

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALLEGED FAILURE OF FERN LAKE COMPANY)	CASE NO.
TO FILE REQUIRED REPORTS)	2017-00031

ORDER

On February 7, 2017, the Commission ordered Fern Lake Company (“Fern Lake”) to show cause why it should not be penalized for failing to comply with KRS 278.140 and 278.230(3). A hearing in this matter was held on March 28, 2017. No representative appeared on behalf of Fern Lake.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Fern Lake is a Kentucky corporation that owns, controls, operates, and manages facilities which are used for and in connection with the distribution and furnishing of water to and for the public for compensation. It is, therefore, a utility subject to Commission jurisdiction.¹

2. KRS 278.230(3) directs every utility, when required by the Commission, to file with it any report or other information that the Commission reasonably requires.

3. 807 KAR 5:006, Section 4(2), requires every utility to electronically file with the Commission, on or before March 31 of each year, a financial and statistical report of its utility operations for the preceding calendar.

¹ KRS 278.010(3)(d).

4. KRS 278.140 requires each utility to file, on or before March 31 of each year, a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year.

5. As of April 1, 2015, Fern Lake had neither filed these reports for the 2014 calendar year operations nor requested an extension of time in which to make such filing.

6. On January 14, 2016, the Commission provided to Fern Lake an electronic link to the standard forms for the annual financial and statistical report and the report of gross earnings from intrastate business.

7. As of April 1, 2016, Fern Lake had neither filed these reports for the 2015 calendar year operations nor requested an extension of time in which to make such filing.

8. Where the act which a utility is required to do is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance.²

9. Fern Lake has willfully failed to submit its reports by March 31, as required by 807 KAR 5:006, Section 4(2), and KRS 278.140.

10. Fern Lake has willfully failed to comply with KRS 278.230(3) by failing to file its annual and statistical report for the 2014 calendar year.

11. Fern Lake has willfully failed to comply with KRS 278.230(3) by failing to file its annual and statistical report for the 2015 calendar year.

12. Fern Lake has willfully failed to comply with KRS 278.140 by failing to file its report of its gross earnings or receipts derived from intrastate business for the 2014 calendar year.

² See *Re Dyke Water Company*, 55 PUR3d 342 (Cal. P.U.C. 1964).

13. Fern Lake has willfully failed to comply with KRS 278.140 by failing to file its report of its gross earnings or receipts derived from intrastate business for the 2015 calendar year.

14. KRS 278.990(1) provides that any utility that willfully violates any Commission order, provision of KRS Chapter 278, any regulation promulgated pursuant to KRS Chapter 278, or fails to perform any duty imposed upon it under those sections, shall be subject to a civil penalty not less than \$25.00 and not more than \$2,500.00 for each violation.

15. Fern Lake should be assessed a penalty of \$5,000.00 for its willful failure to comply with KRS 278.230(3).

16. Fern Lake should be assessed a penalty of \$5,000.00 for its willful failure to comply with KRS 278.140.

IT IS THEREFORE ORDERED that:

1. Fern Lake is assessed a penalty of \$5,000.00 for its willful failure to comply with KRS 278.230 and 807 KAR 5:006, Section 4(2).

2. Fern Lake is assessed a penalty of \$5,000.00 for its willful failure to comply with KRS 278.140.

3. Fern Lake shall pay the assessed penalties, totaling \$10,000.00, within 14 days of the date of this Order. Payment shall be by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky" and shall be sent by certified mail or delivered to Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602-0615.

By the Commission

ENTERED
MAY 04 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2017-00031

*Fern Lake Company
34 Appolo Fuels Road
Middlesboro, KY 40965

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