

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**ELECTRONIC APPLICATION OF
MARTIN COUNTY WATER DISTRICT
FOR AN ALTERNATIVE RATE
ADJUSTMENT**

Case No. 2021-00154

**MARTIN COUNTY CONCERNED CITIZENS, INC.'S POST-HEARING
MEMORANDUM**

Pursuant to the Commission's Order of May 28, 2021, Martin County Concerned Citizens, Inc. ("MCCC") submits this memorandum in support of certain requirements that should be considered if an emergency increase is granted.

If the increase is granted, Martin County will have the highest minimum bill¹ of any water district or association in Kentucky. (MCCC EX 1). This is in a county where 18% of households have annual incomes of less than \$10,000. (MCCC EX 3.) For those households at \$10,000 in annual income, the minimum water bill accounts for 5.4% of annual income. And it's not just those families that are at the very lowest end of Martin County's income distribution range that are facing unaffordable water. If the increase is granted, the new minimum bill would constitute 2.5%² or more of any household income at or above \$21,441.60. 45.8% of the counties' households have income less than \$24,999. (*See* MCCC EX 3.). This rate increase will

¹ If the increase is granted, the new minimum bill with the existing surcharges included would be \$44.67.

² *See e.g.*, EPA, Announcement of Small System Compliance Technology Lists, 62 Fed. Reg. 42,026, 42,046 Aug. 6, 1998. <https://www.govinfo.gov/content/pkg/FR-1998-08-06/pdf/98-21032.pdf> (using the 2.5% affordability threshold for drinking water in determining what compliance technologies are affordable). The EPA uses the affordability threshold of 2.5% of median household income when assessing treatment costs required to meet drinking water standards. The Environmental Economics Advisory Committee of the EPA's Science Advisory Board has stated that 2.5% threshold is too high, especially for small rural water systems struggling with costs (*Ibid*: 19). The American Water Works Association is also critical of the EPA's use of the affordability threshold as not being sufficient to capture impacts across different income levels. *See* <https://www.awwa.org/Portals/0/AWWA/ETS/Resources/AffordabilityAssessmentTool.pdf>.

mean that the minimum monthly bill will be unaffordable for nearly 45% of the counties' residents. And that minimum monthly water bill does not fully account for the cost of basic water in the county. Because of the long history of water quality problems, 88% of customers randomly surveyed in the district do not use the water for drinking or cooking. (*See* MCCC EXs 10-11.) Most of those customers are buying bottled water for drinking and cooking because they do not feel Martin County's drinking water is safe, which significantly adds to the cost of water for those families.

And, it's important to note that the household income data presented in MCCC Exhibit 3 is based on census estimates that are a few years old. Newer data suggests that Martin County is not recovering from the COVID economic crisis as quickly as other areas in Kentucky. In particular, in April 2021, Martin County had the second highest unemployment rate in Kentucky. <https://kystats.ky.gov/KYLMIPressRelease/25EC8913-407D-4599-9B74-677C6F8ACB5D>.

The Martin County Water District ("MCWD" or "the district") representatives who testified at the hearing on May 27, 2021 were cognizant of the fact that this rate increase is simply unaffordable for many in the county. (*See, e.g.,* Testimony of Tony Sneed, 5/27/21 beginning at 13:17:51.) Tony Sneed testified that it is his hope that if this rate increase goes into effect, the district will be able to keep dropping the district's water loss in such a way that would save the district money and allow it to move forward without future rate increases. (*See Id.* beginning at 13:22:19.) Those are exactly the types of statements that were made multiple times by water district officials during the last rate case. That case resulted in a 53% increase in minimum bills. (*See* MCCC EX 4.) Now, the district is asking for another increase, which would bring the overall increase since January 2018 to 69%. (*See id.*) While MCCC understands that

the district has dire financial needs, it cannot keep coming back to its customers asking for one last increase to stabilize the situation.

Affordability is not just the customer's problem. It is also the district's problem. The district's concern is collectability. Collectability on a month-to-month basis impacts the district's cash flow. In February and March 2021, the district sent disconnect notices for non-payment to about 9% of its customers each month. (*See* Testimony of Ann Perkins, 5/27/21 hearing, beginning at 14:14:36.). In March, 54 customers were disconnected from water service. (*Id.*) That's about 1.5% of the district's customers being disconnected for non-payment in one month. The unaffordability of water for the people in the county is having a significant impact not just on the district's customers, but on the district's monthly cash flow as well.

And the situation is likely to get worse. As Steven Caudill testified, the district has a small customer base that is declining. What's more, there are no big commercial or industrial users to help subsidize the costs. The burden of the cost of water service falls almost entirely on the district's residential customers. (*See* Testimony of Steven Caudill, 5/27/21 hearing, beginning at 16:09:08.) And those customers are struggling just to pay the operations and maintenance expenses of the district. It is completely impractical to presume that the district's 3600 or so customers could ever foot the bill for the \$40 million in immediate needs³ that the district asserts are necessary to stabilize the system. While it is fundamentally unfair that these customers are being asked to pay to fix a system that was completely neglected and mismanaged for years, it is not just a matter of fairness. It is a matter of what is and what is not possible. At some point, the

³ The current "immediate needs" list includes nearly \$15 million for sewer line replacement. (*See* MCWD, Ex. 1, at slide 17.) That amount should be excluded from the water district's list of immediate needs. The district's capital improvement planning should include only improvements needed for the water district

district's ability to collect the amount it bills becomes the driving factor in whether the district is able to meet its basic revenue needs. We are at or near that point in Martin County.

MCCC proposes here several measures that should be addressed as part of any rate order issued by the Commission in response to this emergency request.

1. Report on Customer Assistance Funding

Customer assistance funding is vital, not only to customers, but also to the district. MCCC asks that the district report on its efforts to secure all assistance funding available, to make sure that customers are aware of and taking advantage of all available funding, and to report on all planning and efforts currently underway related to the upcoming Low-Income Household Water Assistance Program ("LIHWAP") that will be available this fall. In particular, MCCC asks that the district report the following:

(1) Its efforts to notify customers of the Healthy at Home Eviction Relief Funding that was announced in February 2021 and the extent to which renters in the county made use of the funds;

(2) Whether any entity has applied for the up to \$200,000 in customer assistance funding that was made available on January 25, 2021 as part of the Community Development Block Grant Coronavirus Response package established by the Department of Housing and Urban Development that is administered through Kentucky's Department of Local Governments. If that funding has not been applied for, a description of all efforts taken by the district to push the application process forward and the outcome of those efforts. If that funding has been applied for, the current status of the application or award.; and

(3) Any communications the district has had with federal or state officials regarding the upcoming LIHWAP program and any planning the district has undertaken for how to ensure that the district's customers are able to take full advantage of that customer assistance funding.

2. Late Fees to Fund Customer Assistance

MCCC asks that the district set up a customer assistance fund or begin talks with Community Action regarding the potential for providing additional funds to be managed by Community Action for customer assistance for water customers in the district. In particular, any late fees collected by the district should be directed to customer assistance. The district's late fees are not cost-justified. (*See* 05.20.21_Filed_Response_to_MCCC_Data_Request.pdf, Response to Question 18, at 8.) In addition, because the moratorium was in effect for much of the 2020 test year, late fee revenues are an insignificant portion of the pro forma revenues considered in this matter. While the coronavirus related customer assistance funding that has been provided will help, it is clearly insufficient to meet the need here. The district needs to initiate the process of developing its own customer assistance funding stream to help its customers and to help stabilize the district's monthly revenues. MCCC asks that that process begin by diverting late fee collections into a customer assistance fund.

3. Customer Complaint Standard Operating Procedures

Craig Miller testified that the district was developing Standard Operating Procedures for dealing with customer complaints. MCCC has been pushing the district to institute a process for tracking each customer call since January 2020. (*See* MCCC EXs 6-7.) Despite MCCC's efforts, the district still only tracks customer complaints that result in a work order. (*See* Testimony of Nina McCoy 5/26/21 hearing, beginning at 16:35:36, testifying regarding MCCC EXs 8-9.) This is insufficient.

Despite improvements in customer service, more needs to be done to ensure that customers who call to express concerns or complaints are heard. The public comment of Willie Stepp provides one example of a customer who feels he has been ignored by the district in recent months. (See Public Comment of Willie Stepp, available at: http://psc.ky.gov/pscscf/2021%20cases/2021-00154/Public%20Comments/20210601_PSC%20Response%20Email%20to%20Willie%20Stepp.pdf.) Mr. Stepp reports that he contacted the district four times in Spring 2021 to report a leak that is on the district’s side of the meter. That leak not only represents potentially significant water loss for the district, it is also causing significant damage to Mr. Stepp’s driveway and yard. As Mr. Stepp states: “After four messages to the water district since February, I have been ignored when requesting that the water district make repairs to a broken water line that continues to cause damage to my property—destroying my blacktop driveway and my yard. They have never shown enough courtesy to at least pretend to care how they treat their customers or care about customer concerns. It is disrespectful and uphauling when a customer’s complaints are quite simply IGNORED.” (*Id.*)

Within the next month, MCCC would like the opportunity to review and comment on Standards Operating Procedures for Customer Service being developed by the district. And, specifically, MCCC asks that those procedures include a process for recording and tracking each communication the district has with its customers. MCCC also asks that a table be included in each board packet that records the nature of each customer communication or complaint for the month and the resolution (if any) of each communication or complaint. While MCCC Exhibit 9 provides an example of the type of reporting envisioned, MCCC is happy to work with the district to come up with a standard reporting table that could be included in each board packet.

4. Water Quality Concerns

While it is clear that water quality has improved in the district since 2017, it is also clear that water quality problems still remain. The 2020 report shows that disinfection byproducts were above the maximum contaminant level at the customers' taps in 35% of the 97 households tested in 2019. (See MCCC EXs 10 and 11.) In 2016, the Division of Water allowed the district to reduce the number of collection points in the distribution system at which disinfection byproducts monitoring is performed from four to two. (See MCCC EX 12.) Because of the high number of taps that tested above the MCLs for disinfection byproducts in 2019, MCCC asks that the district immediately initiate the process to resume testing four IDSE locations.

MCCC also seeks to ensure that the district is regularly flushing to ensure water quality. The district's customer service order list shows that in the 12 instances where customer water quality complaints were logged, the complaints were resolved by flushing or blowing off the line. (MCCC EX 8). It is MCCC's understanding that at least some of the water quality issues reported in the county would be ameliorated by regular flushing of the lines. MCCC therefore asks that the district report whether it is currently under a mandatory flushing protocol. If it is, MCCC asks that the district report what that protocol is, and the extent to which that protocol has been followed since January 2020. If, as was reported in the past, ordinary flushing practices are impossible because of the state of the lines, MCCC asks that the district assert so affirmatively and provide the Commission with a realistic flushing plan for the entire distribution system. MCCC asks that MCCC and the Commission be updated on when flushing is planned and when it is accomplished.

5. Report on Infrastructure Funding Currently Available

MCCC asks that the district report the status of funding that is being made available pursuant to SB 36. <https://apps.legislature.ky.gov/law/acts/21RS/documents/0195.pdf>. MCCC asks that the report address the following: (1) summary of all communications between the district and the Kentucky Infrastructure Authority regarding the funds made available under SB 36; (2) the status of any disbursements made or to be made under Section 1(2) of the legislation; (3) whether any funds are being or will be sought under Section 1(3) of the legislation; and (4) whether any additional funds are being or will be sought under Section 1(4) of the legislation.

6. Expansion of Bills to Be Paid from the Debt Service Surcharge Account

The period of outstanding bills covered by debt service surcharge needs to be expanded to include all bills incurred prior to January 1, 2020. MCCC asks that the Commission expand that period and rework the order in which payments are made so that the debt covered under the surcharge includes all currently unpaid accounts payable as of December 31, 2019. (*See* 05.20.21_Filed_Response_to_MCCC_Data_Request.pdf, at Ex. 10, p. 101.)

7. Capital Improvement Plan Required

Money is likely to be appropriated later this year that for water infrastructure improvements. The ability of the district to take advantage of those funding opportunities is likely directly related to the degree to which the district has a prepared plan for how the funds should be used. In addition, in this district, because of the unfortunate history of grant money poorly spent, a public process is needed to ensure transparency and to ensure that the public and this Commission have a voice in determining priorities among the many necessary projects envisioned.

The district should be required to develop a Capital Improvement Plan that incorporates at least the \$40 million in immediate needs presented at the hearing, as well as needs included in Infrastructure Replacement Plan submitted by district in April 2020. Any other capital needs should be included as well. The presentation of needs should include estimates of the cost of each project with a rough breakdown in expenses that includes administrative, permitting, labor, and materials, as well as an estimate of how long it is expected that the project would take to complete once construction begins.

In addition to the presentation of the needs, the draft plan should prioritize each of the proposed projects. The plan should present the prioritization of projects with justifications for the order of priority that include discussions of the costs and benefits of the proposed improvement, costs and benefits of not doing the project, the costs and benefits of any alternative projects that may fulfill the same need, and potential funding sources for the project.

The plan should be made public with at least 30 days for review and comment on the draft plan before a public meeting is held⁴ to consider public comments and reactions to the plan. After incorporating considerations of the public comments about the plan into the draft document, the plan should be submitted to the Commission for its review and approval.

CONCLUSION

If approved, this rate increase will cause significant hardship to many residents in Martin County. The seven requests made herein are designed to improve some issues in the system that are important to customers, to provide additional oversight to ensure that all sources of external funding are being used to the fullest extent, to put measures in place to help ensure that additional funding will be made available to the district and its customers, and to give the

⁴ MCCC is happy to work with the district to facilitate the public meeting.

district's customers a more significant role in decisions that directly impact them. MCCC respectfully asks that the Commission consider these requests as part of its upcoming order in this matter.

Respectfully Submitted,

/s/ Mary Varson Cromer

Mary Varson Cromer

Appalachian Citizens' Law Center, Inc.

317 Main Street

Whitesburg, Kentucky 41858

Telephone: 606-633-3929

Facsimile: 606-633-3925

mary@aclc.org

Counsel for MCCC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing post-hearing brief was served via electronic mail to all parties in this matter on this the 1st of June 2021.

/s/ Mary Varson Cromer