

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY PUBLIC SERVICE COMMISSION)
VS.) CASE NO. 9671
HARDIN COUNTY WATER DISTRICT NO. 1)

O R D E R

On August 29, 1987, Hardin County Water District No. 1 ("Hardin No. 1") was ordered to appear and show cause why it should not be penalized under KRS 278.990 for failure to comply with the Commission's regulations. The staff report dated April 30, 1986, containing the alleged violations of Commission regulations was made a part of the record in this case.

On September 11, 1986, an attorney representing the estate of Elsie Carroll and Mildred Reed ("Carroll and Reed") filed a motion for limited intervention. By its response filed September 25, 1986, Hardin No. 1 objected to the Carroll and Reed's motion for limited intervention. The attorney's response filed on September 29, 1986, stated he did not seek to participate in this proceeding, but simply sought to be placed on a mailing list to be informed of hearing dates and receive copies of orders.

Because Carroll and Reed did not intend to participate in this proceeding, but only sought to be on a mailing list for

certain documents, on October 10, 1986, the Commission denied Carroll and Reed's motion for limited intervention, and placed Carroll and Reed on a mailing list as requested.

On September 9, 1986, Hardin No. 1 filed a motion requesting the Commission schedule an informal conference with the Commission staff prior to a hearing in this proceeding. On September 25, 1986, Hardin No. 1 supplied a statement of the reasons for which an informal conference was being sought and a proposed agenda. On October 10, 1986, the Commission granted Hardin No. 1's motion for an informal conference. The informal conference was held November 12, 1986, at the Commission's offices in Frankfort, Kentucky.

On December 1, 1986, Hardin No. 1 filed a motion to limit the scope and purpose of the Show Cause Hearing. The District objected to discussion of causation of the collapse of the standpipe mentioned in the staff report. On January 22, 1987, the Commission denied Hardin No 1's motion.

A hearing was held on April 1, 1987, at the Commission's offices in Frankfort, Kentucky. There were no intervenors present. At the hearing Hardin No. 1 asserted that the Commission does not have authority to conduct a Show Cause Hearing for the purpose of penalizing the District under KRS 278.990. Hardin No. 1 acknowledged that at the time of the drafting of the staff report in this case Hardin No. 1 was in technical violation of the Commission's regulations. In its effort to mitigate any penalties that might be associated with acknowledging these violations Hardin No. 1 presented testimony and exhibits by its Chairman, John N. Vititoe, and its manager, Joyce Gibson. Mr. Vititoe

testified that at the time of the staff inspection the District did have an employee safety program in place and a copy of the plan was placed in evidence. In addition Mr. Vititoe and Ms. Gibson placed in evidence exhibits which indicated that the District had corrected the other deficiencies listed in the staff report. Ben E. Carter, a Certified Public Accountant, testified that he had audited the accounts of Hardin No. 1 and that the District was financially unable to pay a penalty of any sort.

AUTHORITY OF THE COMMISSION

At the hearing, Hardin No. 1 objected to any penalty being imposed. The basis for the objection is that the Commission has no statutory authority to fine a water district. Hardin No. 1 contends that because KRS 278.990 refers to only private utilities, publicly owned utilities such as water districts are not subject to penalties. The Commission is unpersuaded by this reasoning. KRS 278.015 states in part:

Notwithstanding any of the provisions of KRS Chapter 74 any water district, combined water, gas or sewer district, or water commission shall be a public utility and shall be subject to the jurisdiction of the public service commission in the same manner and to the same extent as any other utility as defined in KRS 278.010,...

Because water districts became subject to Commission regulation subsequent to the initial enactment of Chapter 278, Section 278.015 was enacted to avoid the necessity of rewriting every section of the chapter to specifically refer to water districts.

The Commission believes that the legislature did not intend to provide for the regulation of water districts, yet withhold the

means to enforce that authority. For these reasons, the Commission concludes that it has the statutory power to enforce its regulations by penalty under KRS 278.990 as it deems appropriate.

COMMENTARY ON VIOLATIONS

In its testimony Hardin No. 1 has admitted to being in violation of the following sections of 807 KAR 5:006 at the time of the original inspection in this case: Section 18 - System Maps and Records; Section 19 - Location of Records; Section 23 - Inspection of System; and Section 24 - Reporting of Accidents. Hardin No. 1 presented testimony and exhibits to show that it has changed its management and operation since the date of the investigation. The District stated that it has restructured its Board of Commissioners with a new majority and has hired a new manager during the last year. In addition, Hardin No. 1 presented exhibits to show that it has taken steps to correct its violations of Sections 18, 19, and 23 of 807 KAR 5:006. While the Commission is encouraged by the obvious effort of Hardin No. 1 to correct these violations, the seriousness of these infractions cannot be overlooked. The Commission is particularly disturbed that the February 7, 1986, accident, which involved a fatality and substantial property damage, was not promptly reported as required. In addition, Hardin No. 1's failure to maintain and update its system maps after reporting that it was doing so was a serious oversight. Hardin No. 1's admitted failure to observe Commission regulations represents a pattern of conduct which the Commission cannot accept.

FINDINGS AND ORDER

The Commission, after consideration of the evidence of record, and being advised, is of the opinion and finds that:

1. Violation of Commission regulation 807 KAR 5:006, Section 18 - System Maps and Records, has existed for an extended time, even though Commission reports of inspections have put Hardin No. 1 on notice of this violation, and Hardin No. 1 has made representations that prompt corrective action would be forthcoming.

2. Hardin No. 1 failed to promptly report the February 7, 1986, storage tank accident as required by Section 24 of 807 KAR 5:006.

3. The violations set forth in the two paragraphs above have been admitted or un rebutted.

4. The Commission is aware of the impact fines and penalties may have on water utilities and their ratepayers. However, in this case a fine should be assessed.

IT IS THEREFORE ORDERED that:

1. A fine of \$500 is levied against Hardin No. 1 for its failure to maintain maps of its system.

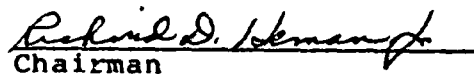
2. A fine of \$1000 is levied against Hardin No. 1 for its failure to promptly notify the Commission of the February 7, 1986, accident.

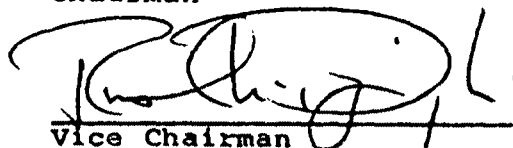
3. The total fine of \$1500 is due and payable within 30 days after receipt of this Order. Hardin No. 1 is instructed to send its certified check or money order, made payable to the

Kentucky State Treasurer, within the time directed herein to Leigh
Hutchens, Accountant Supervisor, Public Service Commission, 730
Schenkel Lane, Frankfort, Kentucky 40601.

Done at Frankfort, Kentucky, this 11th day of May, 1987.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director