

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE OPERATING)	
CAPACITY OF MARTIN COUNTY WATER)	CASE NO. 2016-00142
DISTRICT PURSUANT TO KRS 278.280)	

ORDER

On April 11, 2016, the Commission entered an Order opening this investigation into deficiencies identified in the Commission Staff’s December 12, 2014 Utility Inspection Report (“Inspection Report”) of Martin County Water District’s (“Martin District”) facilities and records. The investigation also includes Martin District’s compliance with the Required Action plan set forth in Appendix A of the Commission’s April 2, 2008 Order in Case No. 2006-00303¹ and allegations of service quality deficiencies identified by Gary Ball, a customer of Martin District, through his complaint to the Commission.²

The Commission has conducted a public meeting, and three hearings to take evidence on these issues and, in particular, on Martin District’s water-loss-reduction planning and efforts, leak-reduction planning and efforts, including the prioritization of finding and repairing major leaks, unmetered service and theft of water, bad debt expense, and whether Martin District plans to pursue a surcharge.³

¹ Case No. 2006-00303 *An Investigation into the Management and Operation of Martin County Water District* (Ky. PSC Apr. 2, 2008).

² Order (Ky. PSC Apr. 11, 2016) at 8.

³ Order (Ky. PSC Dec. 16, 2016) at 2.

On October 30, 2017, the Commission granted intervention to the Martin County Concerned Citizen's, Inc. ("MCCC"). On December 7, 2017, MCCC filed with the Commission a motion requesting a procedural schedule and an initial request for information to Martin District ("MCCC's Initial Request"). In its motion, MCCC requests that the Commission issue an Order addressing: 1) whether Martin District must respond to MCCC's request within 14 days of service of the request; 2) how continuing requests are to be addressed, particularly in the event that Martin District must supplement or amend its responses; and 3) in the event that Martin District does not provide a complete and precise response to information requests, whether Martin District is required to provide written grounds for its failure to respond.

On December 15, 2017, Martin District filed with the Commission a motion requesting that Martin District be protected from responding to MCCC's requests. As grounds for its motion, Martin District states that: 1) the Commission has not provided for discovery; and 2) responding to MCCC's requests increases Martin District's financial and administrative burden in this proceeding.

The Commission will grant in part and deny in part both pending motions. The Commission finds that MCCC should be allowed an opportunity to conduct limited discovery on Martin District. The Commission will establish a procedural schedule, and allow discovery, but will limit MCCC's requests to the scope of the Commission's investigations. The Commission will also strike MCCC's discovery if it requests information duplicative of that which the Commission requests in this Order. The Commission strikes, in MCCC's Initial Request, Items 1, 2, 3, 4, 5, 6, 10, and 19, as the Commission is requesting information in this Order that will respond to those requests in

whole or in part. The Commission will strike MCCC request numbers 12, 16, and 17 as overly burdensome on Martin District. The Commission will strike MCCC request number 14 as irrelevant to the scope of the proceeding before the Commission. The Commission will strike MCCC request number 20 as premature, as the cost-of-service analysis should be provided in any future rate proceeding, but is irrelevant to the scope of this investigation.

With regard to how continuing requests for information are to be addressed, the Commission finds that, in order to limit the burden on Martin District and not unduly complicate the proceeding, Martin District is required to respond only to continuing requests from the Commission. The Commission intends to hold hearings approximately every 90 days in this investigation until the issues facing Martin District have been addressed. The Commission will provide an opportunity prior to each hearing for discovery, at which point MCCC may renew any request for information that it desires and any amendments or supplements to previous requests may be made.

With regard to MCCC's question regarding how Martin District should respond when it provides an incomplete or imprecise response to a request for information, the Commission states that any respondent to a request for information should provide a written explanation as to why it did not or cannot respond to a request for information. The Commission further states that it routinely includes this requirement in any request for information that it or Commission Staff issues.

The Commission finds that Martin District should respond to the requests for information contained in the Appendix to this Order, as well of the requests of MCCC as listed above. Additionally, the Commission finds that a hearing should be held,

pursuant to 807 KAR 5:001, Section 9(3), to take evidence on all issues subject to this investigation.

IT IS HEREBY ORDERED that:

1. The motions of MCCC and Martin District are denied in part and granted in part.

2. MCCC's requests for information Items 1, 2, 3, 4, 5, 6, 10, 12, 14, 16, 17, 19, and 20 are stricken.

3. The information requested in MCCC's remaining requests for information and those listed in the Appendix attached to this Order are due no later than January 10, 2018.

4. a. Responses to requests for information shall be appropriately bound, tabbed, and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Martin District shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which Martin District refuses to furnish all or part of the requested information, Martin District shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. A party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

5. A hearing for the purpose of taking evidence on the issues within the scope of this investigation in the instant case shall be held on January 17, 2018, at 9:30 a.m. Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

6. The January 17, 2018 hearing shall be recorded by digital video recording only.

7. Martin District shall appear at the formal hearing scheduled on January 17, 2018, and shall present witnesses who are prepared to discuss the issues within the scope of this proceeding and the information filed into the record through Martin District's responses to requests for information.

8. Martin District shall file with the Commission, no later than January 10, 2018, a list of witnesses and exhibits to be presented at the January 17, 2018 hearing. Martin District shall provide six copies of any exhibit it intends to introduce into evidence at the hearing.

9. Martin District shall publish notice of the scheduled hearing in accordance with 807 KAR 5:001, Section 9(2)(b), no more than 21 days and no less than seven days before the day of the scheduled hearing in all areas in which it provides water

service. In addition, the notice of hearing shall include the following statement: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov."

The Commission shall serve a copy of this Order to the Kentucky Division of Water and also on the Martin County Judge/Executive.

By the Commission

Chairman Michael Schmitt did not participate in the deliberations or decisions concerning this case.



ATTEST:


Executive Director

Case No. 2016-00142

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2016-00142 DATED **DEC 21 2017**

1. Provide each Monthly Water Use Report for the period October 2017 through December 2017. Each report should include water loss due to flushing. Martin District should continue to file these reports with the Commission every month.

2. As previously requested in Commission Staff's Third Post-Hearing Request for Information ("Staff's Third Request"), for the period beginning August 1, 2017, to the present, provide each memorandum or other correspondence between Martin District and the Kentucky Rural Water Association. This request is a continuing request.

3. As previously requested in Staff's Third Request, for the period beginning August 1, 2017, to the present, by month, provide the amount of coal severance funds received by Martin County. This is a continuing request.

4. By month, for the period beginning October 1, 2017, to the present, provide the amount of coal severance funds allocated by Martin County to Martin District. Also describe how those funds, if any were received, were used. This is a continuing request.

5. Provide the status of the Appalachian Regional Commission \$1.2 million dollar grant to Martin District and how the District plans to utilize the grant monies. Provide any plans or specifications

6. Reference Martin District's Exhibit 3 to the Staff's Third Request. Provide a detailed explanation as to the status of Martin District's AML Economic and

Community Development Pilot Program Application for \$4,801,750. Provide all applicable correspondences and/or documentation of the same.

7. Provide any documents, correspondence, recommendations, etc. provided by BlueWater to Martin District since July 1, 2017. If Mr. Heitzman's recommendations have not been completed, provide the current draft or preliminary recommendations report.

8. Reference Martin District's Exhibit 5, List of Accounts Payable 2017 to answer the following questions:

a. Provide a detailed explanation as to why Martin District owes All Pumps Sales and Service \$31,266 dating back to November 2016. Ensure to include in the explanation what goods and/or services this company provides to Martin District, and whether any payments have been made to the company since November 2016.

b. Provide a detailed explanation as to why Martin District owes American Electric Power in excess of \$40,000. Why would Martin District not prioritize the electricity bill to ensure uninterrupted power for providing water service?

c. Provide a detailed explanation as to why Martin District owes American Electric Power in excess of \$26,000 in late fees. Explain why Martin District did not prioritize the electricity bill to ensure it was paid in order to avoid excessive late fees.

d. Provide a detailed explanation as to the \$450 amount owed to Candy Moore. Ensure to include in the explanation what services this individual provides to Martin District.

e. Provide a detailed explanation as to why Martin District owes Evans Hardware, Inc. roughly \$70,000 dating back to January 2015. Ensure to include in the explanation what goods and/or services this company provides to Martin District, and whether any payments have been made to the company since January 2015.

f. Provide a detailed explanation as to what Martin District has purchased at Inez Supermarket, Inc. since January 2017 owing \$925, and whether any payments have been made to the company since January 2017.

g. Provide a detailed explanation as to why Martin District owes Linda Sumpter, CPA \$126,000 dating back to August 2014. Ensure to include in the explanation a detailed list of services this individual provides to Martin District, whether any payments have been made to Ms. Sumpter since August 2014, why Ms. Sumpter would continue to provide services since 2014 to date without payment, whether there is a written agreement between Martin County and Ms. Sumpter to provide \$3,500 each month to this individual, whether Martin District has analyzed other more economical options.

h. Provide a detailed explanation as to why Martin District owes R&J Building Supply \$8,695 dating back to December 2015. Ensure to include in the explanation what goods and/or services this company provides to Martin District, and whether any payments have been made to the company since December 2015.

i. Provide a detailed explanation as to why Martin District owes Tech 2000, Inc. \$4,109, and whether any payments have been made to the company since December 2016.

j. Provide a detailed explanation as to why Martin District owes C.I. Thornburg roughly \$126,000 dating back to March 2016. Ensure to include in the explanation what goods and/or services this company provides to Martin District, and whether any payments have been made to the company since March 2016.

k. Provide a detailed explanation as to why Martin District owes Xylem Dewatering \$42,496 dating back to December 2015. Ensure to include in the explanation what goods and/or services this company provides to Martin District, and whether any payments have been made to the company since December 2015.

l. Provide a detailed explanation as to why Martin District owes Zipzone, Inc. (Fastlane) roughly \$167,000 dating back to June 2014. Ensure to include in the explanation what goods and/or services this company provides to Martin District, and whether any payments have been made to the company since June 2014.

9. Provide a list of all expenses that have been paid by Martin District from January 1, 2017 to present by vendor name, date of service, date the invoice was paid, and amount.

10. Refer to the schedule of past due accounts provided in Martin District's Response to Staff's Third Request.

a. Provide a list of past due accounts that have been paid in 2017 include in the list the vendor name, date of original invoice, date paid, and amount paid with the total for all invoices paid in relation to past due accounts.

b. If the amount of any past due accounts paid is zero, provide an explanation as to why Martin District has not made any payments towards those past due accounts.

c. Explain how Martin District prioritizes the payment of past due accounts.

11. Provide the number of customers that Martin District has added/lost from January 1, 2017 until present.

12. Refer to Martin District's Response to Staff's Third Request.

a. Martin District's response to Item 6 (b) states the original loans have been paid in full. Provide the original cost to construct the tank. Provide the amount of the loans that were entered into by Martin District to construct the tank.

b. Martin District's response to Item 6 (d) states the board considered the cost of producing the water when determining the monthly amount of the lease. Provide the estimated amounts the board relied on in its deliberations. Explain all assumptions that were made.

13. Provide a status update of the lease agreement between Prestonsburg and Martin District for the Honey Branch Tank. If a final agreement has been finalized, provide a copy of the agreement.

14. List Martin District's current Commissioners.

15. List any of Martin District's Commissioners that have retired in the past two months, the date of the resignation, and any replacements to the positions vacated by the retired Commissioners.

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