

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NORTH MARSHALL WATER DISTRICT)
_____))
ALLEGED FAILURE TO COMPLY WITH) CASE NO. 2007-00275
KRS 278.160)

O R D E R

This case involves an investigation into North Marshall Water District's ("North Marshall") alleged failure to provide water service in accordance with the terms of its filed rate schedules. Finding that North Marshall failed to bill its customers in the manner set forth in its filed rate schedules and that such failure constitutes a violation of KRS 28.160, we assess the water district a civil penalty of \$100.

North Marshall, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute and furnish water to the public. It serves approximately 5,176 customers in Livingston and Marshall counties, Kentucky.¹ North Marshall is a utility subject to Commission jurisdiction.²

¹ Annual Report of North Marshall Water District to the Kentucky Public Service Commission for the Calendar Year Ending December 31, 2006 at 5 and 27.

² KRS 278.010(3)(d); KRS 278.015; KRS 278.040(1).

North Marshall provides water service under the terms and conditions set forth in its filed rate schedules. These schedules provide, inter alia, that bills will be issued bi-monthly on or about the 20th day of each even-numbered month.³

In a recent proceeding before the Commission involving a formal complaint against North Marshall,⁴ North Marshall admitted to billing practices that appeared inconsistent with the terms of its filed rate schedule. It acknowledged its failure to issue bills to its customers for service rendered for the period from February to April 2006 until April 25, 2006.⁵

As a result of these admissions, the Commission, on July 31, 2007, directed North Marshall to show cause why it should not be subject to penalties prescribed in KRS 278.990(1)⁶ for allegedly failing to comply with KRS 278.160. North Marshall

³ North Marshall Water District Tariff, PSC KY No. 4, Original Sheet No. 11.

⁴ Kentucky Dam Village State Resort Park v. North Marshall Water Dist., Case No. 2006-00365 (Ky. PSC July 31, 2007).

⁵ See Case No. 2006-00375, North Marshall's Response to Commission Staff's Second Data Request, Item 2. North Marshall did not complete the reading of its customer meters until Friday, April 21, 2006. No work was conducted during the following weekend. On April 24, North Marshall employees reviewed the readings, printed the bills, and prepared them for mailing. North Marshall placed the bills into the mail the following day.

⁶ 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) nor more than two thousand five hundred dollars (\$2,500).

responded to this Order⁷ and subsequently declined to request either an informal conference or hearing in this matter.⁸ This matter stood submitted for decision on October 6, 2007.

KRS 278.030(2) provides:

Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.

KRS 278.160 provides, in pertinent part, that:⁹

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

⁷ In the same Order in which we established this case, we also directed that the record of Case No. 2006-00375 be incorporated by reference into the record of this proceeding.

⁸ In our Order of September 21, 2007, the Commission provided North Marshall 15 days in which to request a hearing in this matter. If no request for hearing was received within that period, we directed that this matter stand submitted for decision based upon the existing record. We have received no request for hearing.

⁹ See also 807 KAR 5:011, Section 2, (requiring all utilities to file with the Commission “a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and administrative regulations”).

By necessary implication, KRS 278.160 requires a utility to provide utility service in accordance with the terms of its filed rate schedules. Any failure to provide service in accordance with such schedules constitutes a violation of this statute.

Pursuant to KRS 278.030 and KRS 278.160, North Marshall has filed with the Commission rate schedules governing its provision of water service. One of these schedules provides, inter alia, that bills will be issued bi-monthly “on or about” the 20th day of each even-numbered month.¹⁰

While North Marshall acknowledges its failure to issue its bills within the time period specified in its filed rate schedule, it asserts that this failure was not the result of willful misconduct, but of several uncontrollable factors. North Marshall had recently “lost” the services of the firm that performed its meter-reading operations.¹¹ The readings taken in April 2006 represented only the second time that North Marshall had used its own personnel to read customer meters. North Marshall employees’ lack of experience in reading meters lengthened the time necessary to complete the readings. One of North Marshall’s designated readers was further slowed due to a back injury.

North Marshall further notes that meter reading was further delayed because the first day of April 2006 was a non-business day. In April 2006, North Marshall’s policy required meter reading to begin on the first business day of the month. As April 1, 2006 fell on a Saturday, the water district did not begin reading its meters until April 3, 2006.¹²

¹⁰ North Marshall Water District Tariff, PSC KY No. 4, Original Sheet No. 11.

¹¹ North Marshall Water District’s Response to Show Cause Order at 1.

¹² We question the relevance of this point. Regardless of the day of the week that the first business day falls, North Marshall will have at least 14 business days in which to perform its readings and issue bills. If the first day of the month is a Sunday or Monday, it will have 15 business days.

Arguing that the assessment of a penalty is inappropriate in the present case, North Marshall notes that it acted to ameliorate the effect of any delay in the issuance of its bills. It extended the time in which a customer could submit payment without a penalty by 2 days. It received only one complaint regarding its billing practices for that billing period.

While North Marshall has taken steps to mitigate the effects of its failure to comply with its own rate schedules, its actions do not relieve it of its obligations under KRS 278.160 or of the consequences of any failure to comply with those obligations. North Marshall's failure to issue bills in the time prescribed in its filed rate schedules constitutes a willful violation of KRS 278.160 for which it should be subject to a civil penalty.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. North Marshall has filed with the Commission rate schedules providing that bills for water service will be issued bi-monthly "on or about" the 20th day of each even-numbered month.
2. These rate schedules have been effective since on or before February 1, 2002.
3. For the billing period of February through April 2006, North Marshall did not issue bills for water service to its customers until April 25, 2006.
4. By failing to issue its bills for water service on or about April 20, 2006, North Marshall failed to provide service in accordance with its filed rate schedules and willfully violated KRS 278.160.

5. North Marshall should be penalized the sum of \$100 for its willful violation of KRS 278.160.

IT IS THEREFORE ORDERED that:

1. North Marshall is assessed a civil penalty of \$100 for its willful failure to comply with the provisions of its tariff.

2. Within 10 days of the date of this Order, North Marshall shall pay to the Commonwealth of Kentucky the sum of \$100. This payment shall be in the form of a cashier's check made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. Subject to the filing of a timely petition for rehearing pursuant to KRS 278.400, these proceedings are closed. The Executive Director shall place any future filings in North Marshall's general correspondence file or shall docket the filing as a new proceeding.

Done at Frankfort, Kentucky, this 5th day of December, 2007.

By the Commission

ATTEST:



Executive Director