

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF)
WOOD CREEK WATER DISTRICT) CASE NO. 2022-00145
FOR ADJUSTMENT OF RATES)**

APPLICATION FOR REHEARING

Pursuant to KRS 278.400, Wood Creek Water District (“Wood Creek”) applies for rehearing of the Order of December 20, 2022 on the Order’s finding regarding Wood Creek’s pro forma employee health insurance expense. More specifically, Wood Creek states that the Public Service Commission’s (“Commission”) use of an allocation factor based upon the number of customers to determine pro forma employee health insurance expense rather than a percentage of labor cost was not supported by specific findings and this use of the incorrect allocation factor has deprived Wood Creek of approximately **\$165,386** in annual revenues.

Background

Wood Creek operates facilities that treat and distribute water to approximately 5,493 retail customers in Laurel County, Kentucky and provides wholesale water service to East Laurel Water District (“East Laurel”) and to West Laurel Water Association, Inc. (“West Laurel”). In addition to its water operations, Wood Creek operates and manages under contract the water distribution facilities of East Laurel

and West Laurel. It also operates sewer collection facilities that serve persons within its territory.

As the Commission correctly noted in the Order, expenses that Wood Creek incurred in the test period to provide contract operation and maintenance services to East Laurel and West Laurel and to operate and maintain Wood Creek's sewer operations must be removed "as they do not accurately represent the cost of providing service to Wood Creek District's water customers."¹ Such action is necessary to prevent Wood Creek's water service customers from subsidizing Wood Creek's other operations.

Wood Creek provides health insurance coverage for all its employees. Several of these Wood Creek employees performed services for Wood Creek's water operations and at least one of its non-water service operations. To ensure that Wood Creek's rates for water service recover only employee health insurance expense related to its Wood Creek's water operations, the Commission, in its Order of December 20, 2022, sought to exclude from recovery the portion of Wood Creek's actual test period employee health insurance expense related to its non-water operations. Wood Creek agrees in principle with the Commission's action. It proposed such an adjustment to test period employee health insurance expense in its application. Wood Creek, however, disagrees with the method the Commission

¹ Order of December 20, 2022 at 7.

chose to **calculate** the portion of employee health insurance expense to be recovered through rates.

To do so, the Commission first determined that Wood Creek’s total allowable test period employee health insurance expense was \$798,583.² It then allocated **\$245,405** or **30.73 percent** of total allowable test period employee health insurance expense to Wood Creek’s water operations. This allocation was apparently based upon the ratio of the number of customers served by Wood Creek’s water operations to the total number of customers served by all Wood Creek operations. The calculations for this allocation are shown in Table 1 below.

Table 1		
Operation	Customers	Percentage
Wood Creek Water	5,485	30.73
Wood Creek Sewer	1,242	6.96
East Laurel Water District	5,773	32.35
West Laurel Water Association	5,347	29.96
TOTAL	17,847	100.00%

In making this finding, the Commission implicitly rejected Wood Creek’s proposal that the allocation of total allowable test period employee health insurance expense to Wood Creek’s water operations be based upon the ratio of total salaries

² Wood Creek contributes the total cost of the employee’s health insurance. The Commission has previously found that the percentage of a utility’s contribution to the cost of an employee’s health insurance cost should not exceed the national average private industry employer’s contribution rate as determined by the U.S. Bureau of Labor Statistics. The Commission applied these limits to determine Wood Creek’s total allowable test period health insurance expense as \$798,583. Order of Dec. 21, 2022 at 10, fn. 24. Wood Creek had proposed the same level of total allowable test period health insurance expense in its application.

and wages expense allocated to Wood Creek's water operations to Wood Creek's total test period salaries and wages expensed.³ Had this approach been used, then **51.44 percent** of total allowable test period employee health insurance expense, or \$410,791, would have been allocated to Wood Creek's water operations ($\$1,203,455/\$2,339,460 = 51.44\%$).

The Order of December 20, 2022, lacks specific findings to support the use of an allocation factor based upon the number of customers

The Commission must provide specific evidentiary facts to support its allocation methodology. As an administrative agency, it "is required to set forth sufficient facts to support conclusions that are reached, so the parties understand the decision, and to permit meaningful appellate review." *500 Associates, Inc. v. Natural Resources and Environmental Protection Cabinet*, 204 S.W.3d 121, 132 (Ky.App. 2006). *See also Marshall County v. South Central Bell Telephone Company*, 519 S.W.2d 616 (Ky. 1975).

The Order of December 20, 2022 does not comply with this requirement. It lacks any evidence or reasoning for the Commission's use of an allocation factor based upon the number of customers. It merely sets forth an allocation factor in a footnote. It does not explain how this allocation factor was derived or provide any reasons why the use of this allocation factor is appropriate or will result a reasonable

³ Wood Creek Water District's Response to Commission Staff's First Request for Information, Item 41 (Q41_WoodCreekWorksheet.xlsx, Tab Adj, Cell H31).

and accurate reflection of the employee health insurance expense of Wood Creek's water operations.

Because the Order rejects Wood Creek's proposed allocation method, it must provide the reasoning for its decision. "In administrative proceedings where the burden of proof is on the party seeking relief, the fact-finder may refuse to accept even uncontradicted evidence in the record. But in such cases, the fact-finder must state its reasons for rejecting the only evidence in the record." *Kroger Limited Partnership I v. Boyle County Property Valuation Administrator*, 610 S.W.3d 322, 338 (Ky.App. 2020). The Order of December 20, 2022 is fatally lacking such reasoning.

In light of the absence of required evidential findings, the Commission should grant rehearing to review which allocation factor is appropriate to use to establish Wood Creek's proforma employee health insurance expense.

Use of an allocation factor based upon the number of customers is unreasonable and will result in an inaccurate revenue requirement

Wood Creek directly assigns wage and salary expense for field work performed for its sewer operations and its East Laurel and West Laurel contract operations and directly bills these operations for that expense. A work order is issued for each work assignment. This work order identifies the employees performing the work, the operation for which the work was performed, and the actual time spent

performing the work. This work order system permitted Wood Creek to determine that actual cost of labor performed for each of its operating divisions. Based upon these records, Wood Creek determined the proforma Salaries and Wages – Employees expense proposed in its application.⁴

In its Order of December 20, 2022, the Commission took a similar approach to determine Wood Creek’s proforma Salaries and Wages – Employees expense. It subtracted the total of salaries and wages directly billed to its sewer operations, and to East Laurel and West Laurel from actual salaries and wages. Because labor expense related to customer accounts was not directly billed, the Commission allocated this expense to the various operations based upon the ratio of each operation’s number of customers to the total number of customers served. The Commission found Wood Creek’s adjusted level of employee salaries and wages was \$1,203,455, or approximately **51.44 percent** of Wood Creek’s test period actual total salaries and wages.⁵

This assignment of costs produces an accurate allocation of labor costs to each division and is also reasonable to use to determine proforma employee health

⁴ Wood Creek does not directly assign wages for customer accounts to its sewer operations and its East Laurel and West Laurel contract operations. When calculating its water operations pro forma salaries and wages expense, Wood Creek allocated that expense based upon the number of customers served. It did so because, in addition to managing customer accounts for its water operations, Wood Creek also managed customer accounts for its sewer operations and its East Laurel and West Laurel.

⁵ Order of December 20, 2022 at 7. $\$1,203,455 \div \$2,339,461 = .5144$.

insurance expense. Wood Creek provides health insurance coverage to each of its employees. Employee health insurance cost is a direct labor cost. Using the percentage of Wood Creek's total employee wages and salaries assigned to a specific division as an allocation factor for employee health insurance expense will result in employee health insurance expense being allocated based upon actual work performed for each operating division.

In contrast, assigning employee health insurance costs on the basis of the number of customers each operating division serves is not based upon the actual work performed for each division. While the number of customers served by an operating division may have some relationship to the amount and cost of work performed for an operating division, it is a less reliable and less accurate allocation factor than actual labor cost. It is less likely to represent the actual labor time necessary to serve an operating division because of the topography of that division's service area or the age and condition of that division's facilities.

Despite its greater accuracy and reliability as an allocation factor, the percentage of total employee wages and salaries assigned to a specific division was not used to allocate employee health insurance expense. The failure to use the same allocation factor to allocate wages and salaries expense with employee health insurance expense is at odds with Commission precedent. Historically, the

Commission has applied the same allocation factor used to allocate a utility's salaries and wages expense to allocate its employee health insurance expense.⁶

The Commission's action is also inconsistent with the method that was used in the Order of December 20, 2022 to allocate Wood Creek's test period contributions to the County Employee Retirement Systems ("CERS") for employee pensions. The Commission did not allocate test period contributions based upon the number of customers, but upon the total wages and salaries allocated to Wood Creek's water operations.⁷

⁶ 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) at 13 (health insurance payments and CERS contributions allocated between divisions based upon wage allocation factors); *Electronic Application of Grant County Sanitary Sewer District for A Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2019-00424 (Ky. PSC Mar. 17, 2020), Staff Report at 7-9 (health insurance and dental insurance payments allocated based upon assigned labor time), recommendations adopted by Order of May 6, 2022; *Application of Valley Gas, Inc.*, Case No. 2011-00010 (Ky. PSC May 20, 2011), Staff Report, App. C at 4-5 (allocating health insurance expense based upon salary allocation), recommendations adopted by Order of July 5, 2011); *Application of the Knott County Water and Sewer District for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2002-00292 (Ky. PSC Apr. 29, 2003), Staff Report at 7 (allocating health insurance and pension expense based upon salary allocation), recommendations adopted by Order of May 20, 2003); *Application of the Goshen Utilities, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 98-377 (Ky. PSC Feb. 11, 1999, Staff Report at 5-6 (allocating health insurance upon payroll allocation), recommendations adopted by Order of Mar. 29, 1999); *Application of East Pendleton Water District for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 97-243 (Ky. PSC Mar. 2, 1998), Staff Report, Attachment B at 2 (allocating health insurance expense and CERS contributions based upon payroll allocation), recommendations adopted by Order of Mar. 2, 1998.

⁷ Order of December 20, 2022 at 9.

Table 2			
Calculation of Pro Forma Health, Dental and Pension Benefits			
Category	Order of 12/20/2022	Wood Creek Methodology	Difference
Pro Forma Health Insurance Benefits ¹	\$245,405	\$410,791	\$165,386
Test Year Allowable Life Insurance	3,889	3,889	0
Pro Forma Pension Contributions	319,329	319,329	0
Total	\$568,633	\$734,019	\$165,386
¹ Order of 12/20/2022 uses an allocation factor of 0.3073 (\$798,583 x 0.3073 = \$245,405). See Order of 12/20/2022, Footnote 24. Wood Creek methodology uses an allocation factor of 0.5144 (\$798,583 x 0.5144 = \$410,791).			

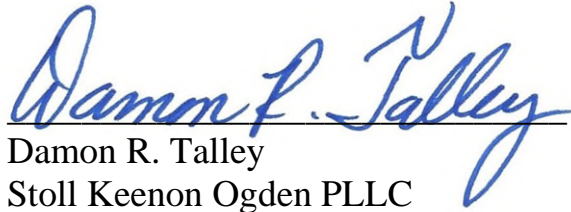
The Commission’s use of an allocation factor based upon the number of customers – a less reliable and less accurate allocation factor - is unreasonable, unreasonably deprives Wood Creek of approximately **\$165,386** in annual revenue,⁸ and results in rates for water service that will not yield a sum sufficient to meet operating expenses, debt service requirements and provide for working capital. As a result, the rates set forth in the Order of December 20, 2022 are unreasonable and unlawful.

WHEREFORE, Wood Creek District requests rehearing of the Order of December 20, 2022 for the purpose of determining the reasonable level of employee health insurance expense and amending the rates set forth in that Order to reflect the appropriate level of that expense.

⁸ \$798,583 x .5144 = \$410,791. \$410,791 - \$245,405 = \$165,386.

Dated: January 10, 2023

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was submitted electronically to the Public Service Commission on January 10, 2023 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.


Counsel for Wood Creek Water District