

recognized that a public utility must be afforded “an opportunity to be heard and to introduce evidence as to the issues underlying one of the determinations of the regulatory commission.”³

The Order did not afford Bracken District an opportunity to be heard. It opened an investigation into Bracken District’s proposed tariff provision and then immediately closed that investigation. Bracken District had no opportunity to respond to the concerns listed in the Order, to present evidence on its proposed tariff provisions, or to otherwise explain the need for and purpose of those revisions. The Order clearly failed to comply with the requirements of the Federal and Kentucky Constitutions. This failure requires that the Application for Rehearing be granted to consider Bracken District’s responses to the Commission’s concerns.

2. The Proposed Policy Provides Adequate Notice to Customers of the Requirements Necessary to Obtain a Leak Adjustment

Contrary to the Order’s finding that the requirements to support an application for leak adjustment were “vague and ambiguous,” the proposed policy provided clear and specific directions as to the evidence necessary to support such an application. The policy expressly identified such documents as a plumber’s statement, invoices for materials and labor, and sworn affidavits from persons with knowledge of the leak’s existence and repair as proper supporting evidence. The leak adjustment application form, which a customer must complete to request a leak adjustment, also identified these documents as essential items the customer must attach to a completed application form.

The Order suggests that the policy’s failure to limit the applicant’s right to submit evidence to specific types of evidence deprives customers of “fair notice of what evidence would meet Bracken District’s threshold.”⁴ The policy, however, clearly identifies the forms of evidences that

³ *Public Service Commission v. Warren County Water District*, 642 S.W.2d 594, 595.

⁴ Order at 5.

would most often support a request for adjustment. It goes further by giving customers the option to submit additional forms of evidence that the customer believes may also support its claim. No one can foresee every circumstance in which a claim for leak adjustment would arise or type of evidence that might support such a claim in a particular circumstance. The Order effectively penalizes Bracken District for providing customer the leeway to support its request with other forms of evidence and for believing that its customers have sufficient knowledge and common sense to select the best form of evidence to support their requests for adjustment.

To address the Order's concerns that the evidentiary requirements are vague, Bracken District has revised its policy to expressly state that that at least one of the documents listed above should be included with the application. Furthermore, the revised policy encourages an applicant to provide all information that would support an application for adjustment. It also places the customer on notice that Bracken District will seek to verify the existence of the leak and the repairs.

To address the Order's concerns about the standard for reviewing and evaluating a customer's request for leak adjustment, Bracken District has revised the policy to expressly state that a customer must demonstrate by a preponderance of the evidence that "the existence and repair of the leak and that the leak was the cause of the above-average water usage." This is the same standard that the Commission uses. The revised policy defines "preponderance of the evidence" in terms that an ordinary customer would understand.

Bracken District recognizes that, with each request for leak adjustment, it has a responsibility to the requesting customer and all Bracken District customers to determine if a leak existed and if that leak was the probable cause of the customer's above-average usage. In the overwhelming number of prior requests for adjustment, Bracken District has quickly investigated and granted requests for adjustment. In many of those cases, Bracken District's staff assisted

customers with their requests and sought out additional information to support the customer's claim.

The revised leak adjustment policy now before the Commission accurately reflects Bracken District's present practices. It clearly informs an applicant of the information required to support a leak adjustment and sets forth the standard used to evaluate the application. It provides customers with reasonable notice of the actions necessary to apply for and obtain a leak adjustment and accurately describes the process that used to evaluate the application.

3. The Proposed Policy Does Not Conflict With 807 KAR 5:006, Section 11(6)

The Order's finding that the proposed policy contained "a requirement that the customer pay the entire amount of the disputed bill" is incorrect. While the original proposal contained such a requirement, the amended version of the tariff submitted on August 1, 2022, did not. Instead, the amended version permitted a customer applying for a leak adjustment to continue to receive service without paying the full bill while his or her application was pending review. It provided:

A Customer remains responsible for the full amount of bill pending review of the Customer's request. No discontinuance of service for nonpayment of the full amount of the bill will be made until review of the request is completed and a bill reflecting the review's results has been issued. [Emphasis added.]⁵

While the customer remains responsible for the unadjusted bill, full payment of the bill is not required nor is the customer subjected to any consequences for nonpayment until a final adverse decision on his or her application.

The policy is consistent with existing law. KRS 278.160(2) requires a utility charge a customer the rate established in a utility's filed rate schedules for service provided. Bracken District must bill the customer for the volume of water provided. The obligation to pay the billed

⁵ Amended Leak Adjustment Policy, Section i.

charges related to the delivery of the full volume of water does not terminate upon the customer's application for a leak adjustment. It continues until Bracken District has reviewed the application and made a final determination that the requirements in its tariff for an adjustment have been satisfied.

The policy's provisions are fully consistent with 807 KAR 5:006, Section 11(6).⁶ They prohibit any discontinuance of or interference with the customer's service until a **final adverse determination** is made on the customer's application. Once that determination is made, a bill reflecting that determination is issued. At that point, there is no longer a billing dispute. If the customer fails to pay the bill, Bracken District may terminate the customer's service upon proper notice.⁷

To allay any concerns that the Commission has regarding this issue, Bracken District has revised its policy to further clarify that a customer's service continues throughout the pendency of the review of the customer's application for leak adjustment and that any unpaid amount related to the customer's application for adjustment will not be subject to any late payment fee regardless of the final decision on that application.

4. Bracken District Has Removed the Provisions Found to Impose an Unreasonable Burden on Customers

The Order of September 27, 2022 expressly found that the originally proposed leak adjustment policy imposed an undue burden upon customers seeking a leak adjustment by requiring those customers to request the leak adjustment prior to payment of the bill for which the

⁶ 807 KAR 5:006, Section 11(6) provides:

A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer: (a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and (b) Stays current on subsequent bills.

⁷ If the customer were to then bring a complaint against Bracken District pursuant to KRS 278.260 regarding the adverse determination, a dispute would still exist, and Bracken District would continue to provide service until the Commission rules upon the customer's complaint.

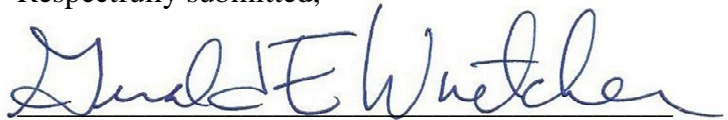
leak adjustment is sought. Although such provisions have previously been approved,⁸ Bracken District acknowledges that such a provision may unduly burden some customers and has removed that provision from the revised version of the policy. A customer seeking a leak adjustment will not be subject to any time restrictions in submitting his or her application.

Conclusion

Bracken County Water District requests the Public Service Commission grant rehearing on its Order of September 27, 2022, and approve the revised leak adjustment policy and leak adjustment application form, which are attached as Exhibits A and B to this Application for Rehearing.

Dated: October 20, 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 20, 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

⁸ See, e.g., Tariff of Estill County Water District No. 1, PSC Ky. No. 4, Original Sheet No. 27.

EXHIBIT A

AREA Bracken County, Ky

PSC KY NO. 1

Third Revised SHEET NO. 21

Bracken County Water District

CANCELLING PSC KY NO. 1

Second Revised SHEET NO. 21

RULES AND REGULATIONS

LEAK ADJUSTMENTS

a. Any Customer, except a customer purchasing water to provide wholesale water service, may request a bill adjustment for water usage resulting from service line leaks after the meter, hidden internal structural piping failures, and plumbing equipment failures.

b. A request for leak adjustment must be in writing on a Leak Adjustment Request Form. The District will review the request and, if it determines that the request complies with the provisions of this Policy, will adjust the Customer’s bill consistent with paragraph d of this Policy. If an adjustment is granted, it will relate back to the bill for which the adjustment is requested.

c. A Customer must show by a preponderance of the evidence the existence and repair of the leak and that the leak caused the above-average water usage. (“Preponderance of the evidence” means that the evidence shows that it is more likely than not that a leak existed, was repaired, and was the cause of the Customer’s above-average water usage.) At least one of the following must be provided in support of the customer’s application: a plumber’s statement, invoices for materials and labor, or sworn affidavits from persons with knowledge of the leak’s existence and repair. The Customer is encouraged to provide all available information that supports the request for adjustment. The District will review the application and verify the existence of the leak and repairs. Plastic pipe for repair of underground water service lines must be certified to withstand a working pressure of 200 pounds per square inch or greater and be CTS pipe. The use of radiator clamps, King Nipples or equivalent will not be accepted.

d. Except as provided in paragraph e, water usage resulting from a leak will be determined by comparing the Customer’s usage during the leak billing period to the Customer’s average usage for the previous twelve (12) billing periods. Water usage in excess of the average customer usage will be billed at a rate equal to the District’s purchased water cost rate for period of the leak plus its average pumping and distribution cost per 1,000 gallons of water. (The pumping and distribution cost rate will be determine using the Transmission and Distribution-Operation Expense and number of gallons sold as reported in the District’s most recently filed annual report with the Public Service Commission.) If a customer applying for a leak adjustment

DATE OF ISSUE _____

MONTH / DATE / YEAR

DATE EFFECTIVE _____

MONTH / DATE / YEAR

ISSUED BY _____

SIGNATURE OF OFFICER

TITLE _____

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE

COMMISSION IN CASE NO. _____ DATED _____

AREA Bracken County, Ky

PSC KY NO. 1

Original SHEET NO. 21.1

Bracken County Water District

CANCELLING PSC KY NO. _____

_____ SHEET NO. _____

RULES AND REGULATIONS

has not been a customer of the District for twelve (12) consecutive months, the average residential usage will be used to determine the amount of the adjustment.

e. If a requested adjustment relates to usage occurring during a summer month (May through September), usage resulting from the leak will be determined by comparing the Customer's usage during the leak billing period with the monthly average for the previous year's summer months (May – September).

f. An adjustment shall cover only one billing period.

g. A customer may receive a leak adjustment only once during an eighteen (18) month period.

h. Adjustments to reflect seasonal changes in usage (for example, the filling of a swimming pool) are not eligible for billing adjustments.

i. A Customer remains responsible for the full amount of bill pending review of the Customer's request. Discontinuance of service for nonpayment of the full amount of the bill, however, shall not be made until review of the request is completed, a final decision on the request is issued, a bill reflecting the review's results has been issued and the Customer has had an opportunity to pay that bill in accordance with the terms of the District's Rules and Regulations. No late payment fee shall be assessed against the Customer for nonpayment of the amount unless the Customer fails to pay the amount owed on the bill reflecting the results of the final decision.

DATE OF ISSUE _____

MONTH / DATE / YEAR

DATE EFFECTIVE _____

MONTH / DATE / YEAR

ISSUED BY _____

SIGNATURE OF OFFICER

TITLE _____

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE

COMMISSION IN CASE NO. _____ DATED _____

EXHIBIT B

LEAK ADJUSTMENT FORM

Name: _____

Account Number: _____

Address: _____

1. Date repairs were made: _____
2. Person making the repairs: _____
3. List of materials used: _____
4. Location of the leak: _____
5. Does this leak involve a swimming pool? _____
6. Attach copy of statements or receipts of material used.

Customers shall be allowed a leak adjustment once every 18 months providing the customer provides documentation that the leak has been repaired. The customer's bill will be based on two components. The first step will be to calculate the customer's average monthly usage over a twelve-month period. If a customer does not have twelve months of usage, the average usage of similar customers will be used. The second step will be to deduct the customer's average monthly usage (as calculated above) from the total amount of water that passed through the meter. The usage calculated in step one will be billed at the utility's regular rates, while the remaining usage will be charged at a rate equal to the District's purchased water cost rate for period of the leak plus its average pumping and distribution cost per 1,000 gallons of water.

If a requested adjustment relates to a leak occurring in summer months, water usage resulting from the leak will be determined by comparing the Customer's usage during the leak billing period with the monthly average for the previous year's summer months (June – September).

I hereby verify that I have read the information given and all statements are correct.

Name

Date

Bracken County Water District

Date