

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF THE CITY OF	)	
AUGUSTA TO INCREASE THE WHOLESALE	)	CASE NO.
WATER RATE CHARGED TO BRACKEN	)	2024-00349
COUNTY WATER DISTRICT	)	

ORDER

On April 24, 2025, the city of Augusta (Augusta) filed a motion, pursuant to KRS 278.400,<sup>1</sup> in this matter. The motion requested that the Commission Order entered on April 18, 2025, be reconsidered or in the alternative, that an emergency hearing be scheduled pursuant to KRS 278.190(2). The Order entered on April 18, 2025, found the following: Augusta failed to respond to Bracken County Water District's (Bracken District) motions filed on March 26, 2025; Augusta should not implement the rate in the notice filed April 1, 2025; Augusta amended its proposed tariff with the March 19, 2025 sworn testimony of Mayor John Laycock in support of an increased rate; and a hearing should be held in this matter on July 16, 2025.<sup>2</sup> On April 28, 2025, Bracken District filed a response to Augusta's request for reconsideration objecting to Augusta's arguments.<sup>3</sup>

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<sup>1</sup> KRS 278.400 was not specifically referenced in the Augusta's motion. However, based on the motion and the request to review an Order amending the application, the commission will review the motion pursuant to that statute.

<sup>2</sup> Order (Ky. PSC Apr. 18, 2025).

<sup>3</sup> Bracken District's Response Objecting to Augusta's Request for Reconsideration (Bracken District's Response) (filed Apr. 28, 2025).

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

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.

Kentucky Administrative Regulation 807 KAR 5:001 Section 5(2) requires that “[u]nless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.”<sup>6</sup>

KRS 278.190 allows the Commission to suspend a utility's proposed rates pending a hearing and decision on the rates for up to five months if a historical test period is used. “If the proceeding has not been concluded and an order made at the expiration of five (5)

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

<sup>5</sup> *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).

<sup>6</sup> 807 KAR 5:001 Section 5(2).

months . . . , the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do.”<sup>7</sup> The Commission may require a utility that provides such notice to maintain records that will allow the utility, the Commission, or any customer to determine the amounts to be refunded, and to whom, in the event a refund is ordered upon final resolution of the case.<sup>8</sup> Further, upon final resolution, the Commission may order a refund to the extent the rates approved in the final Order are lower than rates proposed by the utility and placed into effect pursuant to KRS 278.190(2).<sup>9</sup>

### MOTION

Augusta’s Request for Reconsideration alleged that “the Commission’s failure to issue a final ruling on Augusta’s proposed rate within the five-month suspension period would result in material impairment and damage to the Augusta Water Treatment Plant’s credit and operations.”<sup>10</sup> Augusta argued that the Commission should approve the proposed rate for service provided on and after May 1, 2025, of \$2.967 per thousand gallons pursuant to KRS 278.190(2).<sup>11</sup> In the alternative, Augusta argued that, if the Commission refused to allow the \$2.967 per thousand-gallon rate to go into effect, the Commission should set an emergency hearing date wherein it is given the opportunity to

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<sup>7</sup> KRS 278.190(2).

<sup>8</sup> KRS 278.190(2).

<sup>9</sup> KRS 278.190(2).

<sup>10</sup> Request for Reconsideration of Commission Order Entered April 18, 2025 & Request for Emergency Hearing Pursuant to KRS 278.190(2) (Augusta’s Motion) (filed Apr. 24, 2025) at 1-2.

<sup>11</sup> Augusta’s Motion at 2.

establish that Augusta's credit and operations will be materially impaired or damaged.<sup>12</sup> Augusta claimed that it will be required to continue to defer maintenance that is imperative to its production of safe and reliable water service. According to the motion, Rebuttal Testimony of Doug Padgett<sup>13</sup> establishes that current rates provided a negative \$5,235.83 net cash flow before "Other Revenue" (Grant Receipts) and "Capital Expenses" for the 18 months ended December 31, 2024.<sup>14</sup> In response, Bracken District argued that a negative \$5,235.83 net cash flow would not seem to be emergency "impairment" and/or "damage" to operations.<sup>15</sup>

Augusta further argued that Mayor Laycock's testimony was not an immediate request to amend the initial requested rate of \$2.967 per thousand gallons.<sup>16</sup>

In response, Bracken District pointed out it filed a request for the Commission to determine if the testimony of Mayor Laycock constituted a request for new rate increase, and whether the requisites necessary to implement the requested rate pursuant to KRS 278.190 were met, and Augusta did not file any objection or response.<sup>17</sup> Bracken District argued that Augusta's position that, it did not mean to propose a higher rate by amending the original request, is made without justification, and little merit.<sup>18</sup> Bracken District pointed out that when Mayor Laycock, was asked in his testimony, "[w]ill you be pursuing

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<sup>12</sup> Augusta's Motion at 2.

<sup>13</sup> Rebuttal Testimony of Doug Padgett, Exhibit-DP-1 (filed Mar. 19, 2025).

<sup>14</sup> Augusta's Motion at 6.

<sup>15</sup> Bracken District's Response at 4.

<sup>16</sup> Augusta's Motion at 5.

<sup>17</sup> Bracken District's Response at 2.

<sup>18</sup> Bracken District's Response at 2-3.

a different rate for you to present to the Commission for consideration in this proceeding that includes recovery of depreciation accruing on debt financed plant and do you propose to amend the original tariff requested in this proceeding, if so, please explain?” He stated, “I am requesting to amend the original \$2.967 per thousand gallons tariff proposed in this proceeding to \$3.181 per thousand gallons.”<sup>19</sup>

### DISCUSSION AND FINDINGS

Having reviewed the motion, the response and the record, the Commission finds Augusta’s request for reconsideration should be denied as discussed below.

Substantively, the testimony of Mayor Laycock, was presented as a request to amend the application. Mayor Laycock’s testimony was, “I am requesting to amend the original \$2.967 per thousand gallons tariff proposed in this proceeding to \$3.181 per thousand gallons.”<sup>20</sup> Bracken District’s Response pointed to additional examples of the use of the words “amend” and “amended” in Mayor Laycock’s testimony and the questions posed to him.<sup>21</sup> The Commission finds that to contend the testimony was anything but a request at the time the testimony was filed to amend the rate sought in “this proceeding” is without merit. Mayor Laycock’s testimony is not that he “will be requesting” it was “I am requesting. . . [.]”<sup>22</sup>

Augusta’s motion did not present any evidence not readily discovered at the time of the original Order. The issues addressed by the Commission were raised in Bracken

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<sup>19</sup> Bracken District’s Response at 3, *citing* Mayor Laycock Rebuttal Testimony (filed Mar. 19, 2025) at 10.

<sup>20</sup> Mayor Laycock Rebuttal Testimony at 10.

<sup>21</sup> Bracken District’s Response at 3-4.

<sup>22</sup> Mayor Laycock Rebuttal Testimony at 10

District's motions filed on March 25, 2025.<sup>23</sup> Additionally, Augusta raises no material errors or omissions, or a need to correct findings that are unreasonable or unlawful.<sup>24</sup>

If this was, in fact, meant to be an indication of a future request by Mayor Laycock, that should have been addressed by Augusta in response to the March 26, 2025 motions filed by Bracken District,<sup>25</sup> and should have been done on or before April 2, 2025.<sup>26</sup> KRS 278.400 was not meant to be a substitute for the mandatory procedural requirement of 807 KAR 5:001 Section 5(2). The Commission allowed for adequate time as set in administrative regulation 807 KAR 5:001 Section (5)2 prior to issuance of an Order addressing Bracken District's requests.

There is no need for multiple hearings in this case. The Commission recognizes the procedural schedule was nearing completion for Augusta's request to increase the wholesale tariff rate.<sup>27</sup> As such, the Order issued on April 18, 2025, allowed for additional discovery but also set a hearing date. In its motion, Augusta did not provide any substantive information that it would be in default of its debt covenants or evidence of other urgent or emergency financial need. Based on a review of the Commission's schedule and Bracken District's motion for a hearing, the Commission selected a date to reflect the age of the matter while at the same time allowing due process for all parties.

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<sup>23</sup> Bracken District's Motion.

<sup>24</sup> *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>25</sup> Bracken District's Motion.

<sup>26</sup> "[A] party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion."

<sup>27</sup> Augusta's Motion at 6.

The hearing scheduled for July 16, 2025, shall be held, and the issue of the amended rate increase addressed at that time.<sup>28</sup>

IT IS THEREFORE ORDERED that:


1. Augusta's motion for reconsideration and request for an emergency hearing is denied.

2. Nothing in this Order shall be construed to change any finding in the April 18, 2025 Order.

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<sup>28</sup> Order (Ky. PSC Apr. 18, 2025).

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director





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