

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PARKSVILLE WATER DISTRICT,)	
COZATT TUCKER, A. B. FEATHER)	
AND DAVIS EDWARDS)	
_____)	CASE NO.
)	89-351
ALLEGED FAILURE TO COMPLY)	
WITH COMMISSION ORDER)	

O R D E R

On December 1, 1989, an Order to Show Cause was issued by the Commission against Parksville Water District ("Parksville") and against Cozatt Tucker, A. B. Feather, and Davis Edwards, the Board of Commissioners of Parksville ("Board"). The Order directed Parksville to show cause why it should not be assessed a penalty under KRS 278.990 for failure to comply with an Order of the Commission and for Cozatt Tucker, A. B. Feather, and Davis Edwards to show cause why they each should not be subject to a penalty under that section for aiding and abetting Parksville in its failure to comply. A hearing was held in this matter on June 4, 1990.

The Show Cause Order arises out of an Order issued by the Commission in Case No. 10030.¹ In that case, Parksville requested

¹ Case No. 10030, Parksville Water District's Request for Approval to Provide Less Storage than the Minimum Required for One Day's Supply; a Deviation from Subsection (4) of 807 KAR 5:066(5).

a deviation from 807 KAR 5:066, Section 5(4), which requires each water utility to maintain water storage equal to one day's supply of its average daily use. Parksville requested the deviation on September 17, 1987 on the grounds that it did not have sufficient storage facilities to comply with the regulations and did not have the financial resources to construct such facilities. On February 17, 1988, the Commission entered an Order granting Parksville a deviation from the regulation until July 1, 1991.

In addition to granting the deviation, the Order also directed Parksville to retain a professional engineer to conduct a comprehensive engineering analysis and to prepare a report of Parksville's water distribution system. The purpose of the study was to develop plans to finance and construct the additional water storage facilities that Parksville needs to come into compliance with the Commission's regulations. The Order directed Parksville to file a copy of the engineer's report by September 1, 1988. The due date for the report was extended several times, the last extended date being October 3, 1989. Parksville failed to file the report by the last extended date which resulted in the Commission issuing the Show Cause Order on December 1, 1989.

Statement of Facts

Parksville is a water district organized under the authority of KRS Chapter 74. Cozatt Tucker and A. B. Feather were, at all times relevant to these proceedings, members of the Board of Parksville. Davis Edwards was a member of the Board during the time relevant to this proceeding, but resigned from the Board

while this proceeding was pending. In addition, A. B. Feather served as the general manager of Parksville and managed its daily affairs.

As a water district, Parksville purchases water from the city of Danville, which it distributes to the public for compensation. For that purpose, Parksville owns and operates its own distribution facilities.

On September 16, 1987, in Case No. 10030, Parksville requested a deviation from 807 KAR 5:066. Based upon information furnished by Parksville by way of data requests, the Commission on February 17, 1988 entered an Order which permitted Parksville to deviate from the regulation until July 1, 1991. That same Order also directed Parksville to employ a professional engineer to conduct an analysis of its water distribution system and to determine the water storage requirements for the water district. The Order further directed the engineer to estimate the costs to construct appropriate water storage facilities and to identify available sources of funds that could be used to finance the proposed construction. The obvious purpose of the Order was to ensure that Parksville would be able to comply with the Commission's regulations after the deviation expired. To guard against delay, the Commission set a deadline of September 1, 1988 for the engineer's report, allowing Parksville seven months to perform the study and file the report.

The report was not filed when due and on September 22, 1988 the Commission sent a letter to the district requesting the report be filed within 10 days. In response Parksville informed the

Commission that the engineering firm it had retained to prepare the report had either lost its copy of the February 17 Order or had never received one. Parksville stated that it no longer had a copy of the Order in its records and requested copies from the Commission. Copies of the Order were sent to Parksville on September 28, 1988 with a request that Parksville advise the Commission by October 12, 1988 when the report would be ready. On October 12, 1988, Parksville informed the Commission that the "scope of work on the hydraulic analysis had begun and will be presented to the Commission in 10 days for their review and approval." Parksville further stated that upon approval of the scope of work, the analysis would be completed within 60 days.

On November 10, 1988, the engineers submitted an outline of the work to be performed in preparing the report required by the February 17, 1988 Order. The Commission on December 6, 1988 informed Parksville that the engineer's proposal did not comply with the Order of February 17, 1988 and suggested that Parksville seek additional time to file the required report. On January 9, 1989, Parksville requested 90 days to submit the report and on January 13, 1989, the report's due date was extended by the Commission to March 15, 1989.

Parksville did not file the report by the extended due date and on March 24, 1989 Parksville was informed by the Commission that unless it brought itself into compliance with the earlier Orders the Commission would consider an investigation of the management of the water district. Parksville was advised that an investigation could lead to a show cause action and appropriate

penalties could be assessed against the district or its chairman.

On March 29, 1989, Parksville requested a six-month extension of the due date for the report and on April 5, 1989 the Commission once more extended the due date for the report to October 3, 1989. Parksville again failed to file the report by the extended due date and on October 2, 1989, one day before the report was due, requested additional time. The request was denied on November 30, 1989 and on December 1, 1989 the Show Cause Order was issued.

The Show Cause Order charges Parksville with continuous failure to file the required engineering study by the due dates given by the Commission and charges the members of the Board with aiding and abetting Parksville in its failure. In defense of its conduct, Parksville states that upon receipt of the Order directing it to obtain an engineering analysis, it retained the services of Kenroy Engineering, Inc. ("Kenroy") and has relied upon Kenroy's advice throughout the proceeding.

According to the minutes of the Board, a special meeting was called on February 22, 1988 to discuss securing the services of a professional engineer to prepare the report required by the February 17 Order. At that meeting, it was decided that Kenroy should be invited to the next regular Board meeting to be held on March 15, 1988.

At the March 15 meeting, Kenroy advised the Board that it had prepared reports similar to that required by the February 17 Order many times and understood what was required. Parksville then approved a resolution authorizing its general manager, A. B. Feather, to retain the services of Kenroy for the dual purpose of

preparing a rate case and for preparing the report. No further action was taken by the Board with respect to the report until October 11, 1988 after Parksville had been informed by the Commission that the report was past due. At a Commission meeting on that date, A. B. Feather informed the Board that Kennoy was preparing a "scope of work" to be submitted to the Commission and that upon its approval, the work would be performed and the study prepared in compliance with the February 17 Order.

The report was next discussed by the Board at its regular meeting on December 13, 1988. At that time the Board was advised that the "scope of work" submitted to the Commission did not satisfy the Order of February 17 and it was agreed that Parksville would request a 60-day extension of the report's due date. The Commission subsequently granted an extension to March 15, 1989.

On March 16, 1989, a special meeting was called to inform the Board that Kennoy had not been able to file the report by the extended due date. The Board authorized a request for another extension, and the Commission, once again, extended the due date to October 3, 1989.

On September 25, 1989, at a special meeting, the Board was informed that Kennoy would not be able to complete the analysis necessary for the report by the extended date. The Board then authorized Mr. Feather to seek another extension of the due date. On December 12, 1989, at a regular meeting, Mr. Feather advised the Board that the extension had not been granted and that the Show Cause Order had been issued. The report was not filed until June 4, 1990, 21 months after it was first ordered due.

Conclusions of Law

The Commission first gave Parksville seven months to conduct an analysis and make the report required by the February 17, 1988 Order. Given the nature of the work to be performed, seven months was more than ample to prepare the report and Parksville should have had no difficulty in meeting the original due date. Nevertheless, approximately 21 months elapsed before the report was filed.

Although some of the delay may have been due to difficulties encountered in compiling the necessary information because of the condition of the system, the delay is primarily attributable to the dilatory acts of Parksville and the failure of its manager and Board to require its engineer to do the work that it had contracted to perform.

In defense of its actions, Parksville and the Board maintain that lacking the necessary expertise, it was required to rely upon its engineers and that all action taken was on the advice and counsel of the engineers. Nevertheless, it is obvious from the initial misplacement of the February 17, 1988 Order and the repeated failure to meet deadlines, the engineers were not doing the work they had agreed to perform. Parksville, and more specifically the Board as the operator and manager of the system, is primarily responsible for compliance with the Commission's Orders and cannot shift that responsibility to the engineers hired by Parksville. After all, the engineers work solely at the direction and control of their employer and, therefore, can do no more or, in this case, no less than what Parksville and the Board

allow. Parksville and the Board had a positive duty to correct the situation but instead intentionally chose to take no action at all. Parksville and the Board's omission to act constitutes a willful violation of the Commission's Order.

KRS 278.990(1) provides in part that any utility that fails to obey any lawful requirement or order of the Commission shall be assessed a penalty of not less than \$25 nor more than \$1000 for each offense. That section further provides that any officer, agent, or employee of a utility who willfully violates any provision of KRS Chapter 278, or who procures, aid or abets any violation shall be fined not more than \$1000 or imprisoned for not more than six months, or both. Penalties for violations against the utility and penalties for violation against the individuals under this section are mandatory, the Commission's discretion being limited only to the amount. Under the circumstances of this case, a penalty of \$25 should be assessed against Parksville, a penalty of \$500 should be assessed against A. B. Feather, its manager and member of the Board, and a penalty of \$100 each should be assessed against Cozatt Tucker and Davis Edwards, members of the Board. Penalties assessed against individuals must be paid by those individuals, and not from funds belonging to the water district.

This Commission being otherwise sufficiently advised,

IT IS HEREBY ORDERED that:

1. Parksville Water District was in violation of the Orders of this Commission by failing to file the report ordered on February 17, 1988 in Case No. 10030, in accordance with the lawful dictates of this Commission.

2. Cozatt Tucker, A. B. Feather and Davis Edwards, as members of the Board of Parksville, and A. B. Feather, additionally, as manager of Parksville, aided and abetted Parksville in failing to comply with the Orders of this Commission issued pursuant to the authority of KRS Chapter 278.

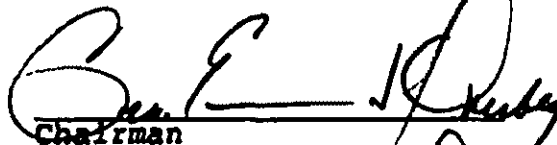
3. For their failure, Parksville is hereby assessed a penalty of \$25, A. B. Feather is assessed a penalty of \$500, and Cozatt Tucker and Davis Edwards are each assessed a penalty of \$100.

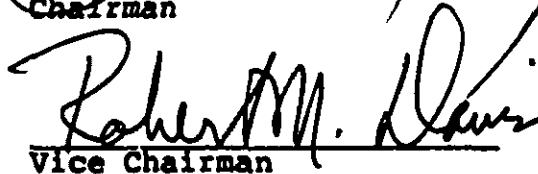
4. The penalties assessed against the individuals shall not be paid with funds belonging to Parksville.

5. The penalties assessed shall be paid by certified checks, payable to the Kentucky State Treasurer, and mailed to the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky 40601 within 30 days of the date of entry of this Order.

Done at Frankfort, Kentucky, this 2nd day of October, 1990.

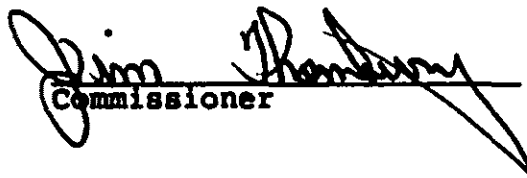
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