

**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 BRIEF

The Martin County Concerned Citizens’, Inc. (“MCCC”), by and through counsel, submit the following arguments in conformity with the Commission’s September 27, 2021 Order in this matter. MCCC also incorporates arguments presented in its August 25, 2021 Objection filed in this matter. Further, MCCC recognizes that it has the burden with regard to the alternative rate proposals supported by Roger Colton’s testimony. MCCC believes that it has carried that burden through the arguments presented in Mr. Colton’s testimony, in the September 27, 2021 briefing in this matter, and herein. MCCC asks that the Commission recognize that MCWD has not objected to MCCC’s alternative rate proposals.

In addition, in response to questions from the Commission to Roger Colton during the September 24, 2021 hearing in this matter, MCCC provides here as Exhibit 1 a study Mr. Colton published regarding the effects of Philadelphia’s Income-Based Water Affordability Program, which was implemented in July 2017. Additional materials that are responsive to the Commission’s questions to Mr. Colton during the hearing are cited in footnotes six and seven below.

MCCC does not dispute that the Martin County Water District (“MCWD”) needs additional revenues to maintain operations. But as MCCC has shown, water has become unaffordable for many of MCWD’s low-income customers. Because of that unaffordability, MCWD is unable to collect for its billed service. And, far too many of the district’s

customers are losing water service altogether because of their inability to pay. MCCC advocates for “Creative Solutions” to the affordability crisis confronting MCWD and its customers.

I. It is reasonable to provide an opt-in low-use rate for low-income customers.

As set forth on pages 15-16 of MCCC’s September 27, 2021 Objection, one of the “Creative Solutions” to the unaffordability/uncollectability dilemma facing MCWD is the establishment of an opt-in lower minimum rate for low-income customers. Under this system, a low-income customer who is also a low-use customer would be able to opt-in to a minimum residential base rate that is one-half of the current minimum. That lower minimum rate would cover usage of up to 1000 gallons. For usage from 1001 to 2000 gallons, the customer would be charged the regular volumetric rate. But, if the customer used 2001 gallons or more, the charge would default back to the standard rate.¹ MCWD has not objected to this proposal.

In addition to the arguments previously presented by MCCC in support of this voluntary low-use minimum rate, the reasonableness of the proposal is further demonstrated by responses to Commission’s staff’s most recent post-hearing data requests.

Those responses demonstrate how the minimum charge routinely results in customers paying for water they did not consume. Staff first requested how many customers were billed the minimum charge (exclusive of surcharges) each month since June 2020. The data provided by MCWD was as follows:

¹ It is important to remember that a customer is charged the minimum charge *only* if the customer’s consumption is lower than 2,000 gallons per month. MCWD stated in response to earlier MCCC discovery that “The rate is set to charge \$33.32 for up to 2,000 gallons per month. For every gallon above 2,000 gallons during a month, the customer is charged \$0.00843.” (emphasis added) (Jul. 7, 2021 Response MCCC #16).

Number of Customers Billed Minimum Charge (exclusive of surcharge) Since June 2020
(MCWD's Oct. 19, 2021 Amended Response to Staff's Post-Hearing Data Request #1)

2020	Number of Customers Billed Minimum Charge		2021	Number of Customers Billed Minimum Charge	
	# Accts	Pct of Accts ²		# Accts	Pct of Accts
January			January	933	30%
February			February	779	25%
March			March	803	26%
April			April	986	32%
May			May	844	27%
June	140	xxx	June	1019	33%
July	1016	33%	July	782	25%
August	539	17%	August	839	27%
September	958	31%	September		
October	870	28%	October		
November	906	29%	November		
December	934	30%	December		

Based on this response, from one-quarter to one-third of all MCWD customers are charged the minimum bill each month.

The fact that these customers are being charged for water they don't use is then made

² This calculation assumes 3,120 residential customers. In response to discovery, MCWD stated that it serves 3,120 residential customers. (DR Response MCCC-1-15, May 20, 2021). MCWD provides different residential customer counts in different documents. For example, in its application for rate relief in this document (Attachment 4(b), Martin County Water District, Impact of Proposed Increase), MCWD provides a count of 3,177 residential customers.

evident in MCWD’s response to Staff’s request for the mean³ and median⁴ water usage for customers being charged the minimum charge. That data is set forth in the table below:

Mean and Median Water Use for Customers Billed Minimum Charge Since June 2020					
(Oct. 14, 2021 Response to Staff’s Post-Hearing Data Request #2)					
2020	Mean Usage	Median Usage	2021	Mean Usage	Median Usage
January			January	980	1020
February			February	1000	1050
March			March	980	1000
April			April	1000	1040
May			May	1030	1060
June	1190	1000	June	1020	1070
July	1050	1040	July	1030	1020
August	980	1070	August	1000	1000
September	1010	1020	September		
October	1010	1070	October		
November	1020	1080	November		
December	1020	1050	December		

The mean (average) water usage of customers receiving minimum bills demonstrates that customers receiving a minimum bill are not consuming anywhere close to the usage which the minimum bill is tied to (2,000 gallons per month). The *highest* monthly average of any given month was in June 2020 (1,190), but that was an outlier. In three months (August 2020, January

³ The mean water usage is the arithmetic average.

⁴ The median water usage is that usage amount at which half of all customers receiving a minimum bill use more and half of all customers receiving a minimum bill use less.

2021, and March 2021), the average usage was less than half (980) of the usage covered by the minimum charge. In nearly every month, customers used an average of roughly 1,000 gallons per month even though they were being charged for 2,000 gallons per month.

The median usage demonstrates that the arithmetic average is not skewed by users at the very top or very bottom of the consumption covered by the minimum charge. The median usage each month shows that half of all customers being charged the minimum charge (for 2000 gallons of consumption) are, in fact, using *less* than roughly 1,000 gallons per month.

When low-use customers are charged for water that they don't actually consume what is happening is that those low-use customers are being charged for water being used by other, higher use, customers. Given the unaffordability of water bills to MCWD's low-income customers, continuing this subsidy makes little sense in policy or law. MCCC's proposed reduced minimum charge for low-income (low-use) customers eliminates the impact of having such low-income, low-use customers, who cannot afford to pay their own bills, being charged not merely for the water they consume, but also for the water that higher income, higher use, customers consume as well.

In this sense, the data provided by MCWD supports the reasonableness of Mr. Colton's proposed cut-off of 1,000 gallons for the low-income minimum monthly charge. The mean and median usage reported by MCWD cluster around this consumption amount.

Also, based on Mr. Colton's testimony, we know that the low-income customers are likely to fall within these lower ranges of consumption. As Mr. Colton testified:

Low use customers are frequently also low-income households. Consider the median incomes in Martin County in 2019 by household size. ... The drop in income for 1-persons households in Martin County is dramatic. While the total median income is \$41,013, the median income for a two-person household is \$44,653. For a 1-person household, however, the median income drops by nearly \$30,000 (60%), to only \$16,879.

(Colton, Direct Testimony, Appendix B, Drop-by-Drop, at 36). Moreover, the data cited by Mr.

Colton shows that:

One reason for the dramatic income drop is the prevalence of an aging population in Martin County's 1-person households. Of Martin County's 4,153 total households, 1,090 are comprised of only 1-person. Of that 1,090, almost exactly half (49%) are 1-person households comprised of a person age 65 or older. Indeed, of the total 1,480 households in Martin County with at least one person age 65 or older, nearly two-fifths (36%) of those households have only one person in them.

(*Id.*, at 36 – 37). As Mr. Colton noted, “in fact. . . families receiving cash public assistance or Food Stamps in the past twelve months (2019) were more frequently two-person families than any other family size. Very few recipients of cash public assistance or Food Stamps are represented by large families.”⁵

The data provided by Mr. Colton in response to a hearing information request from the Commission confirms his results as being consistent with broader research. Research by the Natural Resources Defense Council, for example, concluded that:

It has long been recognized that higher-income households tend to use more water. The landmark AWWRF Residential End Use of Water Study (1999) documented this effect empirically in its survey of over 1,100 single-family homes in twelve communities in the US and Canada. It found that most indoor uses (except leakage) were positively influenced by income, and that outdoor use was strongly influenced by the square footage of the residence. Income effects are also noted in industry manuals, such as AWWA's Manual M50 - *Water Resources Planning*. In Los Angeles, the strong relationship between neighborhood income and water use was found by UCLA researchers, characterized by distinct clustering in water use and income across the city, with high water users located in the census tracts near the Santa Monica Mountains and

⁵ By definition, a “family” must have at least two persons. In contrast, a “household” can be comprised of only one-person.

in the warmer northern sections of the city, while low water users are situated in less affluent areas.⁶

This conclusion was confirmed by specific research directed toward assessing the relationship between “household characteristics” and “per capita water consumption.” “The per capita water consumption increases with the rise in household income and decreases with the increase in the household occupancy. Frequency of all water end-uses increases with the increase in per capita income except for toilet usage.”^{7, 8}

II. It is reasonable to waive surcharges for low-income customers.

MCWD’s two surcharges add \$7.25 to each residential bill regardless of usage. As Roger Colton’s report demonstrates, waiver of those surcharges for low-income customers would improve bill affordability for low-income customers. (Colton, Direct Testimony, Appendix B, Drop-by-Drop, at 33-34.) In addition, it is undisputed that the debt service surcharge is being used to pay Alliance rather than being used “solely for the discharge of its accounts payable incurred prior to April 1, 2018” as the Commission ordered. (March 16, 2018 Order, p. 14, Case No. 2018-00017.) As Roger Colton demonstrated in his testimony regarding the mobility of Martin County’s low-income customers, it is likely that the low-income customers who are paying for the current debt service surcharge are not the same customers who were served by the district when the expenses to be paid for by the surcharge

⁶ Ed Osann, *Flawed Analysis Muddies the Water on Water Affordability*, Natural Resources Defense Council, 2016. Available at <https://www.nrdc.org/experts/ed-osann/flawed-analysis-muddies-water-water-affordability>.

⁷ Wa’el A. Hussien & Fayyaz A. Memon & Dragan A. Savic, 2016. "[Assessing and Modelling the Influence of Household Characteristics on Per Capita Water Consumption](#)," [Water Resources Management: An International Journal, Published for the European Water Resources Association \(EWRA\)](#), European Water Resources Association (EWRA), vol. 30(9), pages 2931-2955, July.

⁸ Furthermore, while it may be true that electricity usage is higher among Eastern Kentucky’s LIHEAP eligible customers than for non-LIHEAP eligible customers, that difference is likely attributable to specifics regarding the inefficiency of electrical heating in many low-income housing units. That difference would not translate to a like difference in water usage among low-income customers in Martin County.

were incurred. Nor were the expenses to be paid for by the surcharge fairly considered capital expenses. As the Commission is aware, historically most of the district's capital expenses have been paid for through grant funding. Furthermore, as the district's October 10, 2018 filing with the Commission showed, nearly 42% of the expenses to be paid by the debt service surcharge were amounts due to Zip Zone, Inc., a local gas station, and Linda Sumpter, the district's former accountant. The remainder of the expenses included amounts due to vendors and service providers of all types. (*See Motion for Commission Approval to Pay Indebtedness with Surcharge Funds, Oct. 10, 2018, Case No. 2016-00142.*)

III. It is reasonable and desirable to require the district to establish a customer assistance fund to be funded with non-cost-justified non-recurring charges, including late payment charges, and charitable contributions.

Without customer assistance funding over the past year, the district would be in worse financial shape. During the period from August 2020 to June 2021, the district made 471 distributions to customer accounts totaling \$136,825.13 from four customer assistance programs. (Oct. 14, 2021 Response MCCC #1.) While this is clearly not sufficient to meet all of the need, such customer assistance programs provide critical funding both to the water district and to its customers. In addition, because of the interest in Martin County's water problems regionally and nationally, there is a need to be able to accept charitable donations from any source and funnel them toward direct assistance for MCWD customers that also benefits the district as a whole.

The Commission has asked for briefing on whether KRS Chapter 278 explicitly or implicitly can be construed to allow MCWD to administer a customer assistance fund that is paid in part through donations. Undersigned counsel has researched the issue and has found

no provisions of KRS Chapter 278 that would explicitly prohibit the district from administering such a fund. Having found nothing that would prohibit the Commission from ordering the district to administer the customer assistance program MCCC requests, it is MCCC's position that the Commission has the plenary authority to do so. *See Kentucky Public Service Com'n v. Com. ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010). That case involved Duke's Accelerated Main Replacement Program (AMRP) Riders through which the Commission had approved funding the expedited replacement of the utility's gas mains in several orders. The Commission's orders were challenged on the basis that the Commission lacked the specific statutory authority to approve riders outside of a general rate case.⁹ The Supreme Court of Kentucky concluded that the Commission's approvals of the AMRP riders were within the Commission's broad statutory authority. The Court found that while the Commission's power to approve the rider may not have been expressly granted by statute, the "PSC has the power to allow such a rider based upon (1) its plenary ratemaking authorityand (2) the absence of any statutes specifically requiring a specific procedure when determining if rates are fair, just, and reasonable." *Id.* at 380-81. The Court stated, "[i]n sum, we agree with the view that the PSC had the plenary authority to regulate and investigate utilities and to ensure that rates charged are fair, just, and reasonable...." *Id.* at 383. The Court concludes, "[i]n summary, since there was no statutory authority forbidding it to do so, the PSC's plenary powers were sufficient to permit it to approve the ARMRP rider...." *Id.* at 383. Likewise here there is no statutory authority that would forbid the Commission from ordering that the district establish and administer a customer assistance fund that is funded in part by charitable contributions, as such the Commission

⁹ During the course of the litigation, the Kentucky legislature enacted KRS 278.509, which expressly allowed recovery of the costs of gas line replacement outside of the normal ratemaking process. That law was determined to be unconstitutional before the Supreme Court of Kentucky decided this matter.

can do so under its broad plenary authority.

If the Commission is concerned that the cost of administering such a fund in house would be socialized across all customers in violation of KRS 278.170(1), spreading out the costs of administration is reasonable because a customer assistance program benefits all customers of the district and not just the customers who directly receive assistance. As MCCC argued in its August 25 Objection, the fate of the district and its low-income customers are interdependent. MCWD has significant problems collecting its bills because the rates are unaffordable for many of MCWD's customers. The uncollectability of so many of MCWD's water bills leads to significant costs for the district. As the Commission found with regard to Home Energy Assistance (HEA) programs administered in Kentucky, "[f]or ratepayers who are not eligible to participate in HEA programs, the primary benefit is a reduction in utility costs, and thus a reduction in rates as a result of avoided costs that would otherwise be incurred from debt collection and from writing off uncollectible accounts." (Final Order, May 4, 2020, Case No. 2019-00366, at 3.) It is reasonable, therefore, to allow the administration costs of a customer assistance program to be spread across all of the district's customers because such a program benefits the district as a whole and not just those customers receiving assistance.

MCCC asks that the Commission order the district to submit its plan for a customer assistance program. The plan should set forth how the program would be administered. Administration considerations should include plans for monthly reporting of program funding and disbursements to the Martin County Utilities Board and annual reporting of program funding and disbursements to the Commission.¹⁰ The plan should also set forth

¹⁰ The Commission's Order regarding the uniform parameters for administration of HEA programs in Kentucky and the monthly and annual reporting required for those programs can provide the framework for such reporting requirements. (*See generally*, Final Order, May 4, 2020, Case No. 2019-00366.)

general guidelines for the program, including proposed eligibility requirements, arrearage requirements, maximum distributions per year, and prioritization and waitlist determinations.

MCCC envisions a fund would be administered like an in-house version of Kentucky American Water's H2O Help fund. That fund is administered by a separate entity, the Dollar Energy Fund, which charges an operating fee for administration. That fund receives annual contributions from Kentucky American Water's shareholders and voluntary donations throughout the year from customer contributions. (*See*, Nov. 18, 2019, Kentucky American Water Response to Commission Staff's First Request For Information, #4, Case No. 2019-00366.) MCCC is hopeful that, through Alliance, MCWD could manage a fund in-house and avoid administration fees. However, if the district or the Commission believes that such a plan is not feasible, MCCC asks that the district be ordered to engage in talks with Community Action of Kentucky and other organizations that might be able to administer a customer assistance fund and report back regarding those discussions.

IV. Require the District to Establish Better Customer Service Protocols

For this argument, MCCC incorporates by reference the arguments made in its June 1, 2021 post-hearing brief in this matter.

Customer complaints are a significant problem for the district. And, many customers complain to the Commission when their problems are not resolved by the district. Pursuant to Kentucky's Open Records Act, MCCC requested a report of all water utility complaints filed with the Commission from January 1, 2020 to August 25, 2021. During that time, 43 complaints were reported regarding the Martin County Water District. (*See* Exhibit 2.) Far more complaints were reported regarding MCWD than any other PSC regulated water utility. *Id.* At the September 24, 2021 hearing in this matter, Jimmy Don Kerr asserted that

customers were being told to report problems to Facebook, WSAZ, or the PSC rather than to call the water district, and that customers were complaining to the Commission before calling the MCWD office. (Testimony of Jimmy Don Kerr at the September 24, 2021 hearing beginning at 09:51:45.)

It is simply not true that customers are complaining to the Commission prior to calling MCWD. The PSC staff prepare a report for each complaint that is filed with the Commission. The report is on a form entitled “PSC Consumer Inquiry System.” On each reported form, the Commission staff makes a note as to whether the customer had contacted the utility prior to submitting a complaint to the PSC. Pursuant to Kentucky’s Open Records Act, MCCC requested a copy of each of those Consumer Inquiry forms for complaints filed with the Commission from January 1, 2020 to August 25, 2021. Those reports are presented here as Exhibit 3. During that time 42 customers of MCWD filed complaints with the Commission that resulted in PSC Consumer Inquiry System reports. Of those 42 complaints, the Commission report indicates that all customers had previously contacted (or attempted to contact) the water district regarding their issue or were aware that a family member or neighbor had already complained to the water district regarding that particular issue. In five instances, MCWD asserted that there had been no previous complaint. (Ex. 3, p. 51, 54, 66, 69, and 83). Four of those instances occurred during the period in August 2020 when PSC staff also noted that they were having difficulty contacting the water district. (*See* Ex. 3, pp. 49-54, 65-69). Several customers expressed frustrations with their inability to get appropriate responses from the district.¹¹ For 15 of the 42

¹¹ “I have reported it almost every week to the water company but they have done nothing to help me.” Ex. 3, at 21. “Customer has been in the office several times this week and no one can explain his billing.” Ex. 3, at 29. “I did contact them with this issue and was ignored.” Ex. 3, at 53. “I have tried to contact them; they won’t answer the phone.” Ex. 3, at 61. “When she called, she was told the bill was correct. She feels they were kind of rude to her even though she has never complained before.” Ex. 3, at 71. “States he wants to talk with someone from Alliance but cannot get through.” Ex. 3, at 85.

complaints, PSC staff were unable to get a response from MCWD in a timely manner. (*See* Ex. 3, pp. 33-73, 87-90.)

The biggest issue between the district and its customers is a lack of trust. The district can begin to build that trust by being transparent in tracking and reporting the complaints it receives. Customers will only stop complaining on Facebook when they believe that complaining to the district will bring about a better result.

MCCC has advocated for and continues to advocate for a process by which the district can track and report customer complaints each month. Currently, MCWD does not track customer complaints that do not result in a work order¹² and instead only makes a note in the customer's file if and when that customer calls in a complaint. (Testimony of Craig Miller at the September 24, 2021 hearing beginning at 13:41:26.)

The ability to track customer complaints is key to understanding the system's problems from the customer's standpoint. It is important that the district be able to track complaints both geographically and over time to determine, for instance, whether there are increased instances of water quality complaints that might be related to a certain tank or section of line or whether there is a spike in billing complaints that could be related to metering issues. The district needs to be able to analyze trends in customer complaints to spot issues within the system.

But even more importantly, the district's customers need to hear that their complaints are being counted and considered. By including a monthly summary of complaints by type and location in each board packet, customers will be able to see that at least there is some effort to note their complaint and report it out. And, by reporting the number and types of

¹² While the district now has an SOP for logging customer complaints, Mr. Miller testified that if the complaint does not result in a work order, the complaint is merely entered into the customer's account. (Testimony of Craig Miller at the September 24, 2021 hearing beginning at 13:41:26.) For after-hours complaints that do not result in a work order, there is no method for logging the customer's complaint. *Id.*

complaints that are being received, the board and the customers will have a better sense of the issues customers are facing in the district.

MCCC respectfully asks that the Commission order the district to develop and implement a plan for tracking each customer complaint and that the district be required to report to the board each month regarding the number of complaints received by type and location.

CONCLUSION

The Commission has asked for “Creative Solutions” to the water affordability crisis. MCCC responded with these specific proposals to provide a voluntary low-use rate for Martin County’s low-income customers and to waive surcharges for those customers. MCCC believes that these solutions are reasonable in this instance because of the severity of the affordability crisis in the county and the inability of many of the district’s customers to pay their bills. MCCC also asks that the Commission do more to address the affordability needs of the customers and the distrust between the customers and the district by requiring the district to implement a customer assistance program and by requiring the district to develop a system for tracking and reporting customer complaints. MCCC believes that these solutions will make it less likely that the district’s customers will have their water service terminated. MCCC also believes that through transparent monthly reporting of customer complaints, the district can begin building trust by letting customers know that their complaints are being counted and considered.

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 on all other parties pursuant to 807 KAR 5:001 on this the 21st day of October 2021.

/s/ Mary Varson Cromer