

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC APPLICATION OF KENTUCKY- |) | |
| AMERICAN WATER COMPANY FOR AN |) | |
| ADJUSTMENT OF RATES, A CERTIFICATE OF |) | |
| PUBLIC CONVENIENCE AND NECESSITY FOR |) | CASE NO. |
| INSTALLATION OF ADVANCED METERING |) | 2023-00191 |
| INFRASTRUCTURE, APPROVAL OF |) | |
| REGULATORY AND ACCOUNTING |) | |
| TREATMENTS, AND TARIFF REVISIONS |) | |

ORDER

On May 16, 2024, Kentucky-American Water Company (Kentucky-American) filed a petition, pursuant to KRS 278.400, requesting a rehearing to correct five different material calculations of the Order entered May 3, 2024. On May 16, 2024, Kentucky-American also filed a motion for an informal conference (IC) pursuant to 807 KAR 5:001, Section 9(4). On May 21, 2024, the Attorney General, through his Office of Rate Intervention (Attorney General), and Lexington-Fayette Urban County Government (LFUCG) filed a joint petition for rehearing.¹ On May 23, 2024, LFUCG filed a response to Kentucky-American's petition for rehearing with no objections.² On May 23, 2024, Kentucky-American filed a response to the Attorney General and LFUCG's joint petition for rehearing (Joint Petition).³ The Commission will address Kentucky-American's

¹ The Attorney General and LFUCG's Joint Petition for Rehearing (Joint Petition for Rehearing) (filed May 21, 2024).

² LFUCG's Response to Kentucky-American's Petition for a Rehearing (LFUCG's Response) (filed May 23, 2024).

³ Kentucky-American's Response to Attorney General and LFUCG's Joint Petition for Rehearing (Kentucky-American's Response) (filed May 23, 2024).

petition for rehearing and motion for an IC as well as the joint petition for rehearing filed by the Attorney General and LFUCG in this Order.

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.”⁴ An order can only be unlawful if it violates a state or federal statute or constitutional provision.⁵

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

Kentucky-American’s Motion

1. Effective Date for Amended Rates

Kentucky-American stated that any new rates approved through rehearing be effective for service rendered on and after February 6, 2024, which is the effective date

⁴ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

⁵ *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).

set forth in the Order.⁶ Kentucky-American argued that the Commission has consistently held that such relief is appropriate.⁷

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Kentucky-American's request for rehearing for any amended rates to be effective for service rendered on or after February 6, 2024, should be granted in order to obtain additional information before rendering a decision on this issue.

Annual Qualified Infrastructure Program (QIP) In Present Rate Revenues

Kentucky-American argued that in removing the Qualified Infrastructure Program (QIP) expenses from the base rates, the Order failed to remove annual QIP revenues of \$9,851,113 from Kentucky-American's present rate revenues, thereby understating Kentucky-American's annual revenue increase in base rates by \$1,489,822.⁸ Kentucky-American stated because of this inclusion, the Order resulted in an impact to and ultimately understates Kentucky-American's required revenue increase, which deviated from Kentucky-American's proposed revenue requirement.⁹ Kentucky-American argued that the error creates a punitive mismatch, whereby the revenues received from the QIP are counted in base rates, but the expenses and rate base have been removed – thereby depriving Kentucky-American of an opportunity to earn the 9.70 percent return on equity (ROE) awarded by the Commission.¹⁰ Kentucky-American also stated that this punitive

⁶ Kentucky-American's Petition for Rehearing (Petition for Rehearing) (filed May 16, 2024) at 2.

⁷ Petition for Rehearing at 2.

⁸ Petition for Rehearing at 4.

⁹ Petition for Rehearing at 4.

¹⁰ Petition for Rehearing at 4-5.

mismatch can be further shown by applying the rates and charges reflected in Appendix B of the Order to Kentucky-American's billing determinants.¹¹ Kentucky-American stated that this results in base water and other revenues of \$115,604,748, which would provide a ROE of 9.25 percent or an overall rate of return of 7.02 percent, on the \$489,426,491 of rate base.¹²

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Kentucky-American's request for rehearing on the alleged failure by the Commission to remove QIP revenues from Kentucky-American's present rate revenues should be granted in order to obtain additional information before rendering a decision on this issue.

2. Income Tax Expense

Kentucky-American argued that the adjustments reflected in the Order increase Kentucky-American's taxable income through the removal of proposed expenses, but those adjustments also include a reduction to Kentucky-American's income tax expense, thereby understating the revenue increase.¹³ Kentucky-American stated that despite utilizing a taxable income amount greater than that proposed by Kentucky-American, the Order nevertheless decreases Kentucky-American's state income tax expense by \$565,343 and federal income tax expense by \$2,255,717, as reflected in Appendix A to the Order.¹⁴ Kentucky-American stated that there is no explanation in the Order regarding

¹¹ Petition for Rehearing at 5.

¹² Petition for Rehearing at 5.

¹³ Petition for Rehearing at 2.

¹⁴ Petition for Rehearing at 5.

the adjustments to tax expense.¹⁵ Kentucky-American stated that given that Kentucky-American's state statutory tax rate is 5 percent of taxable income and its federal statutory tax rate is 21 percent, the Commission's increase in Kentucky-American's taxable income must result in a corresponding increase in Kentucky-American's tax expense.¹⁶ Kentucky-American argued that instead, the Order decreases both amounts without justification.¹⁷ Kentucky-American stated that the Commission's calculation of Kentucky-American's income tax expense results in an effective tax rate of only 9 percent – far below the Company's actual statutory tax rate of 24.95 percent.¹⁸

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Kentucky-American's request for rehearing as to the income tax expense should be granted in order to obtain additional information before issuing a decision on this issue.

3. Capital Structure

Kentucky-American argued that the Order states it utilized Kentucky-American's revised capital structure but appears to calculate the rate of return based upon Kentucky-American's initially-filed capital structure.¹⁹ Kentucky-American stated that the revised capital structure would result in a pre-tax rate of return of 9.01 percent.²⁰ Kentucky-American stated that the total effect of the corrections identified in its rehearing request

¹⁵ Petition for Rehearing at 5.

¹⁶ Petition for Rehearing at 5.

¹⁷ Petition for Rehearing at 5.

¹⁸ Petition for Rehearing at 6.

¹⁹ Petition for Rehearing at 2.

²⁰ Petition for Rehearing at 6.

results in a total revenue increase of \$18,142,476, or a total base rate revenue requirement of \$123,140,707.²¹

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Kentucky-American's request for rehearing as it relates to capital restructure should be granted. The Commission fully intended to utilize Kentucky-American's revised capital structure rather than its initially filed capital structure.

4. Bulk Sales Rate

Kentucky-American's rehearing petition stated that the Order entered May 3, 2024, contains two typographical errors related to bulk sales rates.²² Kentucky-American stated that increasing the current bulk sales rate by 10.75 percent results in a rate of \$0.1854 per 50 gallons.²³ Kentucky-American stated that Appendix B of the Order, however, contains a rate of \$1.854 per 50 gallons and \$3.7080 for 100 gallons, both of which appear to contain a decimal error.²⁴ Kentucky-American stated that it believes, absent other changes, that the correct bulk sales rates are \$0.1854 per 50 gallons and \$0.37080 for 100 gallons.²⁵

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that the rehearing request as it relates to the

²¹ Petition for Rehearing at 7.

²² Petition for Rehearing at 7.

²³ Petition for Rehearing at 7.

²⁴ Petition for Rehearing at 7.

²⁵ Petition for Rehearing at 7-8.

bulk sales rate is denied as moot. The Commission addressed this issue by *nunc pro tunc* on May 17, 2024.²⁶

5. Transition of Judy Water Association to the Sale for Resale Rate

Kentucky-American stated that although the Order approved the transition of the Judy Water Association to the Sale for Resale rate, the Order set forth a separate (and higher) rate for the Judy Water Association: (1) \$0.0050057 for the first 70,000 gallons per day and (2) \$0.0051165 for over 70,000 gallons per day.²⁷

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Kentucky-American's request for rehearing as to the issue of the transition of Judy Water Association to the Sale for Resale Rate should be granted. The Commission agrees that the rate should have the Sale for Resale rate rather than increasing its current tariff rate. The Commission finds that the Judy Water Association rate found in Appendix B of the May 3, 2023 Order should be stricken and replaced with the Sale for Resale rate of \$0.0046912 per gallon. Additionally, the Commission acknowledges that transitioning the Judy Water Association to a lower rate class will create a revenue discrepancy between revenue rates and the Commission approved revenue increase. Therefore, the Commission notes that it will address any additional revenue requirement changes and rate impacts during discovery and in further Orders during this proceeding due to the potential for the overall revenue requirement to be modified which, therefore, has an impact on rates.

²⁶ Order (Ky. PSC. May 17, 2024) at 1.

²⁷ Petition for Rehearing at 8.

6. Request for Informal Conference

Kentucky-American also requested an informal conference as it stated that it may assist Commission Staff in the efficient review and evaluation of the Petition for Rehearing, and more particularly, the exhibits outlining the impacts of the errors. Kentucky-American stated that it is willing to appear in person or remotely by video.²⁸

Based upon the motion, the Commission finds that Kentucky-American established good cause to schedule an IC, and therefore the motion should be granted. The Commission notes that the purpose of the IC is to address the issues granted for rehearing as laid out in this Order. An IC is scheduled on May 29, 2024, at 1:30 PM Eastern Daylight Time, at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

Attorney General and LFUCG's Joint Petition

1. Capital Structure

The Attorney General and LFUCG stated that the Final Order erroneously utilized 9.07 percent instead of 9.007 percent for the rate of return.²⁹ The intervenors argue that the error inflates the awarded revenue requirement increase by approximately \$308,339.³⁰

In its response the Joint Petition, Kentucky-American agrees that the math is correct, however, it states that the calculation relied on a revenue conversion factor of 1.342559 or 134.259 percent instead of 1.342300 or 134.2300 percent as stated in

²⁸ Kentucky-American's Motion for Information Conference (filed May 16, 2024) at 1.

²⁹ Joint Petition for Rehearing at 2.

³⁰ Joint Petition for Rehearing at 3.

Kentucky-American's Petition for Rehearing.³¹ Kentucky-American states that the rate of return would result in 9.006 percent, or 9.01 percent if rounded.³² Kentucky-American did not object to the request for a rehearing on the matter.

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that the Attorney General and LFUCG's request for rehearing as it relates to capital structure should be granted. A rehearing was granted to Kentucky-American on this same issue.

2. Revenue Requirement Calculation

The Attorney General and LFUCG stated that it is unclear whether Kentucky-American's rate increase in the May 3, 2024 Order was properly calculated utilizing Kentucky-American's revised revenue requirement increase of \$25,563,294, or erroneously calculated based upon the original requested revenue requirement increase of \$26,051,999.³³ The Attorney General and LFUCG point out that Kentucky-American revised its requested rate increase downward to \$25,563,294, partially in response to the Attorney General's discovery, but that a higher, original requested rate increase was utilized to determine the awarded revenue requirement increase in Appendix A of the May 3, 2023 Order and that it is unclear whether the Commission incorporated the updated \$503,644 reduction in rate increase.³⁴ The Attorney General and LFUCG request

³¹ Kentucky-American's Response at 2.

³² Kentucky-American's Response at 2.

³³ Joint Petition for Rehearing at 3.

³⁴ Joint Petition for Rehearing at 3.

clarification on this issue and further requested that if the \$503,644 reduction was not included that it constitutes a material error that should be corrected.³⁵

In Kentucky-American's response to the Joint Petition, it agreed that the as-filed revenue requirement requested increase was \$26,051,990 and that Kentucky-American revised it to \$25,563,294.³⁶ Kentucky-American stated that the Commission has everything needed to correct those errors and authorize revised and correct rates.³⁷ Kentucky-American did not object to the request for rehearing on this issue.

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that the Attorney General and LFUCG's request for a rehearing should be granted to further investigate whether all items were included in the revenue requirement.

The Commission, on its own motion, finds that a procedural schedule should be established for the orderly processing of matters addressed in this Order. The procedural schedule is attached as an Appendix to this Order.

IT IS THEREFORE ORDERED that:

1. Kentucky-American's petition for rehearing is granted, in part, and denied, in part.
2. Kentucky-American's request that any amended rates amended by rehearing will be effective for service rendered on or after February 6, 2024, is granted

³⁵ Joint Petition for Rehearing at 5.

³⁶ Kentucky-American's Response at 2.

³⁷ Kentucky-American's Response at 2.

for the sole purpose of obtaining additional information before rendering a decision on this issue.

3. Kentucky's petition for rehearing as it relates to annual QIP revenue in present rate revenues, income tax expense, capital structure, and transition of Judy Water Association to the Sale for Resale rate is granted.

4. The Judy Water Association rate found in Appendix B of the May 3, 2023 Order should be stricken and replaced with the Sale for Resale rate of \$0.0046912 per gallon.

5. Kentucky-American's petition for rehearing as it relates to the current bulk system sales is denied.

6. Kentucky-American's request for informal conference is granted.

7. An IC is scheduled on May 29, 2024, at 1:30 p.m. Eastern Daylight Time at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

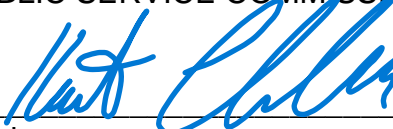
8. The Attorney General and LFUCG's petition for a rehearing is granted as to both issues.

9. The procedural schedule set forth in the Appendix to this Order shall be followed.


10. Kentucky-American shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

11. The remainder of the May 3, 2024 Order, as amended *nunc pro tunc* by *May 17, 2024 Order*, not in conflict with this Order remains in effect.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
MAY 28 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00191 DATED MAY 28 2024

Informal Conference 05/29/2024

All requests for information to Kentucky-American
shall be filed no later than 06/07/2024

Kentucky-American shall file responses to requests
for information no later than 06/19/2024

All requests for information to Intervenors
shall be filed no later than 07/03/2024

Intervenors shall file responses to requests
for information no later than 07/17/2024

Kentucky-American or any Intervenor shall request either a hearing
or that the case be submitted for decision based on the
record no later than 07/26/2024

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