

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BEAVER-ELKHORN WATER DISTRICT,)
HUBERT HALBERT, CHAIRMAN)
PAULA C. JOHNSON,)
COMMISSIONER, TOMMY HALL,)
COMMISSIONER, MARIBETH)
HACKWORTH, SECRETARY, AND BOB)
HACKWORTH, SERVICE MANAGER,)
INDIVIDUALLY AND IN THEIR) CASE NO. 96-596
OFFICIAL CAPACITIES)
_____)
ALLEGED VIOLATIONS OF)
COMMISSION'S ORDERS AND 807)
KAR 5:066, SECTION 5(1))

O R D E R

This proceeding was initiated by the Commission on December 19, 1996 in order to investigate the failure of Beaver-Elkhorn Water District to comply with a September 15, 1995 Order of the Commission in Case No. 95-200.¹ The earlier Order had directed Beaver-Elkhorn to file an engineer's report, regarding certain low pressure areas on the utility's system, within six months. Despite reminder letters and the efforts of Commission Staff, the report had not been filed. The Commission had to assume,

¹ Case No. 95-200, Application of Beaver-Elkhorn Water District For (1) Certificate of Public Convenience and Necessity - Construction - Phase III Water Line Extensions Pursuant o KRS 278.020(1); (2) Authorization of Borrowing From the Commonwealth of Kentucky, Kentucky Infrastructure Authority Water Resources Loan Fund - Phase III Pursuant to KRS 278.300 and Grant o f\$600,000 and From Abandoned Mine Land - \$540,000; (3) Authority to Increase Rates Pursuant to 807 KAR 5:001, Section 10; and (4) Approval of Revised Tariff. Final Order issued September 15, 1995, and January 19, 1996.

therefore, that Beaver-Elkhorn remained in violation of 807 KAR 5:066, Section 5(1), as well. After no response to the Commission's Order of December 19, 1996 was received, the Commission by Order of January 29, 1997 expanded its investigation to include Beaver-Elkhorn's commissioners and management, namely Hubert Halbert, Chairman; Paula C. Johnson, Commissioner; Tommy Hall, Commissioner; Bob Hackworth, Service Manager; and Maribeth Hackworth, Secretary. By the same Order, the Commission also moved the date of the hearing which had been scheduled for January 30, 1997 to March 7, 1997.

The engineer's report which had been sought by the Commission was finally delivered to the Commission by Beaver-Elkhorn's engineer on February 12, 1997. Also on February 12, 1997, the Commission received a written response to the allegations contained in its January 29, 1997 Order from Bob Hackworth. On February 18, 1997, the Commission received a written joint response to the same allegations from Hubert Halbert, Paula Johnson, Tommy Hall, and Maribeth Allen.² Mr. Hackworth in his response stated that he was not aware the Commission had not received the engineer's report until he received the January 29, 1997 Order by certified mail on January 30, 1997. It was his understanding that Beaver-Elkhorn's engineer had sent the report to the Commission in October 1996.³ According to Mr. Hackworth, had he known that

² The Maribeth Hackworth named in the Commission's Order of January 29, 1997, and the Maribeth Allen that signed the joint response are apparently one and the same person.

³ Even if the engineer's report had been received by the Commission in October 1996, it would still have been over six months late.

Beaver-Elkhorn was in violation of Commission Orders, he would have responded earlier. The letter received from the other four similarly state that it was their understanding that Beaver-Elkhorn's engineer was going to take care of the matter in question. They also noted that there had been significant changes in the District's board of commissioners since Case No. 95-200 had been concluded. According to the response, the commissioners "now understand that they should have responded to the [C]ommissions [sic] order promptly themselves"

As duly appointed commissioners of a water district, such individuals have a duty to "do all acts necessary to carry on the work" of the district. See, e.g., KRS 74.070. A manager also has certain duties and obligations. See, e.g., KRS 74.040. KRS 278.990(1) makes it clear that individual officers and employees of a utility who allow the utility to violate any relevant statute, regulation, or Commission Order can be held just as accountable as the utility itself.⁴ It is thus in the best interest of a utility's officers and employees (and agents), as well as being their duty and obligation, to assure that the utility does not violate any statutes, regulations, or Commission Orders. From the letters received from the five individuals named above, it seems to the Commission that Beaver-Elkhorn's officers and employees are now more aware of their duties and obligations and in the future will act to assure Beaver-Elkhorn's consistent and prompt compliance with all relevant statutes, regulations, and Commission Orders.

⁴ It should also be noted, based on the responses received from Mr. Halbert, Ms. Johnson, Mr. Hall, Mr. Hackworth, and Ms. Allen, that KRS 278.990(1) treats agents of a utility the same as its officers and employees, thereby allowing such agents to be held accountable for any violations of statute, regulation, or Commission Order by the utility as well.

IT IS THEREFORE ORDERED that:

1. The hearing scheduled for March 7, 1997 is hereby cancelled.
2. This proceeding is dismissed and shall be removed from the Commission's docket. However, the Commission will not hesitate to initiate additional investigations of Beaver-Elkhorn, its officers, employees, or agents, if the need arises.

Done at Frankfort, Kentucky, this 28th day of February, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director