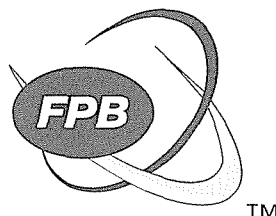


Warner J. Caines
General Manager



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**PUBLIC SERVICE
COMMISSION**

Ms. Stephanie Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: Case No. 2008-00250

Dear Ms. Stumbo:

Enclosed for filing is an original and six copies of Frankfort Electric & Water Plant Board's Reply. I appreciate your assistance. If you have any questions, please contact me at (502) 352-4541 or hprice@fewpb.com.

Sincerely,

Hance Price
Staff Attorney

HP/mw
cc: John N. Hughes
Thomas Marshall
Donald Prather

Equal Opportunity/Affirmative Action Employer

317 West Second Street (P.O. Box 308) Frankfort, Kentucky 40602 Phone (502) 352-4372
Fax (502) 223-3887 www.fpb.cc

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE FRANKFORT)
ELECTRIC AND WATER PLANT) CASE NO. 2008-00250
BOARD FOR AN ADJUSTMENT)
OF WHOLESALE RATES)

REPLY OF FRANKFORT ELECTRIC
AND WATER PLANT BOARD

Submitted by:

Hance Price
317 West Second St.
Frankfort, KY
502 352-4372

and

John N. Hughes
124 West Todd St.
Frankfort, KY 40601
502 227-7270
Attorneys for FEWPB

I. INTRODUCTION

The intervening water districts once again are objecting to the proposed rate increase of the Frankfort Electric and Water Plant Board (“FEWPB”). Having failed to persuade the Commission that any of their arguments had merit, the intervenors now want to deny the FEWPB recovery of the expenses it incurred in defending against their unfounded, unsubstantiated and unwarranted claims. The effect of their argument shifts to the FEWPB’s unregulated retail customers the expenses of defending against intervenors’ frivolous allegations, when those expenses were generated exclusively because of their actions. The intervenors will bear no cost for their actions, if these expenses are not included in the wholesale rate.

The only issue now is whether more detailed invoices should have been filed or whether the itemized lists of rate case expenses previously provided satisfies the request for “rate case expenses”. There apparently is a misunderstanding among the parties as to what constitutes evidence of the rate case expenses. However, FEWPB has now provided the individual invoices for all of the rate case expenses. Those invoices verify and confirm the amount claimed by the FEWPB as rate case expenses.

The Commission’s Order in this case denied a portion of the rate case expense because detailed billing invoices were not provided. At the hearing, counsel for the FEWPB confirmed with counsel for the Commission that the “current rate case costs” were to be supplied. (Tr. 190.) Attached to the FEWPB’s Brief is a schedule of expenses detailing the rate case costs by vendor, date and services provided. Subsequently, on February 22, 2009 as part of the responses to hearing data requests, the FEWPB again provided the total rate case expenses. The FEWPB believed it had supplied information

responsive to the request just as it had done in response to all other Commission data requests in this matter.

II. THE COMMISSION HAS THE AUTHORITY TO MODIFY ITS ORDER AND ITS CONSIDERATION OF THE EXPENSES IS PROPER UNDER THESE CIRCUMSTANCES

It is not unlawful or even unusual for the Commission to reconsider this type of evidence. In Adjustment of Rates of Kentucky American Water Company, Case No. 2000-120, Order of February 26, 2001, the Commission discussed its authority to reconsider an Order:

In Kentucky Power Company, Case No. 7489 (Ky. PSC Jun. 27, 1980), addressing the applicability and scope of KRS 278.400 in such instances, we declared:

The administrative agency retains full authority to reconsider or modify its order during the time it retains control over any question under submission to it. The administrative record remains under the control of the agency until either (a) the time for seeking rehearing has passed, or (b) the Commission denies an application for rehearing, or (c) having granted rehearing, the Commission issues order on rehearing.

The “pendency” status of the case permits the Commission to reconsider its previous order without violating (which it has no intention of doing) the conditions of KRS 278.400 with respect to “additional evidence.”

Id. at 3. Just as in Kentucky Power Co. we are in this proceeding reconsidering our initial Order based upon evidence adduced at the initial hearing.

Adjustment of Rates of Kentucky American Water Company, Case No. 2000-120, Order of February 26, 2001 at 3-4. The Commission also noted KRS 278.400 “contains no express limitation upon the introduction at rehearing of the evidence introduced at the initial hearing.” Id. at 2. Finally, the Commission explained that “we find no reason to strike any portion of the testimony merely because it restates evidence adduced at the earlier hearing.” Id. at 4.

Likewise, in the instant case, FEWPB asks that the Commission reconsider its initial Order based on evidence adduced at the initial hearing. FEWPB exercised reasonable diligence and submitted the items requested by Commission Staff. That is, an invoice and an itemized list. The invoices restate in greater detail exactly the same amount claimed in the invoice signed by FEWPB's General Manager and filed with a pleading signed by FEWPB's counsel.

The Commission has permitted the introduction of additional evidence in other matters as well. For example, in "Application of Northern Kentucky Water District for a Certificate of Convenience and Necessity for the Construction of Subdistrict F Water Main Extensions, Financing and Surcharge", Case No. 2006-00315, the Commission said: "After granting rehearing and **receiving additional evidence** upon the creation and characteristics of proposed Subdistrict F, we authorize the assessment of the proposed surcharge." Order of December 26, 2007 (Emphasis added).

Similarly, the Commission said in "Proposed Wholesale Rate Adjustment of the City of Augusta", Case No. 98-497, February 14, 2000:

Augusta and Bracken District subsequently **petitioned for rehearing to present further evidence** on the amount of "treated water sold" and the amount of undercharges resulting from Augusta's earlier wholesale water service rate. **Having granted the petition and considered the evidence adduced on rehearing**, we authorize Augusta to assess a wholesale water service rate of \$1.30 per 1,000 gallons and a surcharge of 33 cents per 1,000 gallons on Bracken District to collect certain "undercharges."

Under the circumstances in this case, consideration of the invoices is consistent with Commission precedent.

III. CONCLUSION

The FEWPB presented the evidence of its rate case expenses as requested at the hearing. More detailed invoices have now been provided that claim exactly the same amount.

There is no surprise to any party, no increase in the amount of expense requested and no harm or prejudice to any party. However, failure to allow recovery of the expenses will result in a windfall to the intervenors and an unjustified burden on the unregulated retail customers.

WHEREFORE, for the forgoing reasons, FEWPB respectfully requests that the Commission grant its motion and include the additional expenses in the wholesale water rate.

Respectfully Submitted,

John N. Hughes / Hance Price
John N. Hughes
124 West Todd St.
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502 227-7270

Hance Price
Hance Price
317 West Second St.
Frankfort, KY
502 352-4372

CERTIFICATE OF SERVICE

I, Hance Price, certify that on the 22nd day of April, _____ 2009 a copy of this Reply of FEWPB was served by mail to Honorable Thomas A. Marshall, Attorney at Law, 212 Washington Street, P.O. Box 223, Frankfort, KY 40602, Honorable Donald T. Prather, Mathis, Riggs & Prather, P.S.C. Attorneys at Law, 500 Main Street, Suite 5, Shelbyville, KY 40065 and an original and six copies by hand delivery to Ms. Stephanie Stumbo, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, KY 40602-0615.

Hance Price