

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE)	
BUSINESS PRACTICES OF WESTERN)	
PULASKI COUNTY WATER DISTRICT, ALLEGED)	
FAILURE TO COMPLY WITH ADMINISTRATIVE)	CASE NO. 2002-00013
REGULATION 807 KAR 5:006, AND)	
ALLEGED VIOLATIONS OF KRS 278.160)	
AND KRS 278.170)	

O R D E R

Western Pulaski County Water District (Western Pulaski), a water district that is organized pursuant to KRS Chapter 74 and that owns and operates facilities used to distribute water in and around Pulaski County, Kentucky, is a utility subject to Commission jurisdiction. KRS 278.015. Its rates and service are subject to Commission regulation. KRS 278.040(2). Based upon the following, our concerns regarding certain of Western Pulaski s business practices have led to our opening, on our own motion, this investigation.

KRS 278.280(2) directs the Commission to prescribe rules and regulations for the performance of services by utilities. Pursuant to this statutory directive, the Commission promulgated Administrative Regulation 807 KAR 5:006, Section 3(5). Administrative Regulation 807 KAR 5:006, Section 3(5), states: [a]ll records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified. The Uniform System of Accounts for Class C Water Districts and Associations cites the guidelines governing the preservation of records of electric, gas,

and water utilities, published by the National Association of Regulatory Utility Commissioners (NARUC) regarding the record retention period. The guidelines that NARUC adopted require that contracts for the extension of service be maintained for at least 5 years.

In Case No. 2001-070,¹ James Floyd, a customer of Western Pulaski, filed a formal complaint with the Commission. The central issue in the case was whether Western Pulaski was entitled, pursuant to its contract with Mr. Floyd for the extension of water service, to disconnect his service for nonpayment. Mr. Floyd and Western Pulaski entered into the contract in December 2000. Pursuant to 807 KAR 5:006, Section 3(5), Western Pulaski should have retained the contract through December 2005.

In response to a data request from the Commission, Mr. Floyd provided the Commission with a copy of his contract with Western Pulaski. Western Pulaski also provided the Commission with a copy of its contract with Mr. Floyd. At hearing, however, Western Pulaski admitted that it had not retained the original contract and that, when submitting its answer to the Commission, it provided a contract that contained terms of payment different from the original contract,² and also contained what appeared to be Mr. Floyd's forged signature. The alleged forgery is of great concern to the Commission as it appears to constitute an unreasonable act. See KRS 278.280.

¹ James L. Floyd v. Western Pulaski County Water District, final Order entered January 7, 2002.

² Case No. 2001-070, Transcript at 43-46.

Western Pulaski, moreover, did not charge Mr. Floyd a reconnection fee, allegedly because he was a cousin of Western Pulaski's office manager. KRS 278.160(2) requires that a utility uniformly enforce its tariff in regard to the collection of fees and charges and may not charge or receive any greater or less amount than is contained in its tariff. Western Pulaski appears to have violated KRS 278.160(2). Additionally, Western Pulaski, by not charging the reconnection fee, may have violated KRS 278.170(1) by providing Mr. Floyd with an unreasonable preference over other customers solely because of his familial relationship to Western Pulaski's office manager. Finally, in this proceeding, we will investigate certain allegations that Western Pulaski has conducted additional inappropriate and/or unlawful practices as described in Appendix B hereto.

The Commission, on its own motion, HEREBY ORDERS that:

1. Within 20 days of the date of this Order, Western Pulaski shall submit to the Commission a written response to the allegations contained in this Order.
2. Western Pulaski shall appear on March 26, 2002 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky to present evidence concerning the incidents described herein and in Case No. 2001-070, specifically the alleged violations of Commission regulation 807 KAR 5:006, Section 3(5), KRS 278.160 and KRS 278.170, and to show cause why it should not be subject to the penalties of KRS 278.990 for those alleged violations. Western Pulaski shall also be prepared to respond to questions regarding its general business practices concerning compliance with applicable regulations and statutes as set forth in Appendix B.

3. The final Order in Case No. 2001-070, attached hereto as Appendix A, is hereby made a part of the record in this case.

4. Any request by Western Pulaski for an informal conference with the Commission Staff shall be set forth in writing and filed with the Commission within 20 days of the date of this Order.

5. The Commission is not prohibited from issuing additional Orders or requests for production of documents in this case.

Done at Frankfort, Kentucky, this 15th day of January, 2002.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE
KENTUCKY PUBLIC SERVICE COMMISSION

IN CASE NO. 2002-00013

DATED January 15, 2002

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JAMES L. FLOYD)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2001-070
)	
WESTERN PULASKI COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

On March 24, 2001, James Floyd (Complainant) filed a formal complaint with the Commission against Western Pulaski County Water District (Western Pulaski). Complainant alleges that Western Pulaski incorrectly disconnected his water service for past due accounts that were, in fact, current. Additionally, Complainant alleges that Western Pulaski reconnected service without informing him and, as a result, a faucet left on at his residence flooded the floor and caused several thousand dollars worth of damages.

FACTS

On April 2, 2001, the Commission issued to Western Pulaski an Order to Satisfy or Answer. In the Order, the Commission, included language asserting that it does not have jurisdiction or authority to grant damages and dismissed that portion of the

complaint. The Commission, however, asserts that it maintains jurisdiction over Complainant's other claims, particularly to the claim of unreasonable service.

In its answer, Western Pulaski claims that on December 22, 1999, Complainant came to Western Pulaski to sign up for a water meter and Western Pulaski gave him a payment agreement with \$50.00 down and \$35.00 per month due by the 10th of each month. Allegedly, in May 2000 Complainant had a bill of \$42.05 plus \$35.00 of which Complainant paid \$50.00 on June 8, 2000 and requested a leak adjustment, which Western Pulaski granted for \$15.00. Western Pulaski claims that Mr. Floyd did not pay the remaining balance on the account by June 10, 2000 as required by his service contract. Although Complainant paid the balance on June 15, 2000, his name had already been forwarded to field personnel for his service to be disconnected.

Western Pulaski claims that Complainant immediately contacted Western Pulaski and told it that somebody at his residence needed water service reconnected. Additionally, Complainant claims he did not pay until June 15, 2000 because he believed the leak adjustment covered the remaining balance of his bill. Allegedly, within the hour, Western Pulaski reconnected water service, resulting in the water damage. Western Pulaski also waived the reconnection fee.

On April 30, 2001, the Commission issued a data request to Complainant requesting any service or payment contracts between Complainant and Western Pulaski and a copy of any receipts recording payments on said contract. On May 14, 2001, Complainant provided the requested information. The information includes a copy of the service contract that provides for a \$50.00 deposit and six payments of \$53.00 each.

In its answer, Western Pulaski also provided a copy of the service contract. The copy of this service contract provides for a \$50.00 deposit and nine payments of \$35.00 per month. Both service contracts bear Complainant's signature.

Complainant claims that he had always been current in his service contract payments and that he did not pay the full price for one billing because he was under the impression that a leak adjustment to his bill would cover the cost. Complainant claims that he has no knowledge as to why the two contracts differ in terms and he denies that it is his signature that appears on the service contract that Western Pulaski provided.

The sole witness for Western Pulaski was Melissa Burton, Western Pulaski's office manager. She testified that the contract Western Pulaski formed with Complainant was the first time they had set up an extension of service based upon a payment agreement.³ She stated that the charge for the extension is \$365, and of this, Complainant paid \$50 and agreed to pay \$53 per month until he paid off the balance.

Ms. Burton claims that when Western Pulaski received the Order to Satisfy or Answer, she was unable to locate the original service contract because she had disposed of it. Ms. Burton claims that she called Western Pulaski's office and requested that one of its employees prepare a service contract to send to the Commission. Ms. Burton also claims that the reason for the preparation of the service contract was to provide the Commission with an example of how Western Pulaski manages its extension contracts, but claims that she did not direct the employee to forge Complainant's signature on the contract.⁴

³ Transcript at 28-29.

⁴ Id. at 43-46.

Ms. Burton claims that even though Complainant only made a \$50 payment when he was suppose to pay \$53 per payment, Western Pulaski s computer managed to reconcile the difference by assessing it as a service charge on Complainant s regular bill. On at least two occasions prior to the one precipitating this complaint, Complainant received disconnection notices. When he contacted Western Pulaski regarding these notices, he was told to disregard them. Western Pulaski claims that Complainant had paid the balance on these two previous disconnection notices by the time they reached him. Accordingly, Western Pulaski told him to disregard the disconnection notices.

Ms. Burton claims that when Complainant called Western Pulaski to inquire about the disconnection of service, she ordered that the service be restored because Complainant claimed somebody was at his residence who needed the water. Ms. Burton also waived the reconnection fee, claiming that she recognized that Complainant did not understand the contract. Additionally, Ms. Burton claims that it is her call⁵ whether to assess a fee for reconnection, and states that she did not charge a fee in this case as a courtesy to Complainant because he and Ms. Burton are cousins.⁶

DISCUSSION

The immediate issue here is whether Western Pulaski acted unreasonably and/or provided inadequate service. Of particular concern is the difference between the contracts.

Analysis of billing records that Western Pulaski and Complainant provided reveals that Complainant never paid Western Pulaski the full amount due during any of

⁵ Id. at 53.

⁶ Id.

the periods prior to the disconnection of service. In March 2000, he underpaid by \$3.55; in April 2000, by \$3.00; in May 2000, by \$3.00; and in June 2000, by \$3.00. Taken as an aggregate, Complainant actually owed Western Pulaski \$12.55 at the time Western Pulaski disconnected his service. Western Pulaski claims that although Complainant only paid \$50 per month toward the service contract, he somehow was current on the amount he owed Western Pulaski until June 10, 2000.

This is not the case, yet Western Pulaski chose to disconnect Complainant's service in June 2000, rather than on the previous dates. The reason for this treatment is unclear. Pursuant to Western Pulaski's tariff, Western Pulaski may disconnect service if a customer falls behind on any contract payments.⁷

A concern, however, is the service contract that Western Pulaski provided. The contract contains a forged signature. The terms of the contract are apparently inaccurate. Although the Office Manager disavows authorizing the forgery, her signature appears on the cover letter accompanying the contract sent to the Commission, a circumstance implying that the Office Manager knew or should have known that the contract was a forgery. Additionally, when Western Pulaski filed its answer, Ms. Burton did not advise the Commission that the service contract was to be used as an example of how Western Pulaski drafts its contracts. In fact, Western Pulaski's only reference in its answer to the service contracts explicitly states, The office staff gave him a payment agreement with \$50.00 down and \$35.00 per month due by the 10th of each month. Western Pulaski's Answer at 1.

⁷ Western Pulaski's Tariff, Sheet 23, Rules and Regulations, Partial Payment Plan.

Western Pulaski, for some reason that is not readily apparent, did not receive Complainant's answer to a Commission data request. Western Pulaski, until presented with a copy of this contract at hearing, never enlightened the Commission to the fact that the forged service contract that it submitted was to be used as an example. Regardless of any reason that Western Pulaski gives, it is clear that the contract which Western Pulaski provided is a forgery. The circumstances indicate that Western Pulaski has, in this instance, engaged in unreasonable business practices.

Administrative Regulation 807 KAR 5:006, Section 3(5), states that: [a]ll records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified. The Uniform System of Accounts for Class C Water Districts and Associations cites the guidelines governing the preservation of records of electric, gas, and water utilities, published by the National Association of Regulatory Utility Commissioners (NARUC) regarding the record retention period. The guidelines that NARUC adopts require that the service contract in question should be maintained for at least 5 years. Complainant paid off the contract in August 2000 and filed his complaint on March 24, 2001. Pursuant to Commission regulations, Western Pulaski should have maintained the contract at least through August 2005.

CONCLUSION

Pursuant to the terms of its tariff, Western Pulaski did, in fact, abide by the terms of its tariff by exercising its option to disconnect Complainant's service. Western Pulaski, therefore, acted reasonably in disconnecting Complainant's service in June 2000, despite the fact Western Pulaski could have disconnected service for non-payment during any of the preceding months.

Western Pulaski, however, appears neither to have acted reasonably in the proceedings before the Commission nor in its business practices. If Western Pulaski had followed Commission regulations, it would have maintained the service contract and been able to produce the original service contract in its answer. Not only did Western Pulaski fail to abide by Commission regulations regarding the retention of records, it submitted a forged instrument to the Commission. Further, it appears that Western Pulaski does not uniformly administer the rules in its tariff. Accordingly, due to Western Pulaski's actions revealed herein, the Commission will open a proceeding to investigate Western Pulaski's business practices and procedures.

IT IS THEREFORE ORDERED that the complaint is dismissed with prejudice.

Done at Frankfort, Kentucky, this 7th day of January, 2002.

By the Commission

ATTEST:


Executive Director

APPENDIX B

APPENDIX TO AN ORDER OF THE
KENTUCKY PUBLIC SERVICE COMMISSION

IN CASE NO. 2002-00013

DATED January 15, 2002

COMMONWEALTH OF KENTUCKY

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In the Matter of:

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REGULATION 807 KAR 5:006, AND)
ALLEGED VIOLATIONS OF KRS 278.160)
AND KRS 278.170)

AFFIDAVIT

STATE OF KENTUCKY)
) SS.
COUNTY OF FRANKLIN)

Comes the Affiant, **Virginia L. Smith**, after first being duly sworn, and states:

I am the Director of Consumer Services Division of the Kentucky Public Service Commission.

In my capacity as Director, I have received complaints against Western Pulaski County Water District ("Western Pulaski"). The following is a summary of those complaints:

1. Western Pulaski demanded payment from a current tenant for a previous tenant's past due account before it would agree to provide service to a current tenant.
2. Western Pulaski acted in a discriminatory manner when requesting deposits from prospective customers.
3. Western Pulaski disconnected customers' service without providing adequate or appropriate notice.
4. Western Pulaski acted unreasonably in the reconnection of previously terminated service.

5. Western Pulaski failed to adequately maintain records relating to billing, payment, usage, and meter histories; contracts; and payment agreements.

6. Western Pulaski acted unreasonably in accepting contractors' bids and awarding construction contracts.

7. Western Pulaski's management has engaged in discourteous and threatening behavior.

8. Western Pulaski failed to provide adequate notice of board meetings.

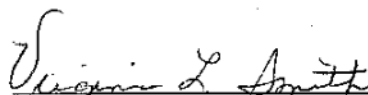
9. Western Pulaski failed to keep adequate and correct minutes of meetings of its Board of Directors.

10. Western Pulaski failed to maintain copies of insurance certificates provided by its contractors.

11. Western Pulaski failed to provide the Commission with requested information within the statutorily allotted time.

12. Western Pulaski has not applied its extension-of-service policy in accordance with its tariffed rules and applicable Commission Regulations.

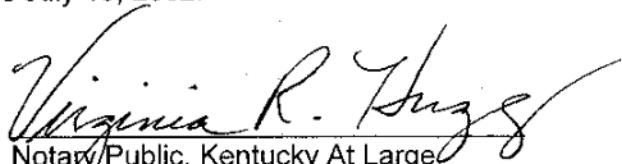
Further the Affiant sayeth not.



Virginia L. Smith, Affiant

SUBSCRIBED AND SWORN to before me by Virginia L. Smith this ____ day of January, 2002.

My Commission as Notary Public expires July 19, 2002.



Notary Public, Kentucky At Large