

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TRIMBLE COUNTY WATER DISTRICT NO. 1)
_____))
ALLEGED FAILURE TO COMPLY WITH) CASE NO. 95-281
807 KAR 5:006 and 807 KAR 5:066)

O R D E R

Trimble County Water District No. 1 ("Trimble No. 1"), a water district formed pursuant to the provisions of KRS Chapter 74, owns and operates facilities used for the distribution and furnishing of water to the public for compensation in Trimble County, Kentucky, and is therefore a utility subject to Public Service Commission jurisdiction. KRS 278.010(3)(d); KRS 278.015.

KRS 278.280 authorizes the Commission to prescribe rules for the performance of any service furnished or supplied by a utility under its jurisdiction. Pursuant to this authority, the Commission has promulgated Commission Regulation 807 KAR 5:006, which establishes general rules for all utility operations, and Commission Regulation 807 KAR 5:066, which establishes general rules for the operation of water utilities.

FINDINGS OF FACT

On May 31, 1994, Commission Staff inspected Trimble No. 1's records and facilities for compliance with Commission regulations. In its report of this inspection, Commission Staff listed four instances where Trimble No. 1 failed to comply with Commission

regulations, two of which the utility subsequently corrected and which are not the subject of this show cause proceeding.

On December 5, 1994, Trimble No. 1 informed the Commission that it was working on a policy to bring itself into compliance with 807 KAR 5:006, Section 7(6). This regulation states, in relevant part:

Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit. Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis, except that a utility shall not be required to refund or credit interest on deposits if the customer's bill is delinquent on the anniversary of the deposit date.

Also on December 5, 1994, Trimble No. 1 requested a deviation from 807 KAR 5:066, Section 4(4), which states:

The minimum storage capacity for systems shall be equal to the average daily consumption.

In order to obtain the information necessary to grant such a request, Commission Staff established Case No. 94-492¹ and forwarded an application form for such a deviation to Trimble No. 1 on December 28, 1994.

Despite reminder letters of March 16, 1995, and May 9, 1995, in addition to telephone calls, the Commission did not receive the completed application from Trimble No. 1. Without the information contained in the application, Trimble No. 1's request for a deviation from 807 KAR 5:066, Section 4(4), could not be granted.

¹ Case No. 94-492, The Application of Trimble County Water District No. 1 for a Deviation from 807 KAR 5:066, Section 4(4).

Case No. 94-492 was therefore dismissed. Also, as Trimble No. 1 did not notify the Commission whether it had brought itself into compliance with 807 KAR 5:006, Section 7(6), its continued failure to comply with that regulation was assumed.

Based on the Commission Staff's inspection report, and absent any attempt by Trimble No. 1 to notify the Commission that it had brought itself into compliance with 807 KAR 5:006, Section 7(6), or to pursue a deviation from 807 KAR 5:066, Section 4(4), the Commission found that a prima facie showing had been made that Trimble No. 1 was in violation of Commission Regulations 807 KAR 5:006 and 807 KAR 5:066.

Trimble No. 1 was ordered to appear before the Commission on July 25, 1995, for the purpose of presenting evidence concerning the alleged violations, and to show cause why it should not be subject to the penalties prescribed in KRS 278.990(1) for those alleged violations.

Trimble No. 1 was also ordered to submit to the Commission a written response to the allegations concerning the violations and the contents of the inspection report, and was given the opportunity to request an informal conference with Commission Staff to consider the simplification of issues or any other matters, or to file the completed application for a deviation from 807 KAR 5:066, Section 4(4).

On July 21, 1995, Trimble No. 1 supplied the Commission with some of the information it required regarding the two violations, and the Commission postponed the hearing scheduled for July 25

pending settlement negotiations. On August 24, 1995, the Commission requested additional information regarding Trimble No. 1's request for a deviation from 807 KAR 5:066, Section 4(4), and the status of Trimble No. 1's efforts to comply with 807 KAR 5:006, Section 7(6). No response was received regarding this necessary information. The Commission therefore rescheduled the hearing for November 15, 1995.

Trimble No. 1 failed to appear either personally or by counsel at the hearing. Commission Staff testified concerning the June 8, 1994 inspection report, and the violations reported therein. According to Commission Staff, Trimble No. 1 was notified of its violations of Commission regulations in June of 1994. While two violations were corrected, Trimble No. 1 failed to correct the two violations that are the subject of this show cause proceeding, despite being directed by the Commission to do so, and failed to provide the Commission with the information necessary to grant a deviation from 807 KAR 5:066, Section 4(4). Furthermore, Trimble No. 1 did not appear at the hearing to explain, if it could, the reasons for its failures.

CONCLUSIONS OF LAW

Pursuant to KRS 278.990(1),

If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the Commission from which all rights of appeal have been exhausted, the utility shall be

subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25.00) nor more than two thousand five hundred dollars (\$2,500).

Trimble No. 1 is a utility subject to the jurisdiction of the Commission and is required to comply with Commission regulations. As a utility, Trimble No. 1 is in willful violation of 807 KAR 5:006, Section 7(6), for its failure to refund or credit interest accrued on customer deposits to the customers on an annual basis, and 807 KAR 5:066, Section 4(4), for not having minimum storage capacity for its distribution system equal to the average daily consumption of its customers.

For each violation, a penalty of \$500 should be assessed against Trimble No. 1 pursuant to KRS 278.990(1), payable within 60 days. Trimble No. 1 should be directed to abate the violation of 807 KAR 5:006, Section 7(6), within 60 days and to certify to the Commission that the violation has been abated. Trimble No. 1 should be directed to file a schedule to which it will adhere to abate the violation of 807 KAR 5:066, Section 4(4), within 60 days, or to file for a deviation from 807 KAR 5:066, Section 4(4), which includes filing all information necessary to grant such a deviation, within 60 days. Failure to adhere to the requirements contained in this Order should result in the assessment of additional penalties.

IT IS THEREFORE ORDERED that:

1. Trimble No. 1 is found to be in willful violation of 807 KAR 5:006, Section 7(6), and 807 KAR 5:066, Section 4(4).

2. Trimble No. 1 shall pay a penalty of \$500 for each of these violations of the regulations pursuant to KRS 278.990(1).

3. Trimble No. 1 shall, within 60 days from the date of this Order, abate the violation of 807 KAR 5:006, Section 7(6), and certify to the Commission in writing that the violation has been abated.

4. Trimble No. 1 shall, within 60 days from the date of this Order, file a schedule to which it will adhere to abate the violation of 807 KAR 5:066, Section 4(4), or file for a deviation from 807 KAR 5:066, Section 4(4), which includes filing all information necessary to grant such a deviation.

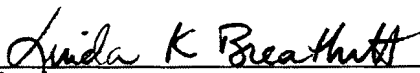
5. The penalties assessed hereunder shall be due and payable in full 60 days from the date of this Order.

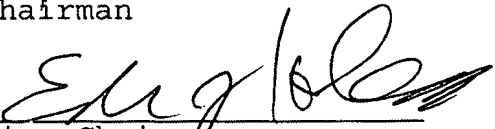
6. The penalties due hereunder shall be paid by certified check or money order made payable to the Kentucky State Treasurer and mailed to the Kentucky Public Service Commission, Office of General Counsel, P. O. Box 615, Frankfort, Kentucky 40602.

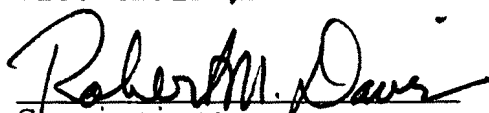
7. Failure to adhere to the requirements contained in this Order shall result in the assessment of additional penalties.

Done at Frankfort, Kentucky, this 13th day of February, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director