

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF )</b>	<b>CASE NO.</b>
<b>OLDHAM COUNTY WATER )</b>	
<b>DISTRICT FOR AN ALTERNATIVE )</b>	
<b>RATE ADJUSTMENT )</b>	

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**NOTICE OF FILING**  
**ORDERS OF FRANKLIN CIRCUIT COURT**

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By and through the undersigned counsel, Oldham County Water District (“Oldham District”) gives notice of filing the September 24, 2025 and October 15, 2025 Orders of the Franklin Circuit Court into the record of this proceeding.

Dated: February 5, 2026

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 February 5, 2026, and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.

/s/ Tina C. Frederick  
Tina C. Frederick

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 24-CI-00725**

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**OLDHAM COUNTY WATER DISTRICT**

**PLAINTIFF**

v.

**OPINION AND ORDER**

**PUBLIC SERVICE COMMISSION OF KENTUCKY**

**DEFENDANT**

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This matter is before the Court for review of the Public Service Commission of Kentucky's (Commission) June 18, 2024, Final Order denying Oldham County Water District's (OCWD) application to increase its rates. Counsel for all parties were present for Oral Arguments on Tuesday, May 20<sup>th</sup>, 2025. Upon consideration of the arguments, review of the briefs, and having otherwise been sufficiently advised, the Court hereby **REVERSES** the Commission's Final Order on the issue of whether the OCWD's inclusion of the disputed amount for employee health insurance, providing full health insurance coverage for its workforce, was "fair just and reasonable" and an allowable expense in its rate base.

**BACKGROUND**

In August of 2023, OCWD filed an application with the Commission to increase its rates in order to produce additional revenue to cover operating costs. In accordance with KRS 278.030(1), OCWD's application included a list of revenues and expenses which were then used to calculate the additional revenue OCWD needed from ratepayers in order to cover costs while maintaining fair, just, and reasonable rates. Included in OCWD's list of operating costs was the cost of providing its employees with pensions and benefits, including medical and dental

insurance coverage. OCWD employs only five commissioners and twenty-three employees, nineteen of whom work hourly. OCWD has offered medical coverage to full-time employees since 1992, paying the entire cost of the plan premiums. Dental coverage was later added to the employee benefits package. *Oldham County Water District's Brief on the Merits* at 2-3.

In a discovery request made after the filing of the application, the Commission asked OCWD to provide a list of “each employee benefit (medical, dental, life, and others), the employee’s contribution, the employer premium contribution, and the adjustment based on Bureau of Labor Statistics (BLS) contribution rates, if applicable.” *Id* at 3. This inquiry recommended that OCWD reduced their \$1,150,721 in employee pension and benefit expenses to comport with the BLS and Willis Towers Watson “national averages.” *Complaint* at 4. The BLS news release referenced by the Commission reported that the average United States employer in private industry paid 79% of the premium expense for single coverage or 67% for family coverage. *Id* at 7. The Willis Survey, prepared by private third party Willis Towers Watson, established a benchmark for dental insurance coverage. *Id*. OCWD considered an adjustment based on these benchmarks to be unreasonable because the Commission had never ordered such an adjustment before, so it was not applied in OCWD’s response to the Commission. *Id*. In support of this position, OCWD pointed to the competitive job market in the area and stated that “[m]any mid-size and larger employers in [the] area offer health insurance for their employees and families,” and that “[p]aying 100 percent of the health insurance premiums for Oldham District’s employees is the most important factor in retaining its current employees or attracting new, experienced employees.” *Public Service Commission of Kentucky’s Amended Response Brief* at 3.

On January 2, 2024, the Commission issued a Staff Report which noted that “Oldham District did not make an adjustment to reflect *the allowable health insurance premium* based on the Bureau of Labor Statistics (BLS) national average for an employer’s share of health insurance and the Willis Benchmarking Survey for national average for an employer’s share of dental insurance that is consistent with Commission precedent.” *Oldham County Water District’s Brief* at 3-4 (emphasis added). The Staff Report recommended that the Commission accept OCWD’s proposed benefit expenses adjusted by the BLS and Willis Surveys. *Public Service Commission’s Brief* at 3. This Staff recommended disallowing 21% of OCWD’s expenses for single coverage premiums and 33% of expenses for family coverage for purposes of the Revenue Requirement Calculation. *Complaint* at 7. The Staff also recommended disallowing 60% of OCWD’s dental premium expense. *Id* at 8.

Pursuant to a request from OCWD, a hearing was held on April 19, 2024. At this hearing, OCWD provided extensive testimony regarding the employee benefits at issue. OCWD explained that providing employer-funded health insurance is important for attracting employees in the highly competitive Oldham County job market. They also argued that full coverage is vital for avoiding the loss of experienced employees whose departures would result in a huge loss of expertise and a costly hiring and training processes. *Oldham County Water District’s Brief* at 12-13. They explained that the cost to ratepayers of raising wages and paying additional payroll taxes and retirement contributions is higher than the costs associated with paying the full cost of employee health insurance premiums. *Id*.

On June 18, 2024, the Commission issued a Final Order denying the rate change as requested because OCWD failed to provide “robust evidence” that their proposal met “the necessary criteria to deviate from the established national standard.” *Final Order* at 17-18. The

use of the term “robust evidence” merely demonstrated the gravity of the Commission’s view of the evidence in support of OCWD’s proposal. The Final Order accepted the Commission Staff’s recommendation to adjust OCWD’s benefits expenses according to the BLS and Willis Survey. The Commission held that the employee pension and benefits expenditure of \$1,150,721 should be reduced by \$125,241. *Complaint* at 6.

### **STANDARD OF REVIEW**

KRS 278.430 places the burden on the Plaintiff to show by clear and satisfactory evidence that the Commission’s “determination, requirement, direction or order is unreasonable and unlawful.” A decision of the Commission is “unlawful” if it violates a statute or a constitutional provision and is “unreasonable” if it is not supported by substantial evidence and reasonable minds cannot differ upon the evidence. *Citizens for Alternative Water Solutions v. Ky. Public Service Commission*, 358 S.W.3d 488, 490 (Ky. Ct. App. 2011); *National-Southwire Aluminum Co. v. Big Rivers Electric Corp.*, 785 S.W.2d 503, 510 (Ky. Ct. App. 1990) *citing Energy Regulatory Comm’n v. Ky. Power Co.*, 605 S.W.2d 46 (Ky. Ct. App. 1980). Substantial evidence is defined as “that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994). A person challenging to overturn the Commission’s determination on setting rates “carries a heavy burden of making a convincing showing that the order is invalid because it is unjust and unreasonable.” *Commonwealth ex rel. Hancock v. South Central Bell Tel. Co.*, 528 S.W.2d 659, 662 (Ky. 1975). The Plaintiff has a heavy burden to demonstrate both that the Commission’s determination was not supported by substantial evidence and that reasonable minds would not differ, and that the determination violated a statutory or constitutional provision.

## ANALYSIS

KRS Chapter 13A requires agencies to go through the administrative process or promulgating regulations, defining an administrative regulation as a “statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public.” *See KRS 13A.100(1).* KRS 13A.130(1)-(2) states:

- (1) An administrative body shall not by internal policy, memorandum, or other form of action;
  - (a) Modify a statute or administrative regulation;
  - (b) Expand upon or limit a statute or administrative regulation; or
  - (c) Except as authorized by the Constitution of the United States, the Constitution of Kentucky, or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Constitution of Kentucky, a statute, or an administrative regulation.
- (2) Any administrative body memorandum, internal policy, or other form of action violative of this section or the spirit thereof is null, void, and unenforceable.

The legislature enacted Chapter 13A to prevent administrative agencies from abusing their authority over those subject to their regulation. Chapter 13A explicitly prohibits agencies from adopting unpromulgated internal policies that expand the scope of their authority beyond their existing regulatory authority. Unpromulgated policies that function in this way are null and void. As the Court of Appeals explained in *Commonwealth, Education & Humanities Cabinet, Dept. of Education v. Gobert*, 9779 S.W.2d 922, 927 (Ky. App. 1998), “an administrative agency is prohibited from modifying or expanding any statute or administrative regulation by internal policy, memorandum, or other action and any attempt to do so is unenforceable, null and void.”

Here, the PSC's internal policy has no basis in statute or administrative regulation, and accordingly, it is unenforceable.

Before an agency regulatory action that meets the description of an administrative regulation can become effective, an agency must publish the regulation's text in the Administrative Register, take written comments, and hold a public hearing on the matter. *See* KRS 13A.270. KRS 278.040 requires the Commission to adopt regulations under Chapter 13A to ensure that utilities only collect fair, just, and reasonable rates. Relevant to the rate proceeding at issue are the regulations 807 KAR 5:001, which provides the Commission's rules of procedures, 807 KAR 5:006, which provides the Commission's general rules, and 807 KAR 5:076, which describes the Commission's "alternative rate adjustment procedure for small utilities." None of these regulations limit a utility's allowable employee insurance expenses, nor do they adopt the BLS or Willis Surveys as a regulatory requirement.

The Commission argues that the use of the BLS and the Willis Survey in their decision-making is not subject to Chapter 13A rulemaking requirements because these two surveys merely "operate as benchmarks regarding the appropriate and competitive employer contribution for certain benefits." *Public Service Commission of Kentucky's Amended Response Brief* at 2. As the Commission noted in a recent Order involving a sewer utility, "In every general rate case filed since 2016 in which a utility sought to recover its expenses for the payment of 100% of its employees' health insurance premiums, the Commission has reduced test year expenses for health insurance premiums to levels based on national average employee contribution rates."

*Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Sewer Rates*, Case No. 2022-00432, Order at 70 (Ky. PSC Feb 14, 2024). The Commission uses the benchmarks set by these surveys as internal policy in their rate change application review

process. Although the PSC describes this policy as a “benchmark”, in reality, the PSC applies it as a hard and fast rule, a regulatory requirement. While the PSC is free to consider such surveys as a factor in setting rates, it cannot categorically reject all evidence that supports a deviation from their internal policy, as it did in this case. Each rate case must consider what is “fair, just and reasonable” within the factual context of the specific case before the Commission. Here, the Commission applied an “across the board” policy without due consideration of the factors that impact OCWD, or whether OCWD’s health insurance policy, in context, was a valid policy choice that benefited ratepayers.

The Commission’s use of such “benchmarks” go beyond the Commission’s regulatory authority to set limits on the allowable employer insurance contributions. In reality, the PSC’s so called “benchmarks” operates as an unpromulgated rule that is exactly the type of generally applicable policy that Chapter 13A makes null and void. While the Commission is free to consider the Willis Survey or BLS data as one factor in deciding whether the applicant’s health insurance costs are reasonable, it may not arbitrarily impose the Willis Survey or BLS data as a rule of decision in every case, unless it adopts that standard as an administrative regulation. Here, the record is clear that the PSC simply applied the Willis Survey without consideration of the competing factors that, contrary to its unpromulgated internal policy, support a finding that OCWD’s health insurance costs are fair, just and reasonable within the context of the market it serves and the broader personnel goals (promoting longevity and stability in its workforce) that are served by the OCWD policy.

The Commission has a duty to determine whether the rates proposed by an applying utility are fair, just, and reasonable. A critical part of this obligation is the duty of the Commission to examine where potentially excessive benefits may place an unreasonable burden

on ratepayers. While a benchmark is appropriate for the Commission to judge the costs expended by utility companies, there are several issues with the benchmarks used by the Commission in this case. First, as discussed above, this kind of benchmark is generally applied to all applicants for a rate change, making these standards a generally applicable policy subject to Chapter 13A rulemaking requirements.

Additionally, the BLS and Willis Survey benchmarks are arbitrary. The Commission allows for deviation from the national standards established by the BLS and Willis Survey upon a utility being able to demonstrate that certain undefined criteria have been met. However, the standards established by the BLS and Willis Survey are not specific to the Oldham County area job market, to the management of water utilities, nor to the utility sector in any capacity. While it is an essential duty of the Commission to ensure that all utilities operate in a financially sustainable manner, there is no reason for the Commission to require a water utility to operate in the same manner as a restaurant or a bookstore. On average, the private sector businesses populating the data behind the BLS and Willis Survey do not have the same business goals as a utility. Further, the Willis Survey, which was published in 2015, is an outdated metric. For these reasons, the benchmarks are arbitrary. The standard operating expectations for a utility should be based on promulgated standards that are specific to the utility sector.

As denial of OCWD's benefits was based on a failure to meet the unpublished criteria required to deviate from a standard that is impermissible, the denial is arbitrary, rendering it null and void under Chapter 13A. Disregarding the unpromulgated and arbitrary standards applied by the Commission, exclusion of the \$125,241 from OCWD's expenses was unlawfully arbitrary and lacked a rational basis. The amount of money disallowed by the Commission represents a small portion of the more than \$5 million operating budget for OCWD. OCWD has provided

insurance premium coverage for employees for thirty years, operating sufficiently without a rate increase for fifteen of those years. *Complaint* at 2. To support their application for a rate change, OCWD demonstrated the importance of maintaining such a benefits package for employees. OCWD explained that the job market in and around Oldham County is highly competitive. The employees have an expectation for this benefits structure, the loss of which would risk the loss of valuable experienced employees who would be expensive to replace. OCWD also explained how the rate increase required to raise wages to compensate employees for the lost health insurance benefits would cost ratepayers more and increase OCWD's tax burden. *Oldham County Water District's Brief* at 12-13. Based on the weight of these factors, reasonable minds would not differ in determining that the Commission's decision to deny OCWD's request was not based on substantial evidence. Further, the Commission's determination was in violation of KRS 13A. The action of the Commission here crossed the line between valid regulatory oversight, and micromanagement based on an internal policy that has never been promulgated as an administrative regulation, and thus lacks the force of law.

## CONCLUSION

OCWD demonstrated that the rates resulting from their policy providing for full health insurance benefits for its workforce was fair, just, and reasonable within the context of this rate case, the market that it serves, and the best interest of the ratepayers. The Commission ignored the evidence that such a change in policy would likely result in the loss of critical employees, or the necessity of increasing base pay for the employees whose health insurance benefits would be slashed under the Commission's arbitrary edict. The Commission's refusal to consider these issues, and its unyielding adherence to an internal policy that has never been subjected to public notice or comment, has resulted in an arbitrary action. In an action for judicial review, the

OCWD has the burden to demonstrate “by clear and satisfactory evidence that the determination, requirement, direction or order [of the PSC] is unreasonable or unlawful.” KRS 278.430. The OCWD has carried that burden. In reviewing OCWD’s application, the Commission determined that the full coverage of employee health and dental insurance premiums did not comport with the unpromulgated, and arbitrary standards used to judge the application. Since the decision to exclude \$125, 241 from the OCWD’s budget was in violation of Chapter 13A, the PSC’s decision on that issue is null and void. The Plaintiff has met the heavy burden of demonstrating both that the Commission’s determination was not supported by substantial evidence and that reasonable minds would not differ that the determination violated a statutory or constitutional provision, namely KRS 13A.130’s prohibition against regulation by internal policy. Therefore, the Court must **REVERSE** the Commission’s Final Order to the extent that it excluded the OCWD’s requested inclusion of the disputed amount for employee health insurance (\$125,241) in its rate base. Accordingly, the Court **GRANTS SUMMARY JUDGMENT** to OCWD.

**SO ORDERED** this the 24th day of September, 2025.



PHILLIP J. SHEPHERD, JUDGE  
Franklin Circuit Court, Division I

Distribution: Counsel of Record

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 24-CI-00725**

OLDHAM COUNTY WATER DISTRICT

APPELLANT/PLAINTIFF

v.

PUBLIC SERVICE COMMISSION OF KENTUCKY

APPELLEE/DEFENDANT

**ORDER**

Oldham County Water District having moved to amend the Opinion and Order dated September 24, 2025 pursuant to Civil Rule 59.05, and the Court having considered the Motion and all parties having the opportunity to be heard, the Court otherwise having been sufficiently advised,

IT IS HEREBY ORDERED that:

1. The Motion to Amend Opinion and Order is granted.

2. The Opinion and Order dated September 24, 2025 is amended as follows:

a. The phrase “in its rate base” appearing on Pages 1 and 10 of the Opinion and Order is stricken and replaced with the phrase “in its revenue requirement.”

b. The phrase “in the OCWD’s budget” appearing on Page 10 of the Opinion and Order is stricken and replaced with the phrase “in OCWD’s revenue requirement.”

Dated this \_\_\_\_ day of October 2025.



PHILLIP J. SHEPHERD, JUDGE  
Franklin Circuit Court, Division I

Distribution: Counsel of Record