and collection purposes. It must know the successor's contact information should a need arise requiring the District to contact the successor regarding its service. That information is obtained through the water user agreement.

An executed water user agreement also provides evidentiary proof that successor customer is aware of its obligations under the tariff and has agreed to meet those obligations. It also protects the District by ensuring a longer period under the statute of limitations in which to bring an action for collection of any unpaid debts for water service. As a security deposit to ensure payment is required of new customers and is generally collected at the time the water user agreement is executed, requiring a successor to execute such an agreement ensures the successor makes such deposits as is required of all other new customers. To the extent that all customers are required to execute a water user agreement, failing to require successor customers who take possession or ownership of a premises already receiving water service to execute such an agreement would constitute an unreasonable preference and conflict with KRS 278.170(1)

In summary, Rule 3.b does not impose any unreasonable or unnecessary requirements on any customer. The District has a reasonable basis for imposing this requirement on persons who assume possession of premises receiving water service. The requirement assists the District in providing water service and in billing and collection amounts owed for water service. The Commission should reverse its decision to strike Rule 3.b.

Conclusion

Hyden-Leslie District requests that the Commission grant its application for rehearing on its Order of August 4, 2021 and approve Rule 3.b, Rule 9.d as revised, and Rule 11.j and permit the use of the Water User Agreement as revised.

Respectfully submitted,

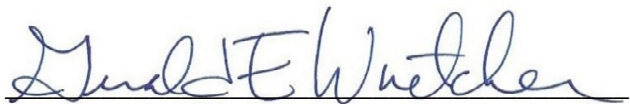


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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that this document was transmitted to the Public Service Commission on August 27, 2021 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.



Counsel for Hyden-Leslie County Water District