

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF)
OLDHAM COUNTY WATER DISTRICT)
FOR A DEVIATION FROM 807 KAR) CASE NO. 2023-00118
5:076, SECTION 2(1) TO BE)
PERMITTED TO USE ALTERNATIVE)
RATE FILING PROCEDURES)**

MOTION FOR DEVIATION

Pursuant to 807 KAR 5:076, Section 17, Oldham County Water District (“OCWD”) moves the Public Service Commission (“Commission”) for a deviation from the requirement of 807 KAR 5:076, Section 2(1) to be permitted to apply for an adjustment of its retail water rates using the alternative rate filing procedure set forth in 807 KAR 5:076.

In support of its Motion, OCWD states as follows:

1. OCWD is a water district organized pursuant to KRS Chapter 74. It provides retail water service to approximately 9,058 customers in Oldham County, Kentucky.¹ It also provides wholesale water service to the city of LaGrange, Kentucky.²

¹ Annual Report of Oldham County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2022 (“2022 Annual Report”) at Ref Page 27.

² *Id.* at Ref Pages 27 and 29.

2. OCWD's retail water rates were last adjusted in 2009 in Case No. 2009-00436.³ Since then, OCWD has not applied to the Commission for any adjustment to its retail water rates, and it is **not** currently required to do so under any order of the Commission.

3. As reflected in OCWD's annual reports on file with the Commission, OCWD has maintained a sound financial condition in each of the thirteen (13) full years since the last adjustment to its retail water rates. Up until now, OCWD has been able to fully fund its depreciation each year and still maintain a reasonable operating margin through careful planning and close monitoring of its finances on a regular basis.

4. Based in large part on recent economic developments outside of OCWD's control, including unprecedented price increases in inventory, chemicals, fuel, labor, employee-retention, and various other required expenditures, OCWD has determined that a rate adjustment is now necessary in order to continue providing quality services to its customers.

5. 807 KAR 5:076 establishes a simplified procedure for smaller utilities to use in applying to the Commission for rate adjustments. The procedure, known as the alternative rate filing ("ARF") procedure, is designed to be less costly to the

³ *Application of Oldham County Water District for a Certificate of Public Convenience and Necessity to Construct, Finance, and Increase Rates Pursuant to KRS 278.023*, Case No. 2009-00436, Order at 10 (Ky. PSC Nov. 9, 2009).

utility and its customers. Unlike the general rate adjustment procedure set forth in 807 KAR 5:001, Section 16, the ARF procedure does not require an extensive amount of financial information, a cost-of-service study, or written testimony.

6. 807 KAR 5:076, Section 2 permits a utility to use the ARF procedure if the utility: (1) had gross annual revenue in the immediate past calendar year of \$5,000,000 or less; (2) maintained financial records fully separated from a commonly-owned enterprise; and (3) filed with the Commission fully completed annual reports for the immediate past year and for the two prior years if the utility has been in existence that long.

7. During calendar year 2022, OCWD reported gross annual revenue of \$5,200,444.⁴ Thus, OCWD exceeded the \$5,000,000 threshold limit by approximately four percent (4%). OCWD requests a deviation from the \$5,000,000 threshold limit to be permitted to utilize the ARF procedure for the reasons set forth below.

8. 807 KAR 5:076, Section 17 authorizes the Commission to permit deviations from the requirements of 807 KAR 5:076 upon a showing of good cause. The Commission granted deviations of this nature on prior occasions where the utility's annual revenue exceeded the regulatory limit.⁵ In Case No. 89-103, for

⁴ 2022 Annual Report, at Ref Page 11.

⁵ See, e.g., *Electronic Application of Hardin County Water District No. 1 for a Declaratory Order Regarding the use of the Procedures set forth in 807 KAR 5:076 to Apply for an Adjustment of the Rates of its Radcliff Wastewater Sewer System for Sewer Service, or in the alternative, a Deviation from 807 KAR 5:076, Section 2(1)*, Case No. 2022-00410,

example, the Commission granted Valley Gas, Inc. (“Valley Gas”) a deviation from the requirement of 807 KAR 5:076, Section 2(1).⁶ At the time of that case, the maximum amounts allowed under the regulation were 400 customers or \$200,000 in annual revenue.⁷ Valley Gas had 505 customers and \$249,898.57 in annual revenue, exceeding either of these maximums by approximately **twenty-five percent (25%)**.⁸ The Commission granted the requested deviation upon finding that Valley Gas “in all other respects, substantially meets the requirements for the alternative rate filing procedure.”⁹ The Commission later granted similar deviations for Valley Gas in 1992¹⁰ and 1995.¹¹

9. The Commission continued to grant deviations from the requirement of 807 KAR 5:076, Section 2(1) after the regulation was amended in 1996 to increase the maximum amounts allowed to 500 customers and \$300,000 in annual revenue.

Order (Ky. PSC Feb. 10, 2023); *Application of Kentucky-American Water Company for an Adjustment of Sewer Rates Pursuant to the Alternative Rate Filing Procedure*, Case No. 2009-00367, Order at 1-2 (Ky. PSC Oct. 9, 2009) (granting a motion for deviation to use ARF procedures where the utility exceeded both the maximum customer and revenue amounts permitted at the time); *Application of Garrison-Quincy-KY-O-Heights Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2007-00476 (Ky. PSC Nov. 28, 2007) (same); *Application of Black Mountain Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2004-00379, Order at 1-2 (Ky. PSC Oct. 20, 2004) (same); *Application of Ledbetter Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedures for Small Utilities*, Case No. 2003-00237, Order at 1 (Ky. PSC July 21, 2003) (same); *Application of East Knox County Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedures for Small Utilities*, Case No. 96-617, Order at 1 (Ky. PSC Jan. 9, 1997) (same).

⁶ *In the Matter of Adjustment of Rates of Valley Gas, Inc.*, Case No. 89-103, Order (Ky. PSC May 18, 1989).

⁷ 8 Ky.R. 835; eff. 4-7-1982.

⁸ *In the Matter of Adjustment of Rates of Valley Gas, Inc.*, Case No. 89-103, Order (Ky. PSC May 18, 1989).

⁹ *Id.*

¹⁰ *In the Matter of the Notice of Gas Cost Adjustment Filing of Valley Gas, Inc.*, Case No. 1992-00407, Order (Ky. PSC Apr. 22, 1997) (finding that despite having \$44,000 in excess revenue, Valley Gas in all other respects substantially met the requirements for an ARF filing).

¹¹ *In the Matter of the Notice of Gas Cost Adjustment Filing of Valley Gas, Inc.*, Case No. 1995-00231, Order (Ky. PSC May 25, 1995) (finding that despite having \$77,000 in excess revenue, Valley Gas in all other respects substantially met the requirements for an ARF filing).

In Case No. 96-617, for example, the Commission granted a deviation permitting East Knox County Water District to use the ARF procedure when it had 1093 customers and \$352,111 in annual revenue—exceeding the maximum revenue amount allowed at the time by approximately **seventeen percent (17%)**.¹² The Commission approved similar deviations for Ledbetter Water District,¹³ Black Mountain Utility District,¹⁴ and Garrison-Quincy-Ky-O-Heights Water District.¹⁵ In all but one of these cases, the applicant utility exceeded the regulatory limits by well over four percent. In fact, in Case No. 2004-00379, the utility in question had over 1400 customers and **\$567,765** in revenue the year before it filed its case—exceeding the maximum revenue amount by more than **eighty-nine percent (89%)**.¹⁶ Finally, the Commission has also approved at least one deviation from 807 KAR 5:076, Section 2(1) since the regulation was last amended in 2011 from a \$300,000 maximum revenue threshold to a \$5,000,000 maximum revenue threshold.¹⁷

¹² *Application of East Knox County Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedures for Small Utilities*, Case No. 96-617, Order at 1 (Ky. PSC Jan. 9, 1997).

¹³ *Application of Ledbetter Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedures for Small Utilities*, Case No. 2003-00237, Order at 1 (Ky. PSC July 21, 2003).

¹⁴ *Application of Black Mountain Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2004-00379, Order at 1-2 (Ky. PSC Oct. 20, 2004).

¹⁵ *Application of Garrison-Quincy-KY-O-Heights Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2007-00476 (Ky. PSC Nov. 28, 2007).

¹⁶ *Application of Black Mountain Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2004-00379, Order (Ky. PSC Oct. 20, 2004); Annual Report of Black Mountain Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2004, at Ref Pages 11 and 27.

¹⁷ *See Electronic Application of Hardin County Water District No. 1 for a Declaratory Order Regarding the use of the Procedures set forth in 807 KAR 5:076 to Apply for an Adjustment of the Rates of its Radcliff Wastewater Sewer System for Sewer Service, or in the alternative, a Deviation from 807 KAR 5:076, Section 2(1)*, Case No. 2022-00410, Order at 4-5 (Ky. PSC Feb. 10, 2023).

10. As the Commission recently noted, several of the utilities granted deviations under the 1996 version of the regulation were operating at a loss even though the utility's gross operating revenue itself exceeded the regulatory threshold.¹⁸ While OCWD is not currently operating at a loss, it will be soon absent a rate adjustment. This is because OCWD's annual operating expenses are increasing at a much greater rate than its annual operating revenues, due in large part to the lingering economic disruptions and unprecedented price increases stemming from the COVID-19 pandemic.¹⁹

11. Over the past five years, OCWD's annual operating expenses have increased by an average of approximately five percent (5%) per year, while its annual operating revenues have increased only by an average of approximately one and one-fourth (1.25%) percent per year.²⁰ In 2022 alone, OCWD's operating expenses increased by more than twenty percent (20%) while its operating revenues increased by less than four percent (4%).²¹ OCWD should not be treated differently

¹⁸ See *Electronic Application of Wood Creek Water District for a Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2021-00427, Order at 2 (Ky. PSC Dec. 20, 2021).

¹⁹ For a discussion of the lingering economic impacts of the COVID-19 pandemic, see, e.g., *How Much Has Inflation Increased In 2022? And Are Prices Still Rising?* FORBES, Dec. 12, 2022 (noting that inflation began to spike in the U.S. in April of 2021 and climbed to **9.1%** by June of 2022, and further noting that inflation is expected to continue for the next year or two), available at: <https://www.forbes.com/sites/qai/2022/12/12/how-much-has-inflation-increased-in-2022-and-are-prices-still-rising/?sh=66f2ff2768aa>.

²⁰ See 2022 Annual Report, at Ref. Page 11; Annual Report of Oldham County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2021, at Ref. Page 11; Annual Report of Oldham County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2020, at Ref. Page 11; Annual Report of Oldham County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2019, at Ref. Page 11.

²¹ 2022 Annual Report, at Ref. Page 11.

from the utilities previously granted a deviation by the Commission simply because OCWD is being proactive in seeking a rate adjustment, rather than waiting until it is operating at a loss.

12. In addition to the foregoing, the requested deviation is also appropriate for the following reasons:

a. OCWD has maintained adequate financial records and filed fully completed annual reports with the Commission for every year since OCWD's inception, including **2022**, making the use of the alternative rate filing procedure feasible. OCWD therefore submits that, other than the annual revenue limit, it "substantially meets the requirements for the alternative rate filing procedure in all other regards."

b. Granting OCWD's requested deviation would be in line with the Commission's well-established precedent. In fact, in all but one of the above-mentioned cases in which the Commission granted such a deviation, the requesting utility exceeded the regulatory maximum revenue amount by more than four percent. In addition, just like many of the utilities previously granted a deviation by the Commission, the amount of OCWD's operating revenue does not "tell the full story" in light of its substantial operating expenses.

c. There appears to be only one case in which the Commission denied a utility's request for deviation from the requirement 807 KAR 5:076, Section

2(1) since the regulation was amended in 2011.²² In that case, the utility in question exceeded the \$5,000,000 revenue threshold by nearly one million dollars, or approximately nineteen percent (19%)—a much greater amount than the approximate four percent (4%) by which OCWD exceeds the revenue threshold.²³

d. Without the requested deviation, OCWD will be required to use the significantly more expensive general rate case procedures set forth in 807 KAR 5:001, Section 16, which will further increase OCWD's already inflated costs. Specifically, OCWD will have to engage the services of an attorney. Legal fees for general rate cases typically range from a minimum of \$75,000 to upwards of \$100,000 or more. An ARF rate case, on the other hand, could be done in-house at little to no cost to OCWD. OCWD will also have to pay between \$25,000 to \$50,000 to retain the services of a rate consultant to prepare a rate study, including a cost-of-service study, and written testimony—another cost that could be avoided through the use of the ARF procedure.

e. If the Commission denies this Motion and requires OCWD to prepare and file its rate adjustment using the general rate case procedures, OCWD's rate case expense will range from \$100,000 to \$150,000 or more. OCWD's customers will ultimately bear the burden of these higher, and avoidable, costs

²² *Electronic Application of Wood Creek Water District for a Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2021-00427, Order (Ky. PSC Dec. 20, 2021).

²³ *Id.*

through additional rate adjustments—something OCWD has worked tirelessly over the past 13 years to prevent. Specifically, the use of these procedures will cost each customer of OCWD a minimum of approximately \$11 and as much as approximately \$17 or more (\$100,000 divided by 9,058 customers equals approximately \$11; \$150,000 divided by 9,058 customers equals approximately \$17). On the other hand, the use of the ARF procedure would cost OCWD’s customers nothing.

f. Finally, OCWD notes that the \$5,000,000 revenue ceiling in 807 KAR 5:076, Section 2(1), has not been amended since 2011. From 2011 to 2022, however, the United States has experienced an average inflation rate of approximately 2.5% per year, according to the U.S. Bureau of Labor Statistics’ Consumer Price Index data.²⁴ This means \$5,000,000 in 2011 had the same buying power that approximately \$6,575,000 had in 2022. Said another way, a utility with \$5,000,000 of revenue in 2011 would require approximately \$6,575,000 of revenue in 2022 to remain the same “size” as in 2011, keeping all else the same.²⁵ OCWD earned below \$5,000,000 of operating revenue in 2011, and it earned well below \$6,575,000 of operating revenue in 2022.²⁶

²⁴ See *Consumer Price Index Data from 1913 to 2023*, US INFLATION CALCULATOR, available at <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

²⁵ *CPI Inflation Calculator*, U.S. BUR. LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm.

²⁶ See 2022 Annual Report, at Ref. Page 11; Annual Report of Oldham County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2011, at Ref. Page 11.

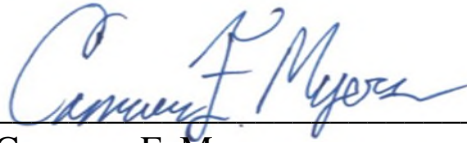
g. OCWD is cognizant that the Commission continues to evaluate any requests for a deviation on a case-by-case basis while it considers the potential need to increase the revenue ceiling in 807 KAR 5:076, Section 2(1). OCWD therefore respectfully requests that the Commission consider this fact as weighing in favor of good cause shown for a deviation.

h. The use of the ARF procedure is feasible given OCWD's financial history, the availability of each of its fully completed financial reports on file with the Commission, and the thoroughness of its financial records. It will allow the Commission to effectively conduct its review of the reasonableness of the proposed rates in a more cost-effective and expedient manner, to the direct benefit of OCWD's ratepaying customers, and without in any way impeding the Commission's ability to perform its statutory duties. Therefore, OCWD respectfully requests the Commission to grant this Motion.

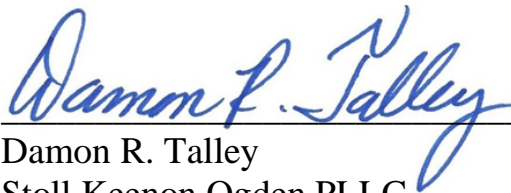
WHEREFORE, OCWD requests that the Public Service Commission grant OCWD's requested deviation from the requirement of 807 KAR 5:076, Section 2(1) to be permitted to apply for an adjustment of its retail water rates using the alternative rate filing procedure set forth in 807 KAR 5:076.

Dated: April 17, 2023

Respectfully submitted,



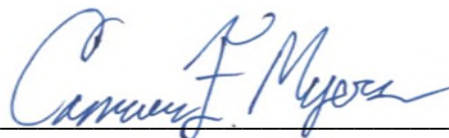
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CERTIFICATE OF SERVICE

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 April 17, 2023, and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.



Cameron F. Myers