

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG)	
SANDY WATER DISTRICT FOR AN)	CASE NO. 2022-00044
ADJUSTMENT OF ITS WATER RATES)	
PURSUANT TO 807 KAR 5:076)	

APPLICATION FOR REHEARING

Pursuant to KRS 278.400, Big Sandy Water District (“the District”) applies for rehearing of the Commission’s Order of September 13, 2022, with respect to the implementation of the approved rate adjustment in two phases and to the District’s immediate use of surcharge proceeds for the specific purposes set forth in its application for rate adjustment.¹

The Phase I Rates Are Unreasonable as They Fail to Generate Sufficient Revenues for the District to Remain Operational and Financially Sound

In its Order of September 13, 2022, the Commission found that the District **requires** annual revenues of \$2,834,555 from water sales, an increase of \$226,154, “to remain operational and financially sound and to have an opportunity to provide adequate, efficient, and reasonable service to its customers.”² To achieve this increase, the Commission established two rate schedules for the District – Phase 1 Rates and Phase 2 Rates. It ordered Phase I Rates to be charged for water service that the District provides from September 13, 2022 to September 12, 2023, and Phase 2 Rates to be charged for water service provided after September 12, 2023. Based upon test period water

¹ This application is timely filed in accordance with KRS 278.400. KRS 278.400 provides that a party may apply for rehearing of an order within 20 days after service of that order. “Service of a commission order is complete three (3) days after the date the order is mailed.” If an order is transmitted electronically to a party, the order is considered mailed “on the date the transmission of the order is completed.” KRS 278.370. Accordingly, service of the Order of September 13, 2022, was completed on September 16, 2020. The twentieth day after the service is October 6, 2022.

² Order at 16.

sales, the Phase 1 Rates will produce \$2,721,695 in revenue from water sales, or approximately \$113,294 more than proforma present rate service revenues, during the year they are in effect. Phase 2 Rates will generate annual revenues \$2,834,555, or approximately \$226,154 more than proforma present rate service revenues. The District did not request a phase-in of rates in its application; nor did Commission Staff recommend a phase-in of rates in its report to the Commission on the District's application.

The Phase 1 Rates will produce approximately \$112,860 less revenue than is necessary for the District to "remain operational and financially sound." The Commission implicitly acknowledges the inadequacy of the Phase 1 Rates by noting that Phase 1 Rates **will not** allow the District to fully recover its depreciation expense or fully fund its depreciation reserve.³ Only after the passage of one year, when the Phase 2 Rates take effect, will the District be authorized rates that produce the level of revenue that the Commission has found reasonable and necessary.

The imposition of the Phase I Rates violates the Due Process Clause of the Fourteenth Amendment of the Federal Constitution. The United States Supreme Court and the Kentucky Supreme Court have interpreted Due Clause of the Fourteenth Amendment as requiring that a utility's rates be "just and reasonable."⁴ A rate is unreasonable if it fails to enable a utility "to operate successfully and maintain its financial integrity."⁵ The Kentucky Supreme Court has further found that rates failing to generate sufficient revenues to permit a water district to provide

³ *Id.* at 17 (Phase 1 Rates "will allow for adequate revenues to cover expenses and debt service and **a portion of the depreciation reserves**") (emphasis added).

⁴ KRS 278.030(1), which provides that "[e]very utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person," similarly establishes a utility's right to fair, just and reasonable rates.

⁵ *Public Service Commission of Kentucky v. Dewitt Water District*, 720 S.W.2d 725, 730 (Ky. 1986). *See also Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (noting that rates must be sufficient to assure confidence in the financial integrity of the enterprise"); *Commonwealth ex rel. Stephens v. South Central Bell Telephone Co.*, 545 S.W.2d 927, 930-931 (Ky. 1976) ("A confiscatory rate is one that is unjust and unreasonable. Rates are non-confiscatory, just and reasonable so long as they enable the utility to operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed").

for an adequate depreciation account and replacement fund are unreasonable as they jeopardize that water district's financial integrity and stability.⁶

The Phase 1 Rates will not produce the level of revenue that the Commission has found necessary for the District to “remain operational and financially sound” and, therefore, are *per se* unreasonable. Given that the District has reported net operating losses for the last four years, the postponement of the implementation of the Phase 2 Rates may worsen the District's financial problems.

Denying the District the authority to immediately charge the Phase 2 Rates and requiring the assessment of lower rates, even for just one year, conflicts with the Kentucky Supreme Court's decision in *Public Service Commission of Kentucky v. Dewitt Water District*, 720 S.W.2d 725, 732 (Ky. 1986) (emphasis added), in which the Court found that a water district “should be entitled to a reasonable depreciation deduction on **its entire plant in-service** for the purpose of computing its operating expenses.” The imposition of the Phase 1 Rates is effectively a disallowance of a portion of the District's reasonable depreciation expense. Such action is “unreasonable and constitutes a taking of the [water district's] property . . . without just compensation.” *Dewitt* at 730.

The Order of September 13, 2022, refers to “a significant hardship on Big Sandy District's customers” as the basis for the delaying the assessment of the Phase 2 Rates.⁷ The record, however, is devoid of any customer complaint or protest regarding the proposed increase.⁸ Furthermore, Commission Staff in its report on the District's application did not recommend a phase-in of rates and made no finding regarding “customer hardship.” A limited review of recent rate case proceedings indicates that rate increases of the same percentage have been ordered for other water

⁶ *Dewitt Water District*, 720 S.W.2d at 731.

⁷ Order at 17.

⁸ Notice of the proposed rates, including the proposed surcharge, was mailed to every customer. See Application at Exhibit L.

utilities without any phase-in of rates. In several instances in which a phase-in of rates was ordered, the applicant expressly requested the phase-in of rates.

While the District acknowledges that any rate increase adversely affects customers, it believes the District's customers are willing to accept the requested increase to maintain or improve the quality of service. Given the present high inflation rate and a very tight labor market that requires the payment of higher wages to retain and attract quality employees, service quality is likely to suffer if the implementation of Phase 2 Rates is delayed until later 2023. The District notes that, unlike other rate proceedings, in which the Commission authorized rates that producing revenues lower than those found necessary to meet a water district's reasonable revenue requirements, it made no determination in this proceeding regarding the lower rates' effect on service quality.⁹

In summary, the Phase 1 Rates do not produce the revenues that the Commission found reasonable and necessary for the District to "remain operational and financially sound." As a result, those rates are unjust and unreasonable. Their assessment is contrary to longstanding legal precedent. Accordingly, the Commission should grant rehearing on this issue and immediately authorize the District to assess the Phase 2 Rates.

Request for Clarification of Surcharge Conditions

In its application for rate adjustment, the District submitted a five-page, single-spaced statement setting forth the District's need for a water loss detection and control program and describing its proposed program. In that statement, it listed and described ten specific expenditures on which it proposed to expend surcharge proceeds. These initial expenditures totaled \$905,086.

⁹ See, e.g., *Electronic Application of Garrison-Quincy-Ky-O-Heights Water District for a Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2021-00094 (Ky. PSC Nov. 24, 2021); *Application of P.R. Wastewater Management, Inc. for an Alternative Rate Adjustment*, Case No. 2018-00339 (Ky. PSC Apr. 12, 2019); *Application of North Hopkins Water District for Rate Adjustment for Small Water Utilities Pursuant to 807 KAR 5:076* (Ky. PSC Aug. 16, 2018).

The District submitted forty-nine pages of price quotes and other materials to support the proposed expenditures. While the Order of September 13, 2022, authorizes a surcharge to fund a water loss detection and control program surcharge, it is silent on the proposed expenditures. The District requests that the Commission clarify and expressly state whether the use of surcharge funds is authorized for the expenditures listed in the application.

Employee Benefits

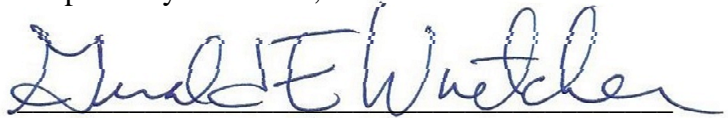
In its Order of September 13, 2022, the Commission held that the value of dental insurance benefits provided to water district commissioners must be applied to the salary limitations set forth in KRS 74.020 and ordered the District to cease providing dental insurance benefits to the members of its Board of Commissioners who are currently receiving the maximum salary permitted under that statute. While the District has not applied for rehearing on this portion of the Order of September 13, 2022, and has voluntarily ceased providing such benefit to the members of its Board of Commissioners, the District places the Commission on notice of its disagreement with the Commission's interpretation of KRS 74.020 and reserves the right to contest the Commission's interpretation in future administrative and judicial proceedings.

Conclusion

WHEREFORE, the District requests that the Commission grant rehearing on the Order of September 13, 2022, to authorize the District to immediately assess the Phase 2 Rates and to clarify that the District may use the proceeds of the water loss detection and control program surcharge for the uses set forth in the District's application for rate adjustment.

Dated: October 6, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on October 6, 2022 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.



Gerald E. Wuetcher