

**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 OBJECTION

The Martin County Concerned Citizens, Inc. (“MCCC”), by and through counsel, submit the following argument and objections to any additional rate increase for residential customers. In addition, MCCC presents here a report prepared by Roger Colton (hereinafter “Report”), who is a national expert in utility affordability, with a particular emphasis on creative program design and implementation within tight budget constraints. Mr. Colton has testified as an expert in over 300 cases, including nearly 20 cases since January 2020. MCCC presents Mr. Colton’s report, *Drop-by-Drop: Drowning in Water Unaffordability: Martin County Water District* and curriculum vitae as Exhibits 1 and 2.

MCCC respectfully reserves the right to present additional argument in a post-hearing brief to be submitted after the hearing in this matter, which has now been scheduled for September 23-24, 2021.

I. The District Faces Multiple Ongoing Operational Failures

The Martin County Water District (“MCWD”) is failing to provide adequate, efficient, and reasonable service to its customers. While the District’s functional capability is not at the near-collapse levels that we saw in January 2018,¹ the day-to-day operations of

¹ For a summary of the events of January 2018 and the near collapse of the system then, *see* MCCC’s Motion for an Expedited Hearing, filed in Case No. 2016-00142 on January 18, 2018. https://psc.ky.gov/pscscf/2016%20cases/2016-00142/20180118_Martin%20County%20Concerned%20Citizens,%20Inc.%20Motion%20for%20an%20Expedited%20Hearing.pdf.

the district are dire. What recent events show is that the district operates on a daily basis in triage mode. The district and the last order of this Commission focused on the “immediate needs” of the district, that is, the parts of the system that need to be replaced immediately to get water loss under control. However, the reality is that the truly immediate needs the district faces are those major repairs that are required day after day just to keep the system functioning. The reality is that, for the past several months, the district has been unable to make those repairs in a timely manner. As a result, this summer customers of the district have gone without water, some for weeks at a time. And while the district talks about all of the work it is doing to get water loss under control, it often fails to immediately investigate and deal with water leaks that are reported by customers.² The district introduced the GeoSync program that it uses to track operations in the field during the recent MCWD Workgroup quarterly meeting. Alliance has made the information the district records in GeoSync available for viewing publicly.³ Limiting the layers displayed on the map to “Leaks-Reported,” shows that there are likely more than 50 leaks reported in 2021 alone.

The ongoing operating challenges of the district span the entire system. For around four to five months from approximately February to July 2021, the district was unable to pump water from the Tug Fork intake site, the district’s sole intake source, because the raw water intake pump was out of service. It took the district several months to get another intake pump at the river. As a result of going months without pumping, the Crum Reservoir, from which water is drawn to feed the water treatment plant, reached dangerously low levels. The district was nearly out of water. As pumping from the raw water intake resumed, the district was unable to refill the tanks quickly because the treatment plant must

² See e.g., Willie Stepp, Public Comment, June 1, 2021, available at https://psc.ky.gov/pscscf/2021%20cases/2021-00154/Public%20Comments//20210601_PSC%20Response%20E-mail%20to%20Willie%20Stepp.pdf.

³ Go to geosync.cloud. Login: martinview@alliancewater; password: view2021.

run nearly 18 hours each day just to meet the system’s daily demand. Tanks in the distribution system that had been drawn low took a long time to refill. The drawdown of the reservoir likely exacerbated that already significant water quality issues of the district, especially because it occurred during the summer months when disinfection byproducts (DBPs) are most likely to exceed their maximum contaminant limits (MCLs). As the UK Pilot study found, “[t]here was a strong seasonal pattern for both classes of DBPs, with concentrations of DBPs and total coliform being elevated and frequently exceeding MCLs in the summer and early autumn in contrast to lower winter and spring concentrations.”⁴

July was a particularly bad month for the district and its customers. The district reported four boil water advisories to the Division of Water (“DOW”) during the month.⁵ Three of those were due to main line breaks and one due to a pump failure. One of the main line breaks resulted in a system-wide boil water advisory and caused a 12-hour water outage. The pump failure at Big Branch / Meathouse affected multiple residents on Route 1439. Those residents first reported their water outage on July 12. Service was not restored until July 28, 2021. The Mountain Citizen’s article on that outage, *Twelve Families Without Water for Seventeen Days*, details how the district first tried to repair the pump and then had to order a new pump to service that area and how difficult it was for those families to be without water for weeks.⁶ Another pump issue causing an extended outage does not appear on the DOW incident report.⁷ An outage at KY Route 645 near Coldwater Road caused six homes and one business (a florist) to be completely without water or to have only

⁴ Jason M. Unrine, *Preliminary Technical Report: The Martin County Kentucky Community-Engaged Drinking Water Health Pilot Study*, Jul. 27, 2020, available at: https://pss.ca.uky.edu/files/martin_county_report_final.pdf.

⁵ See DOW AI#2987 Incident Notifications Report, May 2019 to July 2021. EXHIBIT 3.

⁶ See Rachel Dove, *Twelve Families Without Water for Seventeen Days*, Mountain Citizen, Jul. 28, 2021. EXHIBIT 4.

⁷ It is unclear why this outage would not show up on the Division of Water’s incident reports. 401 KAR 8:150 requires that the district notify DOW immediately if it experiences a loss of pressure below 20 psi or a line break that takes more than 8 hours to repair.

intermittent service July 16 or so until the present. As Tyler O'Connor's August 23, 2021 complaint regarding that ongoing outage states, "I have had water for 9 days in the past 7 weeks. I have not had water for more than 2 consecutive days since the beginning of July. The way that Alliance has handled this particular outage has been nothing short of a display of negligence. I have still paid full price for my water bill. I pay the highest in the state of Kentucky for water but yet I receive the lowest quality service and the lowest quality water."⁸ Tyler O'Connor brought his issues to the Martin County Utility Board meeting on August 24, 2021. The discussion between Tyler O'Connor and Jimmy Don Kerr that occurs between the 2:00 and 16:00 minute marks of the meeting as recorded on The Mountain Citizen's Facebook page is illustrative.⁹ Mr. O'Connor discusses with Mr. Kerr the fact that his complaints were handled poorly by Alliance, that "it took about a month of my water being off before anyone took me seriously," and that he would have appreciated effective communication regarding the situation.

II. The District's Inability to Meet Its Daily Operation and Maintenance Costs Is Directly Tied to the Unaffordability of its Rates

The above examples of district's recent inability to provide adequate, efficient, and reasonable service to its customers demonstrate the perpetual state of crisis the district has been in for the past few months. What the perpetual state of crisis makes clear above all is that the district's ability to fulfill its duties to its customers is dependent on its ability to meet its day-to-day operational challenges. One component of the ability to meet those daily challenges is having consistent and reliable funding for operations and maintenance expenses as they arise. The district asserted as the first "reason for rate increase" that it "has

⁸ See also, Rachel Dove, *At the Mercy of the Water District, Seven Weeks With Barely a Drop of Water in Inez Neighborhood*, Mountain Citizen, August 18, 2021. EXHIBIT 5.

⁹ A recording of the meeting is available at <https://www.facebook.com/mountaincitizen>.

a monthly average cash flow shortage of \$50,000....” (ARF, Att. 3). It is likely that that monthly cash flow shortage affects the district’s ability to address the multiple crises it faces. Those crises cannot wait for cycles of grant funding or loan approval. The day-to-day challenges are dependent on the district’s ability to have the necessary funds in hand to deal with the problem. From the customers’ standpoint, the district clearly needs to address its cash flow problem because failure to do so will perpetuate the district’s current inability to provide adequate, efficient, and reasonable service to its customers.

Roger Colton’s Report shows that the district has a substantial inability to collect problem, which is responsible for the district’s cash flow shortage. First, as Table 5 shows, during the ten-month period from July 2020 to April 2021, the district collected only 85.4% of the residential bills it issued.¹⁰ Further, those 85.4% of bills that were paid accounted for only 80.2% of revenues billed for current service. In February 2021, in particular, the district collected only one-half of the amounts billed for residential service during the month. Ex. 1, at 20-22. Other evidence also supports the conclusion that the district has a significant problem collecting its bills. First is the district’s bad debt expense. In testimony during the May 27, 2021 hearing, Ann Perkins was asked about the 2020 bad debt expense of nearly \$120,000, or 5% of total sales of water for the test year. In answering, she indicated that that was a very high level for bad debt. The Staff Report recommends reducing that bad debt expense to more accurately reflect the district’s five-year average bad debt expense of 2.77%. However, even that level of bad debt is extremely high, especially

¹⁰ It’s important here to note that the inability to collect does not seem to have been particularly affected by whether the utility was shutting off water for nonpayment or not. After the moratorium ended, MCWD did not begin shutting off water until January 2021. While January attains the highest percent of payment in the months tracked in Table 5, the average percentages of customers paying their bills prior to and after non-payment shut offs resumed in January is not appreciably different. The average percent of customers who pay their bills from February 2021 to April 2021 is 84%; while the average percentage of customers paying their bills from July to December 2020 is 83%.

when seen in comparison to Alliance’s clients overall, where the bad debt expense averages 0.17%. In addition, the district wrote off nearly \$60,000 in uncollectable debt in June 2020, which represented one-third of the district’s total accounts receivable.¹¹

And finally, the district’s inability to collect many of the bills it sends leads to nonpayment disconnections for far too many of the district’s customers. And, far too often, those disconnected customers are not reconnected, which likely means that those customers are permanently losing water service, and those arrearages will never be collected. As Roger Colton states in his Report, “the nonpayment disconnection not only threatens the social and physical well-being of the low-income customers, it has significant financial costs to MCWD as well. It not only reduces future revenues from the disconnected customers, it places the unpaid balances at risk as well.” In the three-year period between July 2018 and June 2021, a period which includes the moratorium on terminations, the district disconnected a total 1,059 customers for nonpayment.¹² Of those, only 711 or 67% were reinstated. That likely means that during that three-year period, the district permanently disconnected 348 customers for nonpayment, which is more than 10% of its customer base.¹³ The statistics regarding disconnections for non-payment in the first six months of 2021 are even more dire. Roger Colton presents those numbers in Table 4 of his report. Ex. 1, at 19. During that recent six-month period alone, the district terminated 230 customers for nonpayment, and only 88 of those customers were reconnected. So, just in the first six months of 2021, the district has disconnected 142 customer that had not, at the time of the

¹¹ See MCWD, Regular Meeting of Board of Directors, June 23, 2020 Meeting Minutes, available at https://psc.ky.gov/pscecf/2020-00154/cumbolaw%40cumbolaw.com/07272020015632/07.27.20_Filed_Notice_of_Filing_Board_Packets.pdf.

¹² See Martin County Water District, Non-payment disconnection/reconnection reports, July 2018 through June 2021, attached as EXHIBIT 6.

¹³ MCCC is aware that the latest census report shows that Martin County’s population fell by over 12% during the past decade and it is likely that some of those 348 customers who were permanently disconnected moved out of the service area.

report to the PSC, been reconnected.

What these facts indicate is that the answer to the district's cash flow problem cannot be as simple as imposing yet another rate increase. With the July 9 Order's imposition of an interim rate increase, the minimum rates for MCWD's customers have now increased by nearly 70% since January 2018. Despite these increases, the immediacy and severity of the crises affecting the district have shown little improvement.

And water is unaffordable for the district's low-income customers.¹⁴ At present, Martin County customers pay the highest minimum bills¹⁵ of any water district or water association customers in Kentucky.¹⁶ This is in a county with a 34.4% poverty rate.¹⁷ As Roger Colton's Report demonstrates, water bills for many in the district are simply unaffordable already. Raising those bills again will not solve the problem. As the report states--

In sum, when the widespread inability-to-pay for MCWD low-income customers as is presented above is documented, that inability-to-pay does not represent simply a "social" problem with the failure to provide a basic human necessity at affordable rates. The inability-to-pay is also an inability-to-collect. Responding to this inability-to-collect simply by continuing to increase the underlying bills will not only be ineffective as a means to raise revenue, it will be counter-productive.

Exhibit 1, at 22-23.

¹⁴ MCCC does not attempt to prescribe a definition for low-income customer. Instead, in advocating for "Creative Solutions" to the unaffordability/uncollectability dilemma facing the customers and the district, MCCC recognizes that it would likely be useful to use categorical determinations for which customers would be considered low-income and that those categorical determinations should be based on whether the customer is on SSI, receives SNAP benefits, qualifies for LIHEAP or LIHWAP assistances, etc.

¹⁵ In his concurrence to the July 9, 2021 Order in this matter, former Commission Chair Michael Schmitt stated that "[c]ustomer rates after the emergency increase becomes effective will represent the fifth highest among Kentucky's regulated water utilities." Concurrence to July 9 Order, at 4. While Martin County's average water rates are not the highest in Kentucky, the district's minimum rates are.

¹⁶ The minimum bill includes the \$37.32 interim rate and the \$7.25 surcharges.

¹⁷ U.S. Census Bureau, "Persons in poverty, percent – Martin County, KY, April 1, 2020," Quick Facts, accessed August 17, 2021, <https://www.census.gov/quickfacts/fact/table/martincountykentucky,US/POP010220>.

III. “Creative Solutions”

As Roger Colton emphasizes in his Report, the Commission’s September 2021 Order suspending the disconnect moratorium states: “Given the levels of arrearages, late payments, and struggling communities, the Commission urges stakeholders to endeavor to find creative solutions to ensure the continuity of water and sewer services.” Sept. 21, 2020 Order, at 14. Case No. 2020-00085. Roger Colton’s report recommends a number of such Creative Solutions. MCCC adopts Mr. Colton’s recommendations and sets forth arguments herein to support the Commission’s authority to order these “Creative Solutions” and to demonstrate that these proposals are far more reasonable than considering additional rate increases on customers who cannot afford their current bills.

a. Commission Should Approve Special Rates for Low-Income Customers

MCCC is aware that the district has, in the past, determined that it lacks the authority to approve low-income rate structures.¹⁸ However, none of those conclusions have been reviewed by Kentucky state courts. As set forth below, the statute’s prohibition on discriminatory rates is not absolute. Classifications of customers and difference in rates among customer classes are allowable so long as they are reasonable. MCCC implores this Commission to re-examine its authority under KRS 278.170 and KRS 278.030 to determine that, as a matter of law, the PSC has the authority to find that, in these circumstances, low-income customers represent a reasonable classification pursuant to KRS 278.030, and that the low-use rate and surcharge waiver, as well as the waiver of non-recurring fees, for that classification of customers are reasonable pursuant to KRS 278.170.

The Kentucky legislature gave this Commission “exclusive jurisdiction over the

¹⁸ See, e.g., *In the Matter of: Electronic Application of Water Service Corporation of Kentucky for a General Adjustment of Existing Rates*, Case No. 2020-00160, Final Order, Dec. 8, 2020; *Re Kentucky-American Water Company*, Case No. 2004-00103, Final Order, Feb. 28, 2005; and *In the Matter of: Application for Adjustment of Electric Rates of Kentucky Power Company*, Case No. 91-066, Final Order Oct. 31, 1991.

regulation of rates and service of utilities....” KRS 278.040(2). That delegation of ratemaking authority is plenary and expresses the clear “intention of the Legislature to clothe the Public Service Commission with complete control over rates and service of utilities.” *Southern Bell Telephone & Telegraph Co. v. City of Louisville*, 96 S.W.2d 695, 696 (Ct. App. Ky. 1936). KRS 278.170(1) prohibits unreasonable discrimination in rates and services. It does not categorically prohibit rate discrimination. *See Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 464 (Ky. 1994) (“The manifest purpose of the Public Service Commission is to require and insure fair and uniform rates, prevent *unjust* discrimination, and prevent ruinous competition.”) (emphasis added); *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 514 (Ky. App. 1990) (“Even if some discrimination actually exists, Kentucky law does not prohibit it per se. According to KRS 278.170(1) we only prohibit ‘unreasonable prejudice or disadvantage’ or an ‘unreasonable difference.’ KRS 278.030(3) allows reasonable classifications of service, patrons, and rates by considering the ‘nature of the use, the quality used, the quantity used, the quantity used, the time when used...and any other reasonable consideration.’”)

Other states have allowed rates designed to address affordability concerns despite arguments that such rate structures are unlawfully discriminatory. In 1993, Pennsylvania’s Public Utility Commission ruled that expert testimony on affordability should be admitted over the objection of the utility. *Pennsylvania Public Utility Commission v. Pa. Gas & Water Co.*, 142 P.U.R. 4th 302 (1993). The utility argued that “courts have consistently affirmed the Commission’s lack of authority to mandate rates based on socio-economic principles.” *Id.* The Commission rejected the utility’s argument and allowed the testimony, stating: “For well over a decade, this Commission has recognized that the issue of affordability is relevant to utility operations. For example, we have approved a number of

special rates in order to promote economic development and to retain existing industries. Also, we routinely take customer's financial circumstances into consideration in dealing with individual inability-to-pay cases and in ordering the creation of Customer Assistance Programs. Clearly, affordability is commonly recognized as one of the possible inputs for our deliberations.” *Id.*

Likewise, in 1998, Arizona’s Commission overturned its prior ruling that lifeline rates based on age or economic status were discriminatory. The Commission determined that “this Commission has the authority to permit a just and reasonable classification based on income and to decide whether a different rate for that class is a reasonable difference.” *Re Arizona Pub. Serv. Co.*, 91 P.U.R.4th 337, 381 (Apr. 1, 1988). The Commission found that “a classification of residential customers based on the federal poverty guidelines is just and reasonable.” *Id.*

Massachusetts approved preferential rates for the elderly poor in 1980. *American Hoechst Corporation v. Dept. of Public Utilities*, 379 Mass. 408 (1980). The court upheld the special rate approved by the district, noting that “the reduced rate is afforded only to the neediest of the needy, it is approved as an experiment and a limit is placed on the costs involved, we cannot hold that it was improper for the department to consider the age and income of the members of the class and the importance of the service to them.” *Id.* at 413.

And Utah’s Public Service Commission determined that it had the authority to approve a special lifeline rate for low-income customers and that doing so was likely in the public interest. *Re PacificCorp, dba Utah Power & Light Co.*, 192 P.U.R.4th 289, at 70-76 (1999). In assessing whether such a rate was in the public interest, the Commission considered: (1) whether the need is real and not being met by direct-payment programs, which are preferred; (2) whether the program is properly targeted and would not overly

burden other customer classes; (3) whether the benefits offset the negative impacts; and (4) whether the program is easy and inexpensive to administer. (1) With regard to whether the need was real, the Commission found that it was, because about 12% of the utility's customers would meet the program's threshold of being at or below 125% of the federal poverty level. The Commission then noted that the need was not being otherwise met by LIHEAP because of funding cuts in that program. The Commission stated, "The record allows us to conclude that direct assistance is inadequate to the need." *Id.* at 72. (2) The Commission determined that the program was properly targeted. The eligibility criteria for the program mirrored LIHEAP eligibility. The Commission determined that this classification was properly targeted at those customers with high energy burden. The Commission also concluded that the very slight increase in bills to other classes of customers was not overly burdensome. *Id.* at 72-73. (3) The Commission found that the benefits claimed, while speculative, were sufficient to offset negative impacts. The benefits to be derived from the program "include a reduction in uncollectable accounts, returned checks, and service shutoffs; spreading the recovery of fixed costs over more customers and therefore reducing the impacts on each customer...." *Id.* at 73. (4) And finally, the Commission determined that the program would be easy and inexpensive to administer because it would be administered along with the already existing telephone lifeline program. *Id.* at 74. However, because such a program was new, the Commission determined it was necessary to establish a task force to analyze and recommend how such a rate should be implemented. *Id.* Specifically, the task force was to work out the details of the program, including (1) the amount of credit provided to each eligible customer; (2) calculation of charges and how the credit and charges should appear on customers' bills; (3) whether eligibility should be targeted more specifically to ensure coverage for eligible renters; (4) a

report on the experience of other states; and (5) recommendations for standards, measurements and criteria with which to assess the effectiveness of the program, and recommendations on whether the program should be run as a pilot or have a sunset date, and criteria upon which to determine when the program should be modified or terminated. *Id.* at 75.

Different treatments for low-income customers designed to ensure that those customers do not lose water service and to ensure that the district is able to reliably recover revenues from those customers serves the fundamental purpose of making water service reasonably available to all customers of the district while ensuring revenues to support those services, thereby supporting public health and welfare.

A. Low-income customer classification is reasonable for public policy reasons and because the fate of the district’s low-income customers and the district are interdependent.

KRS 278.030(3) provides that suitable and reasonable classifications of customers may be made based on “the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and *any other reasonable consideration.*” Because water has become so unaffordable for the district’s low-income customers, because the district is having so much trouble collecting for its billed service, and because far too many of the district’s customers are losing access to water service altogether because of an inability to pay; it is entirely reasonable, in this instance, for the Commission to use its authority to order the imposition of a voluntary low-use rate and surcharge waiver for those low-income customers.

It is certainly in the public interest to afford relief to low-income customers who cannot afford their water bills. Water is a basic necessity, yet the district is permanently

disconnecting customers because of inability to pay. Those low-income customers for whom MCWD's water bills are extremely unaffordable should be classified separately so that the district can reduce rates and fees so that those customers will more likely be able to afford their water bills. This type of classification serves legitimate regulatory purpose of protecting public health and welfare by making drinking water more affordable to low-income customers who are otherwise in danger of losing water service altogether.

And, a separate classification for Martin County Water District's low-income customers is as reasonable as a separate classification for two private companies, which was upheld by the Kentucky Court of Appeals in 1990. *National-Southwire Aluminum Co.*, 785 S.W.2d at 515. There, two aluminum smelters, which comprised about 70% of Big Rivers Electric Corporation's customer base, were given special variable rates. The court noted that Commission's order had "expressed that the *economic future* of Western Kentucky was linked to Big Rivers, and the [Commission] indicated that the long-term existence of the smelters must be considered." *Id.* at 508. The variable rate developed by the Commission and upheld by the court reduced the smelters' electric rates when aluminum prices fell below specific benchmarks. The court approved the classification and variable rate. With regard to the separate classification for those two companies, the court stated as follows: "By selling 70 percent of its output to NSA and Alcan, Big Rivers is definitely linked to the aluminum business. The fortunes of the producer and the consumer are dependent on each other." *Id.* at 514. The fortunes of Martin County Water District's poorest customers and the water district itself are likewise interdependent. As is discussed above, the district is having trouble collecting on the bills it issues. In fact, the district is not only losing revenues but also losing customers. Since July 2018, 348 of the customers that have been disconnected for non-payment have not had their service reconnected, that is over 10% of the district's

customer base. The district's ability to collect and the customer's ability to pay are interdependent, just as the smelters' financial health was interdependent with the electric utility's ability to provide service in *National Southwire-Aluminum Company*.

Likewise, classification for low-income customers is analogous to classifications for companies that make economic development commitments in exchange for preferential economic development rider rates. In those instances, economic development is the "other reasonable consideration" that is taken into account to justify the classification under KRS 287.030(3). In *P.S.C. v. Commonwealth*, the Supreme Court of Kentucky upheld the Commission's approval of two reduced economic development riders ("EDRs") as riders to the utility's general rate structure. The Attorney General opposed the approval of the EDRs claiming that they violated the Commission's statutory authority under KRS 278.170 and KRS 278.030 because the classifications and rates were unjust and unreasonable. The Court disagreed, stating: "Both statutes expressly recognize the propriety of a utility drawing distinctions in its rates and making classifications among its customers subject always to the touchstone of reasonableness." *Id.* at 667. The court concluded, "EDRs generally are lawful under KRS 278.170(1) and KRS 278.030 and a particular EDR is sustainable provided the PSC determines that the rate is reasonable and that determination withstands the appropriate scrutiny on judicial review." *Id.* at 668. Economic development is accepted as a reasonable basis for classification under KRS 278.030(1).¹⁹

A separate classification for low-income customers is also reasonable because those

¹⁹ The bases for approving any specific customer for an EDR rider includes the requirement that that customer execute a contract committing to certain terms and a period of service that exceeds the discount period, which is designed to ensure recovery of the customer-specific costs over the entire period of the contract. Those qualifying bases should properly be seen as contractual commitments to help ensure that that particular customer actually provides economic development in exchange for the discount rate. The focus of approving a separate classification for EDR customers is that those customers are providing a societal benefit that is worthy of support through preferential rates.

customers are more likely to impose additional costs on the water district, costs that are spread across all of the system's customers. Because customers with high water burdens are more likely to have accounts in arrears, the district is more likely to incur the carrying costs of the arrearages, costs related to debt negotiation and payment plan implementation, costs related to service terminations and possible reconnects, and bad debt expenses. Provisions to help reduce low-income customers' monthly bills, reduce fees imposed on low-income customers, and provide additional protections against disconnections would be mutually beneficial to this customer class as well as the district.

B. Allowing Low-Income Customers to Opt-In to a Low-Use Rate is Reasonable.

The first proposal to address unaffordability is to allow low-income customers the option of opting in to a lower minimum rate for low usage. The minimum rate would be set at one-half of the approved residential base rate and would cover usage up to 1000 gpm. If a customer who opts in uses between 1001 and 2000 gpm, the customer would be charged the regular volumetric rate for the additional usage. But, if the customer uses 2001 or more gallons in a month, the customer would default back to the standard rate.

Such a rate is reasonable pursuant to KRS 278.170(1) because it would incentivize water conservation. Water conservation measures could be extremely beneficial to this district in particular. As has been testified to many times, because of the high water loss, the district is forced to run its water treatment plant for nearly 18 hours per day. That requires using both of the functioning clarifiers in the system every day. There is no down time for regular maintenance of those clarifiers, and there is no backup. If one of the clarifiers goes down, the system will be unable to fulfill the demand. Reducing the demand on the system is more important here than anywhere else in Kentucky. While most of those reductions

will have to come from measures taken to address the high water loss, the district's customers can help by lowering demand on the system. Incentivizing conservation by providing a lower rate for low-use customers is a good way to reduce consumer demand.

It is also reasonable because providing a low-use rate is merely allowing those low-income customers the opportunity to not pay for water they are not consuming.

Targeting that incentive to the district's low-income customers is important because, as Roger Colton's report shows, low-use customers are frequently low-income households. Assuming that one-person households likely have the lowest use, Table 12 of the report shows that the median income of those one-person households is significantly lower (\$16,789 as compared to \$44,653) than that of the county's two-person households. The report posits that the dramatic difference in income is attributable to the fact that one-half of the county's one-person households are senior citizens. It is anticipated that this benefit would be targeted to a particularly vulnerable part of Martin County's population, elderly residents on a fixed income, especially those living alone.

C. Waiving surcharges for Low Income customers is reasonable

In the last rate case, the Commission instituted two separate surcharges to attach to each of the district's bills. The two surcharges now total \$7.25. These surcharges disproportionately impact low-income customers in that they add a set amount to every bill. Those surcharges increase the current minimum bill by nearly 20%. For low-income customers, particularly those who maintain low usage and pay the minimum bill every month, the surcharges contribute substantially to the unaffordability of their water bills.

And, as Roger Colton's Report argues, because the district's low-income customers are more likely to be renters, and are thus more likely to have moved around, it is likely that those customers are not the same customers who were utilizing the district's service prior to

April 1, 2018, when the debts to be paid by the debt service surcharge were incurred.

Further, the debt service surcharge is not being used as intended. The surcharges were not to be used for operation and maintenance expenses. Yet, for the most part, since Alliance began its service, the debt service surcharge has been used solely to pay the company, and has not been used to service debts incurred before April 1, 2018 as was ordered. In fact, one of the only, if not the only, time the debt service surcharge has been used since January 2020 to service debt was when the district drew from the account in June 2021 to pay \$15,000 to Xylem, after which the company dismissed its federal collections suit against the water district. The debt to Xylem was incurred after April 1, 2018, and therefore payments to Xylem from that account would not be allowable under the Commission's previous orders. There is no indication in the record that the district sought Commission approval for that expenditure.²⁰

Increasing bills for low-income customers by tacking on surcharges that are not even being used as intended should not be allowed. The surcharges substantially increase the low-income customer's water burden, making it more likely that the customer will be unable to pay the bill and the district will be unable to collect the revenue from the bill. Given the extreme levels of disconnections for nonpayment, and the fact that many of those customers are not being reconnected, and given the district's failure to collect the revenues it bills, it is reasonable to waive the surcharges for low-income customers in the district.

D. Non-Recurring Charges

With regard to non-recurring charges, particularly charges for meter turn-on, meter

²⁰ Through Kentucky's Open Records Act, MCCC sought PSC records that might show that the PSC approved this \$15,000 expenditure. The records produced did not show that the expenditure was approved. The expenditure is documented in the following filing: July 15, 2021, Quarterly Activity Report, Ex. 3, check no. 2505. https://psc.ky.gov/pscecf/2020-00154/cumbolaw%40cumbolaw.com/07152021012753/07.15.21_Filed_Quarterly_Activity_Report.pdf.

re-read, meter test, service calls during regular hours, meter reconnection, and meter disconnection, MCCC agrees with the Commission's recent decisions that allow only the marginal costs related to those services.²¹ As the staff and transportation costs related to those services are already covered in the district's regular operating and management expenses and as the district has failed to provide any cost-based justification for those services,²² MCCC asks this Commission for an Order disallowing those non-cost-justified non-recurring charges.

In the alternative, if non-cost justified non-recurring charges related to meter turn-on, disconnection, and reconnection continue, those fees should be waived for low-income customers. Low-income customers are more likely to be charged these fees both because they are more likely to have their service disconnected for nonpayment, and because they move more often. Those who move more often are typically renters. The Census data presented on pages 42-43 of the Report show that of the 527 people who moved during 2019 but stayed within Martin County, 75% were renters. Those renters are more likely to be low-income than the county's homeowners. In 2019, renters in the county had a significantly lower median income than homeowners (\$21,976, as compared to \$45,308). And, regardless of whether the mover is a renter or homeowner, the group of residents who moved in 2019 but stayed within the county have a nearly 30% lower median income than county's residents generally (\$16,389, as compared to \$22,992). The nexus between income, home ownership, and mobility is clear. Those who move from one place to another in the county,

²¹ MCCC recognizes that the Staff Report adjusts revenues to account for lower nonrecurring charges in conformity with the Commission's recent orders. However, the adjustments appear to accept all cost justifications other than labor costs. Given that transportation expenses are also part of the district's ordinary operations and maintenance expenses, it is unclear why those expenses could still be considered additional costs.

²² See MCWD Response to PSC Staff's Third Data Request #10, https://psc.ky.gov/psccef/2021-00154/cumbolaw%40cumbolaw.com/06232021113425/06.23.21_Filed_Responses_to_3rd_Request_Jun2021.pdf.

and incur fees related to reestablishing service at their new residences, are more likely to be low-income renters.

The non-cost based nonrecurring charges related to setting up new service are being imposed most on the low-income residents in the county who can least afford the fees. And so are the non-cost-based fees for disconnecting and reconnecting service when there is nonpayment. As Roger Colton writes in his Report:

It would seem to be inconsistent, at best, for the Commission to find that “the demand exists for significant funding to assist with water and sewer bills across the Commonwealth,” and yet continue to allow non-cost-based charges that fall hardest on the population in need of this assistance. It would seem inconsistent, at best, for the Commission to state that “given the levels of arrearages, late payments, and struggling communities, the Commission urges stakeholders to endeavor to find creative solutions to ensure the continuity of water and sewer services,” and yet approve non-cost-based charges that fall hardest on these “struggling communities.”

Ex. 1, at 43. A nonrecurring charge by definition is, “a charge or fee assessed to a customer to recover the specific cost of an activity, which: (a) Is due to a specific request for a service activity for which, once the activity is completed, additional charges are not incurred; and (b) *Is limited to recovery of an amount no greater than the cost of the specific service.*” 807 KAR 5:011 §1(4). If such charges continue to be allowed without cost justification, it is reasonable to waive them for low-income customers on whom those charges are most likely to fall and who can least afford to pay them.

E. Order the Water District to Establish a Customer Assistance Fund To Be Funded by Any Non-Cost Based Non-Recurring Charges and Charitable Contributions

MCWD should be ordered to create a permanent low-income customer assistance fund. While the above measures would help lower the overall bills of the county’s low-income residents while also improving the district’s revenue collection rates, it is unlikely to

be enough. As Roger Colton’s report starkly shows, both the depth and breadth of poverty in the county is staggering. Even lower bills for many of the county’s lowest income residents will still be unaffordable.

And, customer assistance funding should be seen as equally important to the water district as it is to the customers, because unaffordability and uncollectability go hand-in-hand.

Utility assistance funding, most of which has been provided through COVID relief packages, is currently in place. But it is not permanent and it’s not enough. In 2020, the \$6.6 million in Healthy at Home Utility Relief funding that was made available was disbursed in three months. Now, Kentucky is set to receive \$18 million in Low-Income Household Water Assistance Program (“LIHWAP”) funding, but that funding stream is likely to be depleted over the course of several months.

At the same time, the district, MCCC, and others in the county have struggled over the years with how to manage bottled water donations and other charitable giving. If a permanent customer assistance fund were in place, those donations could be directed in a way that helps both the water district and its customers.

The permanent customer assistance fund should be funded on an ongoing basis with any late payment charges received, as well as any other non-cost-justified nonrecurring charges the district collects, and be set up such that charitable giving can be directed to the fund.

F. Order the Water District to Comply with New Legislation Regarding Waiver of Late Payment Charges for Low-Income Customers

As is discussed in detail in Roger Colton’s report, the district’s response to MCCC data request regarding its compliance with the new legislation on late payment charges

demonstrates that the district's current procedures are not in compliance with KRS 278.0154. The district should be ordered to develop procedures to ensure its compliance with the new legislation, which should include all of the measures presented on pages 47-49 of the Report, and submit them to the Commission for approval.

G. Other Protections to Help Avoid Nonpayment Terminations

And finally, in addition to the protections outlined above, the district should be required to reform its processes to help minimize nonpayment disconnections. Specifically, when a customer asserts an inability to pay, the disconnection process should be put on hold for at least 60 days. During that period, the customer should seek assistance funding with the help of the district, and the district and the customer should negotiate a reasonable payment plan. This additional period of time to work out the way in which the arrearage is to be paid would be beneficial to both the customer and the district in that it would decrease the likelihood that the arrearage would never be paid.

The district should also be ordered to ensure that the payment plans it offers to its customers are reasonable. As Roger Colton's Report demonstrates, the 12-month plan currently offered by the district is simply not affordable for many customers, which explains why over 25% of the payment plans set up between January and March of this year had defaulted by the end of March. *See Ex. 1, at 54.* It does no good, and simply costs the district money, to set up payment plans that are likely to default because the monthly payments are too high.

Likewise, the district must stop disconnecting service without notice when a customer defaults on a payment plan. Such disconnections are unconstitutional. *See Ex. 1, at 56.* As the Report recommends, the district should immediately remedy any unconstitutional disconnections by refunding all fees associated with those disconnections

and by restoring service if service remains disconnected.

H. Order the District to Clearly Show Meter Read Date on Each Bill

Finally, it is beyond dispute that Commission regulations require that the meter read be “clearly shown” on the customer’s bill. Yet, the district does not provide that information to the customers. Given the substantial concerns that are often expressed by MCWD’s customers about unusually high bills and unusually high usage rates where no leak can be found, it is critical that customers have this information. As Roger Colton explains in his Report and as Nina McCoy has testified to before, variability in the period between meter read dates can have significant implications on bill amounts. If a meter is read just one week later than usual, the difference between the normal readings, which cover two four-week periods, and the late read period, which might amount to one five-week period and one three-week period, can significantly impact bill amounts. Such impacts are particularly hard on low-income customers who normally receive only a minimum bill. In that instance, the bill for the five-week period could be significantly more than what they are accustomed to paying. Customers deserve to know the date of the meter reading and the regulations and the MCWD Tariff require it. As the Report recommends, if MCWD is unable to correct this deficiency, those bills that do not show the meter reading should be exempt from late payment charges and other nonrecurring charges.

CONCLUSION

Former Chair Schmitt’s Concurrence to the July 9, 2021 Order in this matter left no room for doubt, the survival of this water utility is in doubt. The only hope offered in the Concurrence is the possibility of regionalization. But even if significant funds for water infrastructure are approved and those funds are immediately invested in studying whether and how such regionalization could be carried out, any help that might come from that

process will come years into the future. The water district and its customers do not have years.

In the short term, the only plan is to keep raising rates to ensure that the district has enough revenue to keep afloat. The district's minimum bills are already the highest in Kentucky, yet the only answer offered is to keep raising those bills. As Roger Colton's Report demonstrates, that will not work.

MCCC offers solutions here that are formulated to keep the system afloat. While Former Chair Schmitt stated in the Concurrence that "any solution to the problem of affordability lies not with the PSC but with the General Assembly," MCCC respectfully disagrees. This Commission has broad, plenary authority over rates and an obligation to ensure that all regulated utilities' customers are provided with safe, reliable service. This Commission has the authority to define Martin County's low-income customers as a separate class and set rates and fees for that class, so long as those determinations are reasonable. They are reasonable, because the problem of affordability is not just a problem for the customers, it is a problem for the water district. It is unreasonable to continue to raise rates and expect commensurate increases in revenue, when the data show that the district is unable to collect a significant portion of the amounts it bills because its bills are unaffordable. It is reasonable to design programs to help low-income customers better afford their bills and provide additional measures of assistance to them when they cannot. If such measures are not taken, the district customers will continue to suffer, and the district will continue to lose revenue and will continue to be unable to provide adequate, efficient, and reasonable service to its customers.

Respectfully Submitted,

/s/ Mary Varson Cromer

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Objection was served on all other parties pursuant to 807 KAR 5:001 on this the 25th day of August 2021.

/s/ Mary Varson Cromer