

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CALDWELL COUNTY WATER)	CASE NO.
DISTRICT FOR RATE ADJUSTMENT PURSUANT)	2016-00054
TO 807 KAR 5:076)	

ORDER ON REHEARING

On February 3, 2016, the Commission accepted for filing Caldwell County Water District's ("Caldwell District") application for a rate adjustment pursuant to 807 KAR 5:076 ("Application"). On July 21, 2016, the Commission entered an Order that denied the water service rates requested by Caldwell District; however, the Order approved different rates for water service rendered on and after the date of the Order.¹

On August 10, 2016, the Attorney General of the Commonwealth of Kentucky ("Attorney General"), the only intervenor in the case, applied for rehearing of portions of the July 21, 2016 Order that allowed a 3 percent wage increase to four Caldwell District employees; additionally, he stated concerns regarding an inadequate opportunity to provide evidence on the issue of Caldwell District's water loss.² He requested that the Commission review and reconsider its July 21, 2016 Order and deny any request in the Application not supported by substantial evidence.³

¹ Order (Ky. PSC July 21, 2016) at 19.

² Motion for Rehearing and Reconsideration (filed Aug. 10, 2016) at 2-6.

³ *Id.*

On August 24, 2016, the Commission entered an Order that granted rehearing on the issues of Caldwell District's wage increase to four of its employees and the level of Caldwell District's water loss.⁴ The Order granting rehearing also established a procedural schedule granting the Attorney General an opportunity to conduct discovery on the two rehearing issues, to request a hearing or an informal conference, or to file written comments or a brief.⁵

On September 8, 2016, the Attorney General filed into the record in the instant case his requests for information submitted to Caldwell District, and on September 20, 2016, Caldwell District filed its response to the requests. On October 20, 2016, the Attorney General filed his comments on rehearing into the record. Neither the Attorney General nor Caldwell District requested an informal conference or hearing. The matter now stands submitted to the Commission for a decision on the record.

DISCUSSION

WAGES

Pursuant to the Commission's February 18, 2016 Order and as provided for per 807 KAR 5:076, Section 11, Commission Staff performed a limited financial review of Caldwell District's test-year operations and filed a written report ("Staff Report") containing its findings and recommendations regarding the proposed rates into the record on May 4, 2016. The Staff Report noted that during the test year, Caldwell District employed five full-time employees and one part-time employee.⁶ The total operating expense for Salaries and Wages – Employees ("Salaries and Wages") for the

⁴ Order (Ky. PSC Aug. 24, 2016) at 2.

⁵ *Id.* at 2 and 3.

⁶ Staff Report (May 4, 2016) at 6.

test year was \$213,285, and the total operating expense for Employee Pensions and Benefits (“Employee Benefits”) for the test year was \$72,905.⁷ The five full-time employees in the test year included the general manager (“GM”), two office employees, and two field employees.⁸ At the time of Staff’s review, which was subsequent to the end of the test year, one of the full-time field employees was no longer employed with Caldwell District.⁹

In its Application, Caldwell District requested to increase test-year Salaries and Wages by \$40,664 and Employee Benefits by \$15,990 to account for the addition of a new field employee and to account for the effects of pay raises that were awarded, subsequent to the end of the test year to two of its full-time employees.¹⁰ With respect to the two pay raises, which account for \$3,224 of the increase to test-year Salaries and Wages, Caldwell District’s general manager (“GM”) received a 15 percent wage increase, and the full-time field employee, who had been employed during the test year and who remained employed by Caldwell District at the time of Staff’s review, received a 14 percent wage increase.¹¹

Following the end of the test year, the two full-time office employees each received a 3 percent wage rate increase on the anniversary of his or her hire date.

⁷ Application (filed Jan. 29, 2016) at Statement of Adjusted Operations.

⁸ *Id.*

⁹ Staff Report (May 5, 2016) at 6.

¹⁰ Application (filed Jan. 29, 2016) at Statement of Adjusted Operations, notes c and d.

¹¹ Application at note c and Staff Report (May 5, 2016) at 8.

Caldwell District, in its Application, did not request to adjust its test-year wages to account for the 3 percent wage increases awarded to these two employees.¹²

In its written report, Staff noted that there was no discussion in the minutes of Caldwell District's Board of Commissioners' meetings describing the justification for the large differences in the percentages awarded to the GM and the field employee and the 3 percent wage increases awarded to the two office employees.¹³ Staff found that Caldwell District's test-year wages should be adjusted to account for a 3 percent wage rate increase for the four employees who were employed during the test year and who remained employed at the time of Staff's review.¹⁴

In its written comments to the Staff Report, Caldwell District disputed Staff's finding and recommendation regarding the 15 percent wage increase awarded to the GM and the 14 percent wage increase awarded to the field employee.¹⁵ Caldwell District listed factors that it took into consideration, such as duties, work experience, performance, and work ethic, and stated that it wanted to award wages that would retain its employees.¹⁶ Caldwell District did not comment upon Staff's recommendation concerning the 3 percent wage increase for its two office employees.

In his written comments to the Staff Report, the Attorney General agreed with Staff's findings and recommendation to disallow rate recovery of the 15 percent and 14

¹² *Id.* Caldwell District also created two new field employee positions following the end of the test-year; however, the Salaries and Wages and Benefits of those employees are not at issue in this rehearing.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Written Comments of Caldwell District (filed May 16, 2016) at 1 and 2.

¹⁶ *Id.*

percent wage increases awarded to the GM and field employee.¹⁷ The Attorney General further stated, though, that Caldwell District had failed to justify a wage increase of any amount to any of the four employees because Caldwell District failed to carry its burden of proof to show that the 3 percent increases recommended by Staff were reasonable.¹⁸

In our July 21, 2016 Order, the Commission found that Caldwell District's number of employees and their associated pro forma wages in Staff's Report were comparable to those found reasonable in Case No. 2015-00154¹⁹ for South Hopkins Water District.²⁰ We noted that the annual wage rate increase for all employees should be comparable unless there is evidence demonstrating a reasonable basis for a different increase amount, and that Caldwell District's written comments on Staff's Report failed to justify the large discrepancies in the wage increases awarded to its employees.²¹ We rejected Caldwell District's argument that the 15 percent and 14 percent wage increases were necessary for Caldwell District to retain the GM and the field employee.²² The Commission noted that we had considered the pro forma wage amounts and found that these amounts were within reason, and we further found that the Attorney General had

¹⁷ Written Comments of the Attorney General (filed May 18, 2016) at 6.

¹⁸ *Id.*

¹⁹ Case No. 2015-00154, *Alternative Rate Adjustment Filing of South Hopkins Water District* (Ky. PSC Sept. 11, 2015)

²⁰ Order (Ky. PSC July 21, 2016) at 11 and 12.

²¹ *Id.* at 12.

²² *Id.*

not demonstrated that the 3 percent increases in wages resulted in any pro forma wage amounts that were unreasonable.²³

In his request for rehearing, the Attorney General argued, among other things, that “[r]ather than basing their decision on the lack of evidence in the record and denying any increase at all, the Commission instead compared Caldwell compensation packages to that of South Hopkins Water District as justification to increase wages three (3) percent.”²⁴ The Attorney General argued that the compensation package of South Hopkins Water District was not at issue, not part of the record, and further, that the Commission had improperly placed the burden of proof on the Attorney General.²⁵

KRS 278.190(3) provides, in part, that the utility has “the burden of proof to show that the increased rate or charge is just and reasonable.” Except in those instances in which an intervening party “advances proposals in areas or on issues” that the utility does not address in its application, the intervening party “has no burden of proof to meet.”²⁶ Thus, because Caldwell District, in its Application, had proposed adjusting its test-year results for the effects of the wage increases awarded to its GM and the one full-time field employee, Caldwell District had the burden of proof regarding the reasonableness of these two wage increases.

While Caldwell District proposed adjustments to its test-year results for wage increases awarded to its GM and one full-time field employee, Caldwell District did not

²³ *Id.* at 12 and 13.

²⁴ Motion for Rehearing and Reconsideration (filed Aug. 10, 2016) at 2.

²⁵ *Id.* at 3–5.

²⁶ Case No. 2004-00103, *Adjustment of the Rates of Kentucky-American Water Company* (Ky. PSC Oct. 27, 2004) at 2.

propose an adjustment for the effects of the wage increases awarded to its two other full-time office employees who remained employed at the time of Staff's review. Rather, in its Report, Staff found that the test-year wages should also be adjusted to account for the wage increases to these two employees as well, and, for ratemaking purposes, increased their test-year wage rates.

Although Caldwell District did not propose any adjustment for these two office employees, KRS 278.190(3) assigns the burden of proof to establish the reasonableness of these increases to Caldwell District. Thus, the Attorney General did not have a burden of proof regarding the post-test-year wage increases to any of the four employees who were employed during the test year and remained employed at the time of Staff's review. To the extent that the language in our July 21, 2016 Order is in conflict on this point, we note that our prior Order is not correct. Following a review of the record, and for the reasons explained below, we nevertheless find that there are no reasons to change, modify, or vacate the findings and conclusions in our July 21, 2016 Order.

We reject the Attorney General's argument that there was no evidence in the record justifying a 3 percent wage increase to the GM and the full-time field employee. In its written comments to the Staff Report, Caldwell District provided its justification for the wage increases awarded to these two employees,²⁷ and this evidence was directly relevant to and probative on the issue of the reasonableness of these two wage increases.

²⁷ Written Comments of Caldwell District (filed May 16, 2016) at 1 and 2.

The Commission, as the trier of fact, has the “exclusive province to pass on the credibility of the witnesses and the weight of the evidence.”²⁸ The Commission weighed the evidence offered by Caldwell District and determined that it was not sufficient to demonstrate that the 15 percent wage increase given to the GM and the 14 percent wage increase given to the field employee were necessary to retain them as employees.²⁹ However, the evidence offered by Caldwell District concerning the need for giving raises to these two employees was found to be persuasive and was sufficient to support the determination in the July 21, 2016 Order that that 3 percent wage increases to the GM and field employee were reasonable.³⁰

On rehearing, the Attorney General requested that Caldwell District provide the rationale for the 3 percent wage increases to Caldwell District’s employees.³¹ In response to the Attorney General’s discovery request, Caldwell District provided the factors that it considered in authorizing its wage increases.³²

The Attorney General, in his comments on rehearing, states that the “record is complete in so far as it now provides adequate evidence upon which the decision shall be made,” and further that there is adequate evidence regarding “Caldwell’s justification

²⁸ *Energy Regulatory Commission v. Kentucky Power Company*, 605 S.W.2d 46, 50 (Ky. App. 1980) (internal citations omitted).

²⁹ Order (Ky. PSC July 21, 2016) at 12.

³⁰ See, for comparison, *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977) (Workers Compensation Board, as finder of fact, “had the right to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or same adversary party’s total proof.”)

³¹ Attorney General’s Request for Information (filed Sept. 8, 2016) at Item 1.

³² Caldwell District’s Response to Attorney General’s Request for Information (filed Sept. 20, 2016) at 1 and 2.

of said [wage] increase.”³³ Thus, the Commission will affirm its previous determination that a 3 percent wage increase for all four of these Caldwell District’s employees is reasonable and recoverable in rates.

WATER LOSS

Commission regulation 807 KAR 5:066, Section 6(3), provides, in pertinent part, that “for rate making purposes a utility’s unaccounted-for water loss shall not exceed fifteen (15) percent of total water produced and purchased, excluding water used by a utility in its own operations.” During its review, Staff did not find that Caldwell District’s unaccounted-for water loss exceeded 15 percent; consequently, the Staff Report did not contain a finding or recommendation for adjusting Caldwell District’s pro forma operations.

As noted previously, in granting rehearing we allowed the Attorney General to serve requests for information on Caldwell District,³⁴ and one of those requests sought additional information on water purchased and sold. In his comments on rehearing, the Attorney General stated:

After performing discovery on this topic and a witness for Caldwell explaining the source of confusion for the Attorney General, the record, which also includes the last 2 years of annual reports, is sufficient to show that there is no evidence that the test year water loss exceeded 15%.³⁵

³³ Attorney General’s Comments on Rehearing (filed Oct. 20, 2016) at 1 and 2.

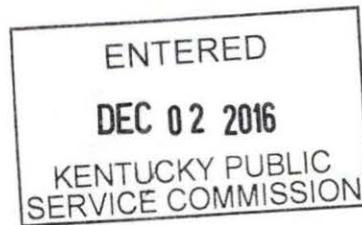
³⁴ Order (KY. PSC Aug. 24, 2016) at Appendix A.

³⁵ Attorney General’s Comments on Rehearing (filed Oct. 20, 2016) at 2.

Based on the Attorney General's comments, the Commission finds that there are no reasons to change or modify the revenue requirement found reasonable in our July 21, 2016 Order or the rates approved therein.

IT IS THEREFORE ORDERED that the findings and conclusions set forth in the Commission's July 21, 2016 Order and the rates set forth in Appendix A thereto are AFFIRMED.

By the Commission



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