

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF CITY OF)	CASE NO.
AUGUSTA REVISING ITS WHOLESALE)	2020-00277
WATER SERVICE RATES)	

ORDER

On July 29, 2020, the city of Augusta (Augusta) filed a revised tariff sheet with the Commission setting forth a proposed adjustment to its existing rate for wholesale water service to Bracken County Water District (Bracken District) effective September 1, 2020. Augusta's proposal increases the usage charge by \$0.15 per 1,000 gallons, or 6.4 percent, to \$2.50 per 1,000 gallons. On August 25, 2020, the Commission suspended Augusta's proposed rate pursuant to KRS 278.190 until February 1, 2021, and established a procedural schedule for the review of the proposed rate increase. The procedural schedule required, among other things, that motions to intervene be filed on or before September 15, 2020.

On September 14, 2020, Bracken District filed a motion for leave to intervene. Bracken District argued that it had an interest in ensuring that any adjustment to Augusta's wholesale rate is reasonable and an interest in ensuring the continued existence and application of the rate mechanism in the 2016 Water Purchase Contract. Bracken District further noted that the Commission had previously found that it had a significant interest with respect to Augusta's proposed rate increase and that no party to the proceeding represents Bracken District's interests. However, through an oversight by Commission

Staff, Bracken District's motion to intervene was not brought to the attention of the Commission when it was filed and therefore was not addressed.

On January 20, 2021, after Commission Staff completed their investigation in this matter, Bracken District filed a second motion requesting an Order on its motion for leave to intervene and requesting that the Commission establish a new procedural schedule. Bracken District noted that it previously filed a timely motion to intervene that had not been addressed. Although Bracken District acknowledged that it previously filed a letter indicating that it did not object to the proposed rate increase, it argued that it still had an interest in the proposed rate increase. Bracken District further claimed that it "ascertained information that suggests that Augusta is not properly or efficiently operating and maintaining its water treatment facility and that its failure to do so has resulted in increased water production costs and an unreasonable wholesale rate."¹ Bracken District asserts that Augusta's proposed rate adjustment reflects the allegedly unreasonable costs. Bracken District argues that the failure to address Bracken District's motion for leave to intervene affected its due process rights and prevented it from representing the interest of its ratepayers.²

On January 27, 2021, Augusta responded to the Bracken District's January 20, 2021 motion and argued that it should be denied and that its rate should be approved. Augusta asserted that the proposed rate increase was made after consultation with Bracken District in July 2020 and that Bracken District filed a letter in response to the

¹ Bracken District's Motion for Ruling and for Establishment of Procedural Schedule (filed Jan. 20, 2021) at 2.

² *Id.*

proposed rate increase explicitly indicating that it would not object to it. Augusta argued that the January 20, 2021 motion was the first time Bracken District raised an objection to the proposed rate and that its objection was untimely and barred by laches. Augusta argued that it and the Commission will be prejudiced by granting Bracken District's January 20, 2021 motion because there will be insufficient time to fully investigate the proposed rate. Augusta also noted that it did not include a request for rate case expenses with its proposed rate, in part, because Bracken District agreed to the proposed rate when it was first discussed as the Commission has encourage wholesale providers to do prior to requesting increases. Augusta also pointed out that in the last litigated rate case between Augusta and Bracken District that the combined expense for the parties was over \$140,000, and argued that Augusta would be prejudiced by the inability to claim rate case expenses, due to its reliance on Bracken District's past agreement to the rate, or by being required to request the addition of those expenses. Finally, Augusta gave notice, pursuant to KRS 278.190(2), of its intent to place the rate into effect, subject to refund, on February 2, 2021 regardless of whether a final Order had been entered in this matter.

The Attorney General is the only person with a statutory right to intervene in this matter.³ Intervention by all others is permissive and is within the sound discretion of the Commission. However, the Commission's discretion to grant or deny a motion for

³ Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) a General Adjustment of its Rates for Electric Service; (2) an Order Approving Its 2017 Environmental Compliance Plan; (3) an Order Approving Its Tariffs and Riders; (4) an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) an Order Granting all Other Required Approvals and Relief*, (Ky. PSC Aug. 3, 2017), Order at 1.

intervention has limits enumerated by statute and regulation.⁴ Specifically, pursuant to 807 KAR 5:001, Section 4(11)(a), the Commission:

shall grant a person leave to intervene if . . . he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.⁵

Having reviewed the evidence and being otherwise sufficiently advised, the Commission finds that Bracken District established it should be permitted to intervene in this matter in its September 14, 2020 motion and Bracken District's motion would have been granted if it had been addressed in a timely manner. Further, pursuant to KRS 278.190(2), Augusta is entitled to place its proposed rate into effect as of February 2, 2021, pending a final Order in this matter, subject to refund—and it has given proper notice pursuant to KRS 278.190(2) of its intent to place the rate into effect—so granting Bracken District's request will not prevent Augusta from collecting its proposed rate while it is investigated further as proposed by Bracken District. Further, given the size of the proposed increase, there is sufficient time to conduct any investigation suggested by Bracken District prior to the statutory date in this matter of May 29, 2021.⁶ Thus, the Commission finds that Bracken District should be permitted to intervene and that a new procedural schedule, attached as an Appendix to this Order, should be entered to allow Bracken District to develop and present evidence.

⁴ *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at *3-4 (Ky. App. Feb. 2, 2007) (unpublished).

⁵ 807 KAR 5:001, Section 4(8).

⁶ See KRS 278.190.

However, while the proposed increase is not insignificant for the parties given their size, the Commission notes the proposed rate will only increase Bracken District's total costs by about \$24,304.20 annually.⁷ As noted by Augusta, in Case No. 2015-00039, Augusta and Bracken District collectively incurred more than \$140,000 in legal fees, as well as other expenses, in a dispute over Augusta's wholesale rate,⁸ with Bracken District alone incurring more than \$70,000 in legal fees⁹ in an effort that ultimately resulted in about \$7,000 in annual savings. The Commission would encourage the parties, and Bracken District in particular, since it is requesting further investigation in this matter, to be conscious of the expenses they incur or cause others to incur in this matter, and the benefits they are likely to obtain by incurring them because the Commission will closely scrutinize the reasonableness of such expenses.¹⁰ The Commission will also consider any reasonable expenses incurred by Augusta in this matter when considering the reasonableness of the proposed rate for the reasons raised by Augusta in its response to Bracken District's January 20, 2021 motion.

IT IS HEREBY ORDERED that:

1. Bracken District's motion for leave to intervene is granted.

⁷ The proposed increase is \$0.15 per 1,000 gallons and Bracken District indicated in its most recent motion that it purchased 162,028,000 gallons of water from Augusta in 2019.

⁸ Case No. 2015-00039, *Proposed Adjustment of the Wholesale Water Service Rates of the City of Augusta* (Ky. PSC Apr. 15, 2016).

⁹ Case No. 2015-00039, *Proposed Adjustment of the Wholesale Water Service Rates of the City of Augusta*, Bracken District's Response to Commission Staff's First Joint Request for Information (filed Apr. 1, 2016), Item 8.

¹⁰ See KRS 278.250; 278.278.260; see also *Electronic Proposed Adjustment of the Wholesale Water Service Rates of Lebanon Water Works* (Ky. PSC Jul. 12, 2018).

2. Bracken District shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. Bracken District shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.

4. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, Bracken District shall file a written statement with the Commission that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

5. The procedural schedule in the August 25, 2020 Order is amended as set forth in the Appendix to this Order.

6. The August 25, 2020 Order shall remain in effect except as amended herein.

By the Commission

ENTERED
FEB 01 2021
KENTUCKY PUBLIC
SERVICE COMMISSION

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ATTEST:



Executive Director

Case No. 2020-00277

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2020-00277 DATED FEB 01 2021

All requests for information to Augusta
shall be filed no later than 02/10/2021

Augusta shall file responses to requests for
information no later than 02/24/2021

Intervenor testimony, if any, in verified prepared form, shall
be filed no later than..... 03/10/2021

All requests for information to Intervenors shall be filed no
later than 03/24/2021

Intervenors shall file responses to requests for information
no later than 04/07/2021

Augusta shall file, in verified form, its rebuttal testimony
no later than 04/19/2021

Augusta or any Intervenor shall either request a hearing or file a statement
that this case may be submitted for a decision based
on the existing record no later than 04/23/2021

*Honorable Cynthia C Thompson
Attorney at Law
202 E. Riverside Drive
Augusta, KENTUCKY 41002

*Doug Padgett
City of Augusta
219 Main Street
Augusta, KY 41002

*City of Augusta
219 Main Street
Augusta, KY 41002

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507