

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO)	
LEDBETTER WATER DISTRICT CHARGING)	CASE NO.
UNAUTHORIZED RATES PURSUANT TO 807)	2021-00311
KAR 5:068)	

ORDER

On June 3, 2022, Ledbetter Water District (Ledbetter District) filed a motion, pursuant to KRS 278.400, requesting rehearing of the Commission’s May 13, 2022 final Order in this proceeding.

Also on June 3, 2022, Ledbetter District filed a motion to intervene to permit Alan Fox, Arne Puckett, William Gillahan, James Schade, Terry Teitloff, and Micah Joiner to be named as parties to this proceeding to join in Ledbetter District’s motion for rehearing of the May 13, 2022 Order. The motion to intervene will be addressed by separate Order.

This matter now stands submitted for a decision.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An Order can only be unlawful if it violates a state or federal statute or constitutional provision.²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

DISCUSSION AND FINDINGS

Ledbetter District requested rehearing of four issues from the May 13, 2022 Order in this matter. First, Ledbetter District asked that an Order be issued identifying with specificity the names of the Ledbetter District commissioners and manager. Ledbetter District noted that the Order opening this case and the May 13, 2022 Order did not identify by name any Ledbetter District officer, agent, or employee. Ledbetter District asserted that it was unclear who had been assessed a penalty: commissioners currently on Ledbetter District's board or commissioners who approved and implemented the unauthorized rates that are the subject of this proceeding. Ledbetter District requested that the Commission exclude Micah Joiner from the assessment of any civil penalty because, while he currently is a commissioner, he was not a board member at the time the violation occurred.

Second, Ledbetter District requested clarification that the civil penalties are suspended until March 31, 2023 and will be vacated without further order of the Public

² *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

Service Commission if the assessed person, completes six hours of certified water management training by March 31, 2023. Ledbetter District asserted that the language in ordering paragraph one of the May 13, 2022 Order creates the perception that the penalties are suspended and never vacated at the end of the one-year suspension period. Ledbetter District claimed that this is a departure from past Commission practice to suspend the effective date of a civil penalty to allow a utility officer, agent, or employee to perform the required condition. Ledbetter District further claimed that, under past Commission practice, Commission orders included a provision that the penalty was vacated upon the occurrence of the required condition without further order.

Third, Ledbetter District requested that the Commission clarify ordering paragraphs 2 and 3, which require Ledbetter District commissioners and manager to attend six hours of certified water management training by a date certain and file notice when the training is completed. Ledbetter District argued that when ordering paragraphs one, which assesses and suspends a civil penalty conditioned upon attending training, two and three of the May 13, 2022 Order are read together, it appears that Ledbetter District commissioners and general manager are assessed a penalty of \$250 each and that each must attend six hours of certified water management training.

Fourth, Ledbetter District requested that the refund ordered by the May 13, 2022 Order be based upon the utility's current customer count, which is higher than the customer count from December 31, 2020 that was used in calculating the refund.

Based upon a review of the motion, the May 13, 2022 Order, and being otherwise sufficiently advised, the Commission finds that Ledbetter District established good cause

to grant rehearing to consider the above issues. The Commission will determine subsequent procedural events in a separate Order.

IT IS THEREFORE ORDERED that Ledbetter District's request for rehearing is granted.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner



ATTEST:



Executive Director

Case No. 2021-00311

*Gerald E Wuetcher
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Ledbetter Water District
1483 US Highway 60W
P. O. Box 123
Ledbetter, KY 42058-0123

*Alan Fox
Ledbetter Water District
P. O. Box 123
Ledbetter, KY 42058