

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

The Application of Big Sandy)
Water District for An Adjustment of)
Rates Pursuant to the Alternative Rate) Case No. 2012-00152
Adjustment Procedure)

MOTION FOR REHEARING

Overland Development, Inc., (Overland), by counsel, moves for a reconsideration of the denial of intervention order issued on August 22, 2012 and of the order establishing an increase in rates to Overland on August 24, 2012.

Overland is a wholesale customer of Big Sandy Water District (BSWD). It has a special contract for service, which specifies the rates and terms of service for wholesale water. Previous contracts have been filed with the Commission pursuant to 807 KAR 5:011(13).

The denial of intervention was based on the untimely filing of the motion. The order refers to the notice of the application, which was published in the local newspaper. The rate charged by BSWD to Overland is not a tariff rate. It is a contract rate. The newspaper notice of a tariff change is not applicable to a contract customer.

Because the rate is based on a contract, not on a general tariff, Overland is entitled to notice from BSWD that it intends to modify the contract. Without such notice, BSWD's action constitutes a unilateral violation of the terms of the contract. The effect

of the Commission's order of August 24 is to void a validly executed contract among the parties without notice to Overland.

Further, the failure to file a revised contract with the new rate violates Commission's regulations. 807 KAR 5:011(13) requires all special contracts to be separately filed with the Commission. See for example, Case 95-460, dated January 7, 1998, In the Matter of: Kingston Terrill Water District v. City of Richmond: "Rates and terms of service specified in contracts are distinguished from tariff rates and conditions of service".

In Case No. 95-451, The Purchased Water Adjustment of Adair County, November 6, 1995, the Commission said:

Consistent with the Commission's order in Administrative 351 and KRS 268.160, contracts and rate schedules filed with the Commission shall control the rates and conditions of service of the parties. Changes to those currently on file with the Commission shall be made in accordance with KRS 278.180 and Commission Regulation 807 5:011. Until such changes are approved by the Commission, the old contracts and rate schedules remain in effect.

If Columbia or Russell Springs wish to change or revise a contract or rate for wholesale utility service to Adair County, they must file with the Commission no later than 30 days prior to the effective date of the revision, the revised contract and rate schedules.

BSWD did not attempt to negotiate a new contract with Overland. Its effort to invalidate the contract by a revision to its tariff rate violates the procedures provided for in the Commission's regulations and amounts to a unilateral rescission of the contract.

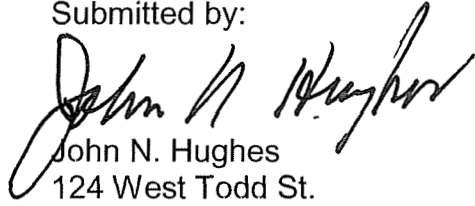
Because BSWD has a valid contract with Overland, it cannot disregard its terms and impose a new rate without a mutual revision of the contract or without a review of

the contract by the Commission and a determination that the contract is unreasonable or unlawful. The lack of notice to Overland of the attempted change of rate through a tariff filing violates its right to participate in the case and to defend the contract. The essence of a fair hearing is the ability to know the issues and to provide evidence in support of the issues. "A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids any agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation." Utility Regulatory Commission v. Kentucky Water Service Co., Inc., Ky. App., 642 S.W.2d 591, 593 (1982). Overland was not notified that the contract was being rescinded or at least modified, and consequently it was denied the ability to present evidence in support of the existing rate.

While the Commission can modify the rates and service conditions of contracts, in this case it made no finding that the contract is unreasonable or otherwise unlawful. Its order makes no mention of the contract. The Commission should find that BSWD has violated the terms of the contract and the procedures for amending that contract, failed to give proper notice to Overland of the modification of the contract and reopen the rate case to exclude the changes to the Overland wholesale rate from the revenue calculation.

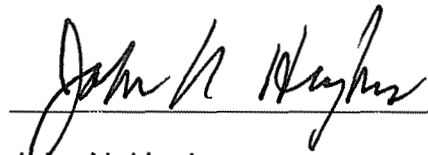
For these reasons, Overland should be granted intervention in this matter and the order of August 24, 2012 as it relates to the wholesale rate charged to Overland should be amended to reflect the current contract rate.

Submitted by:



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I certify a copy of this motion was mailed to Big Sandy Water District, 18200 State Route 3, Catlettsburg, KY 41129 the ~~27~~ 29 day of August, 2012.



John N. Hughes