

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF THE CITY OF)	
BURKESVILLE TO INCREASE ITS WHOLESALE)	CASE NO.
RATE TO CUMBERLAND COUNTY WATER)	2024-00075
DISTRICT)	

ORDER

On October 2, 2024, the city of Burkesville (Burkesville) filed a motion requesting reconsideration of the final Order entered on September 12, 2024. In addition, prior to its reconsideration motion Burkesville sought an extension of time, until November 1, 2024, to file its new tariff sheets in accordance with the findings of the final Order. The October 2, 2024 motion requested reconsideration regarding the Commission’s decision to approve the Phase 3 wholesale rate of \$3.11 per 1,000 gallons instead of Burkesville’s proposed Phase 3 wholesale rate of \$3.26 per 1,000 gallons.

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.

MOTION

Burkesville's motion requested reconsideration of the \$3.11 per 1,000 gallon Phase 3 wholesale rate approved to be effective April 15, 2026, in the final Order in this matter. Burkesville's proposed Phase 3 wholesale rate of \$3.26 per 1,000 gallons to be effective April 15, 2026 was denied.³ In support of its motion for reconsidering the approved \$3.11 per 1,000 gallon rate, Burkesville explained that the contract between Burkesville and Cumberland County Water District (Cumberland District) was negotiated in good faith and that a representative from Kentucky Rural Water Association (KRWA) guided the parties through the proposed "Phase in" plan. During the negotiation both parties agreed to the plan because a phased-in approach would be in the best interest of the customers to prevent a "rate shock."⁴ Furthermore, Burkesville explained that the intention behind the Phase 3 rate of \$3.26 per 1,000 gallons was so that Burkesville could

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).

³ Order (Ky. PSC Sept. 12, 2024), at 5, ordering paragraph 1.

⁴ Burkesville's Response to Order & Motion to Reconsider with Notice of Supplement to Record & Motion for Extension of Time (Motion) (filed Oct. 2, 2024), at 2.

“recover from the shortfall on the first and second year” resulting from the phase-in, and that without approval of the \$3.26 rate, Burkesville will “forego the revenue which was the basis for the negotiation.” In addition, Burkesville argued that the Commission’s denial of the \$3.26 per 1,000 gallon rate could result in “a breakdown of the good relationship currently enjoyed by the city of Burkesville and the Cumberland County Water District.”⁵

Additionally, Burkesville moved the Commission, in light of the request to reconsider the approved Phase 3 wholesale rate, for an extension of the September 14, 2024 final Order deadline to file its new tariff sheets. The motion requested an extension until November 1, 2024, for Burkesville to file new tariff sheets, allowing for a period of time for the Commission to reconsider its findings.⁶

DISCUSSION AND FINDINGS

Although no statute or regulation was cited in Burkesville’s motion, one could reasonably interpret the motion to be an application for a rehearing pursuant to KRS 278.400. In accordance with KRS 278.400, Burkesville has adequately stated the matters on which a rehearing is sought – the Commission’s approved Phase 3 wholesale rate of \$3.11 per 1,000 gallons. Furthermore, Burkesville’s request for an extension of time to file its new tariff sheets is a reasonable request and is justified by its request for reconsideration.

The Commission will interpret the motion as such and based upon a review of the case record and being otherwise sufficiently advised, the Commission finds that Burkesville has demonstrated sufficient reason to grant its application for reconsideration

⁵ Burkesville’s Motion at 2.

⁶ Burkesville’s Motion at 1.

to afford Burkesville the opportunity to present the Commission with new information that it did not present in its original tariff filing. Accordingly, Burkesville's request for reconsideration and its request for an extension of time to file its new tariff sheets, until the reconsideration has concluded, is granted. Burkesville acknowledged that it would like to present Commission Staff with new and pertinent information regarding its proposed Phase 3 wholesale water rate, and the Commission finds it appropriate to gain additional information related to the requests and believes that the additional information could impact its decision.

Accordingly, to informally provide information regarding all the issues mentioned in the motion for reconsideration, the Commission finds it appropriate to schedule an informal conference on Friday, November 8, 2024, at 10 a.m. Eastern Standard Time to be held virtually. The Commission encourages both parties to the contract to participate in the informal conference in order to expedite resolution in this matter. In furtherance of that, the Executive Director should mail a copy of this Order to Cumberland County's Judge Executive as well as Cumberland County Water District's Board of Commissioners.

IT IS THEREFORE ORDERED that:

1. Burkesville's motion for reconsideration is granted.
2. Burkesville's request to stay the filing of new tariff sheets until the conclusion of the reconsideration is granted.
3. An informal conference to be held virtually is scheduled on Friday, November 8, 2024, at 10 a.m. Eastern Standard Time at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

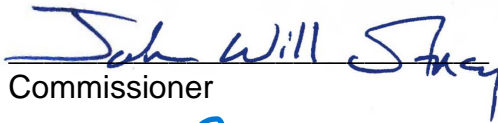
4. The Executive Director shall mail a copy of this Order to Cumberland County's Judge Executive as well as Cumberland County Water District's Board of Commissioners

5. The remainder of the September 12, 2024 final Order not in conflict with this Order remains in effect.

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PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ENTERED
OCT 22 2024
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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