

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------------|---|------------|
| ELECTRONIC TARIFF FILING OF BRACKEN |) | CASE NO. |
| COUNTY WATER DISTRICT TO REVISE ITS |) | 2022-00313 |
| LEAK ADJUSTMENT POLICY |) | |

ORDER

On August 18, 2022, Bracken County Water District (Bracken District) filed a tariff to revise its leak adjustment policy and to include a leak adjustment request form in its tariff. On September 1, 2022, Bracken District filed revisions, which are included as an Appendix to this Order, to its original proposal. Bracken District proposed an effective date of October 1, 2022.

LEGAL STANDARD

KRS 278.030 provides that a utility may collect fair, just and reasonable rates and that the service it provides must be adequate, efficient and reasonable. KRS 278.160(1) requires each utility to file with the Commission a tariff showing all rates and conditions for service established by it and collected and enforced.

KRS 278.170(1) states that a utility cannot discriminate or give any unreasonable preference or advantage to any person for doing a like and contemporaneous service under the same or substantially the same conditions. KRS 278.170(4) provides that the Commission “may determine any question of fact arising under this section.”

Commission regulation 807 KAR 5:006, Section 11 establishes procedures for bill adjustments and monitoring customer’s usage, including notice to customers and

investigation of unusual usage. Further, 807 KAR 5:006, Section 11(6) states that a customer's account shall be considered to be current while a dispute is pending pursuant to 807 KAR 5:006, Section 11 provided that the customer makes payments for the disputed period in accordance with historic usage.

BACKGROUND

Bracken District's current tariff on file with the Commission includes a leak adjustment policy.¹ The current leak adjustment policy provides that a leak adjustment may be made under the following conditions:

1. One adjustment may be allowed during a 12-month period upon proof of correction of the leak. Examples of proof include meter reading verification, plumbing receipt, or material for customer repair.

2. The customer would pay the average of the customer's previous consumption over the past 12 months. If the usage history is not available, then Bracken District's average bill for the previous calendar year is applied.

3. If the leak amount exceeds the average bill, the customer would be charged the rate Bracken District pays its supplier plus pumping and distribution charges for the usage amount exceeding the customer's average bill.

On Bracken District's website, it provides additional information regarding the leak adjustment, including that the leak has to be repaired before an adjustment can be calculated, that the customer must sign a form acknowledging there was a leak and it was repaired, the customer can receive only one leak adjustment within a 12-month period,

¹ P.S.C. KY NO. 1, 2nd Revised Sheet No. 21, Cancelling P.S.C. KY NO. 1, Revised Sheet No. 21.

even if future leaks occur within that period, and a description of how the policy is applied in relation to the billing period.²

PROPOSED REVISIONS TO LEAK ADJUSTMENT POLICY

Bracken District proposed the following revisions to its leak adjustment policy:

1. Wholesale customers are not eligible to receive a leak adjustment. All other retail customers may request a leak adjustment.

2. The leak adjustment is available only for water usage resulting from service line leaks after meter, hidden internal structural piping failures, and plumbing equipment failure.

3. Customers must make their request for a leak adjustment in writing using a specific leak adjustment form and must be made prior to the payment of the bill for which the adjustment is sought.

4. Bracken District will adjust the customer's bill only if Bracken District determines that "the request complies with the provisions of this [p]olicy and is supported by sufficient evidence to demonstrate the existence of a leak and its repair."³

5. The customer "must provide sufficient evidence to reasonably demonstrate the existence and repair of the leak." Examples of "sufficient" evidence of a leak "may" include "a plumber's statement, invoices for materials and labor, and sworn affidavits from persons with knowledge of the leak's existence and repair."⁴

² Bracken District Leak Adjustment Information, accessed on September 14, 2022, at <https://www.brackencountywaterdistrict.com/notices-and-documents>

³ Appendix, Third Revised Tariff Sheet 21 b.

⁴ Appendix, Third Revised Tariff Sheet 21 c.

6. A request that meets the requirements of the policy will relate back to the date on which it was properly submitted.

7. Plastic pipe used for repair of underground water service lines be certified to withstand a working pressure of 200 pounds per square inch or greater and be CTS pipe.

8. The use of radiator clamps, King Nipples, or equivalent is not acceptable.

9. The pumping and distribution cost will be based on the Transmission and Distribution Operation Expense and number of gallons sold as reported in Bracken District's most recently filed annual report with the Public Service Commission.

10. Leak adjustments for leaks that occur during May through September will be based upon the average usage for the previous year's usage from May through September.

11. An adjustment can cover only one billing period.

12. A customer can receive a leak adjustment only once during an 18-month period.

13. Adjustments are not allowed for seasonal changes in usage, such as the filling of a swimming pool; and

14. While the customer remains responsible for the full amount of the bill pending review of the request, no discontinuance of service for nonpayment of the full amount of the bill will be made until Bracken District has completed its review of the request and issued a bill reflecting the review's results.

As noted above, Bracken District also proposed to add its leak adjustment form to its tariff. The information requested on the proposed leak adjustment form relates to the

repairs made, location of the leak, other water usage on the served property (swimming pool, greenhouse, farming), and any changes in water usage in the past twelve-months.

DISCUSSION AND FINDINGS

Based upon a review of the tariff filing and being otherwise sufficiently advised, the Commission finds that Bracken District's proposed leak adjustment tariff is not fair, just or reasonable, and should be denied for the following reasons. Tariff language should be clear and unambiguous to give fair notice to customers regarding the utility's rates and conditions of service. Bracken District's proposed leak adjustment language is vague and ambiguous regarding how a customer complies with the requirements. For example, Bracken District will determine whether the customer complied with the requirement to provide, among other things, "sufficient evidence" to "reasonably demonstrate" that a leak existed and "sufficient evidence" to "reasonably demonstrate" that the leak was repaired. If Bracken District deems that the customer does not meet the sufficient evidence or reasonable demonstration threshold, then that customer will not receive a leak adjustment. The proposed tariff does not define the "sufficient evidence" or "reasonable demonstration" standards with reasonable clarity to put the customer on fair notice of what is required to meet those standards. The tariff provides three examples of what "may" be sufficient evidence; the use of the word "may" indicates that those items may not actually be sufficient to be deemed evidence. Further, the vague language implies that other forms of evidence may be sufficient, but, without a definition of "sufficient evidence," customers do not have fair notice of what evidence would meet Bracken District's threshold. "Reasonably demonstrate" is not defined at all. Without specific

definitions of the applicable standards, Bracken District would have unlimited discretion in making its determination regarding customer compliance.

Additionally, the requirement that the customer pay the entire amount of the disputed bill conflicts with 807 KAR 5:006, Section 11(6), which provides that a customer's account shall be considered to be current while a dispute is pending provided that the customer makes payments for the disputed period in accordance with historic usage.

The Commission is generally supportive of water utilities offering a leak adjustment policy to its customers as such a policy benefits customers when circumstances outside of their control cause unusually high water usage that results in their bill be significantly higher than usual. However, such a policy should be prescriptive and should not place an undue burden on customers. One example of an undue burden that Bracken District's proposed leak adjustment policy places on customers is the requirement that the customer request the leak adjustment prior to payment of the bill for which the adjustment is sought. If the leak is not obvious and not discovered prior to receiving the bill, this would just leave the customer a little amount of time to have the leak repaired and request a leak adjustment prior to the bill being due. Another example is if a customer does not have access to the internet to obtain the leak adjustment form and is not able to travel to the office, the customer would have to have the leak adjustment form mailed to them and could possibly not have enough time to submit the request prior to payment being due.

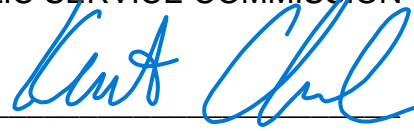
Thus, for the reasons set forth above, the Commission denies Bracken District's proposed leak adjustment tariff and leak adjustment form.

IT IS THEREFORE ORDERED that:

1. The Commission initiates this proceeding to investigate Bracken District's proposed leak adjustment tariff.
2. Bracken District's proposed leak adjustment tariff and leak adjustment form are denied.
3. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

Case No. 2022-00313

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00313 DATED SEP 27 2022

THREE PAGES TO FOLLOW

Hinton, Daniel E (PSC)

From: Wuetcher, Gerald <Gerald.Wuetcher@skofirm.com>
Sent: Thursday, September 1, 2022 2:06 PM
To: Hinton, Daniel E (PSC)
Subject: TFS2022-00423
Attachments: LeakAdjustmentTariff_RevisedSubmission.pdf

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

Mr. Hinton:

Attached is a revised version of Bracken County Water District's Leak Adjustment Policy. If this submission adequately addresses the concerns of Commission Staff that were expressed in our telephone call, please substitute it for Bracken District's original proposal.

Sincerely,

Gerald Wuetcher



Gerald E. Wuetcher
Counsel to the Firm
859-231-3017 Direct

300 W. Vine Street, Ste. 2100
Lexington, KY 40507-1801

The following message, and any documents or previous e-mails attached to it, may contain confidential information protected by the attorney-client privilege. If it was sent to you in error, do not read it. Please inform the sender that you received it and then delete it. Thank you.

AREA Bracken County, Ky

PSC KY NO. 1

Third Revised SHEET NO. 21

Bracken County Water District

CANCELLING PSC KY NO. 1

Second Revised SHEET NO. 21

RULES AND REGULATIONS

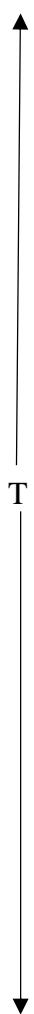
LEAK ADJUSTMENTS

a. Any Customer, except a customer purchasing water to provide wholesale water service, may request a bill adjustment for water usage resulting from service line leaks after the meter, hidden internal structural piping failures, and plumbing equipment failures.

b. A request for leak adjustment must be in writing on a Leak Adjustment Request Form and made prior to the payment of the bill for which the adjustment is sought. The District will review the request and, if it determines that the request complies with the provisions of this Policy and is supported by sufficient evidence to demonstrate the existence of a leak and its repair, will adjust the Customer's bill consistent with paragraph d of this Policy. A request that meets the requirements of this Policy will relate back to the date on which it was properly submitted.

c. A Customer must provide sufficient evidence to reasonably demonstrate the existence and repair of the leak. Such evidence may include such a plumber's statement, invoices for materials and labor, and sworn affidavits from persons with knowledge of the leak's existence and repair. Plastic pipe for repair of underground water service lines must be certified to withstand a working pressure of 200 pounds per square inch or greater and be CTS pipe. The use of radiator clamps, King Nipples or equivalent will not be accepted.

d. Except as provided in paragraph e, water usage resulting from a leak will be determined by comparing the Customer's usage during the leak billing period to the Customer's average usage for the previous twelve (12) billing periods. Water usage in excess of the average customer usage will be billed at a rate equal to the District's purchased water cost rate for period of the leak plus its average pumping and distribution cost per 1,000 gallons of water. (The pumping and distribution cost rate will be determined using the Transmission and Distribution-Operation Expense and number of gallons sold as reported in the District's most recently filed annual report with the Public Service Commission.) If a customer applying for a leak adjustment has not been a customer of the District for twelve (12) consecutive months, the average residential usage will be used to determine the amount of the adjustment.



DATE OF ISSUE August 9, 2022

MONTH / DATE / YEAR

DATE EFFECTIVE October 1, 2022

MONTH / DATE / YEAR

ISSUED BY /s/Diana Moran

SIGNATURE OF OFFICER

TITLE Office Manager

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE

COMMISSION IN CASE NO. _____ DATED _____

AREA Bracken County, Ky

PSC KY NO. 1

Original SHEET NO. 21.1

Bracken County Water District

CANCELLING PSC KY NO. _____

_____ SHEET NO. _____

RULES AND REGULATIONS

e. If a requested adjustment relates to usage occurring during a summer month (May through September), usage resulting from the leak will be determined by comparing the Customer's usage during the leak billing period with the monthly average for the previous year's summer months (May – September).

f. An adjustment shall cover only one billing period.

g. A customer may receive a leak adjustment only once during an eighteen (18) month period.

h. Adjustments to reflect seasonal changes in usage (for example, the filling of a swimming pool) are not eligible for billing adjustments.

i. A Customer remains responsible for the full amount of bill pending review of the Customer's request. No discontinuance of service for nonpayment of the full amount of the bill will be made until review of the request is completed and a bill reflecting the review's results has been issued.



DATE OF ISSUE August 9, 2022

MONTH / DATE / YEAR

DATE EFFECTIVE October 1, 2022

MONTH / DATE / YEAR

ISSUED BY /s/Diana Moran

SIGNATURE OF OFFICER

TITLE Office Manager

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE

COMMISSION IN CASE NO. _____ DATED _____

*Diana Moran
Office Manager
Bracken County Water District
P. O. Box 201
Brooksville, KY 41004

*Bracken County Water District
1324 Brooksville Germantown Road
P. O. Box 201
Brooksville, KY 41004

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