

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO LATE	)	CASE NO.
PENALTY OF OHIO COUNTY WATER DISTRICT	)	2021-00017

ORDER

This matter arises upon an offer of settlement of this matter that was filed by Ohio County Water District (Ohio District) on October 28, 2021. On January 15, 2021, the Commission initiated this investigation into the omission of a late payment penalty amount in Ohio District's filed tariff, in violation of a Commission Order, and statutes and regulations that the Commission enforces. As discussed further below, the Commission approved Ohio District's late payment penalty amount in Case No. 2001-00010.<sup>1</sup> Ohio District collected a late payment penalty pursuant to that Order, but, since 2005, Ohio District has filed tariffs that omit the late payment penalty amount.

LEGAL STANDARD

KRS 278.160 requires a utility to file a tariff with its rates and service with the Commission and prohibits the utility from charging more or less than the rates set forth in the filed tariff. KRS 278.260 provides that the Commission, on its own motion, may initiate a proceeding to investigate the rates and service of a utility. In accordance with KRS 278.180, no change can be made to a utility's tariff except upon 30 days' notice to the Commission. Pursuant to KRS 278.390, every order entered by the Commission

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<sup>1</sup> Case No. 2001-00010, *Application of Ohio County Water District for Non-Recurring Charges* (Ky. PSC Feb. 26, 2001).

continues in force until the expiration of time, if any, named by the Commission in the order, or until revoked or modified by the Commission, unless the Order is suspended or vacated. Commission regulation 807 KAR 5:011 contains the requirements for tariff filings, including regulations how to revise a tariff and that, if the Commission orders a change in the utility's rates or terms of service, that the utility must file a tariff that comports with the Commission's Order.

KRS 278.990(1) states that, upon a Commission finding that a utility and its officers, agents, and employees willfully violated a Commission Order, or statute or regulation that the Commission enforces, the Commission may assess a civil penalty of up to \$2,500 per occurrence of each violation.

#### BACKGROUND

As noted above, the Commission approved Ohio District's late payment penalty amount in Case No. 2001-00010, and Ohio District filed a tariff that complied with the final Order in that case. In processing Ohio District's alternative rate adjustment (ARF), Case No. 2020-00167,<sup>2</sup> the Commission discovered that Ohio District collected late fees, but its tariff did not contain a late payment fee. Upon further review, the Commission determined that Ohio District first filed a tariff<sup>3</sup> that omitted the approved late payment penalty amount in 2005.

In its response filed in this proceeding, Ohio District maintained that the omission of the fee from the tariff sheet was an inadvertent omission, that the 2005 tariff filing was

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<sup>2</sup> Case Number 2020-00167, *Electronic Application of Ohio County Water District for an Alternative Rate Adjustment* (Ky. PSC December 3, 2020).

<sup>3</sup> TFS2005-02023 (filed Dec. 8, 2005); the tariff was accepted for filing by the Commission by letter dated December 14, 2005.

deficient for several reasons, and thus the 2005 tariff was null and void, with the 2001 tariff still in effect.<sup>4</sup>

In an Order dated October 14, 2021, the Commission found that Ohio District willfully violated the Commission's Order in 2001-00010 when they filed a tariff sheet that failed to include a late payment penalty amount. The Commission further found that Ohio District also violated 807 KAR 5:011, Section 6(1) and 7, when it failed to include the late penalty amount on the 2005 tariff filing, and as a result, Ohio District's customers were not on notice of the late payment penalty amount. The Commission directed Ohio District to show cause why the utility and its officers, agents, and employees should not be subject to civil penalties pursuant to KRS 278.990(1).

#### PROPOSED SETTLEMENT

In its offer of settlement (attached as an Appendix to this Order), Ohio District proposed the following:

1. Ohio District will pay a civil penalty of \$2,500.00;
2. Ohio District's board of commissioners and general manager will attend six hours of certified water management training;
3. Ohio District shall adopt and enforce a policy requiring the general manager to perform annual reviews of Ohio District's tariffs, submit a report detailing the review, and if the policy is ever modified or rescinded, Ohio District would notify the Commission at least 30 days in advance;
4. Ohio District will not collect any late payment fees for late payments on or before January 1, 2022; and

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<sup>4</sup> Ohio District's Response to Allegations (filed Apr. 9, 2021) at 6.

5. Ohio District will move for dismissal with prejudice of the Franklin Circuit Court Action No. 2021-CI-00106 within 30 days of acceptance of the settlement.

Ohio District maintained that, by proposing a settlement, that it does not admit or acknowledge that it willfully violated KRS 278.160 or any other provisions of KRS Chapter 278.

In the settlement, Ohio District asked that the Commission not enter an order finding that Ohio District's commissioners or employees willfully violated or willfully aided and abetted in a violation of KRS 278.160. Ohio District also requested that the Commission not order the refund of any late payment fees.

#### DISCUSSION AND FINDINGS

Having considered the proposed settlement and case record and being otherwise sufficiently advised, the Commission finds that the proposed settlement, as modified in this Order, provides for a reasonable resolution to this matter and will take significant steps to ensure that Ohio District commissioners and managers timely and regularly review Ohio District's tariff for accuracy and thoroughness.

Regarding the request related to a finding of willful violations, in the October 14, 2021 Order, the Commission found that Ohio District willfully failed to follow a Commission Order and Commission regulation 807 KAR 5:001, Section 6, regarding tariff filings. The Commission stands by that finding. Ohio District's commissioners and personnel went fifteen years without reviewing the tariff. As a result, Ohio District's customers were not on notice of any change to the utility tariff or the late payment penalty amount.

Regarding Ohio District's proposed term of paying a \$2,500 civil penalty, the Commission notes that it is water district customers who ultimately pay such penalties

without gaining any benefit. The Commission proposes that Ohio District file a notice in this proceeding whether it will pay the \$2,500 civil penalty, or, in the alternative, make a voluntary donation in the amount of \$2,500 to a non-profit community organization with the funds earmarked to be paid, in their entirety, to provide bill payment assistance for Ohio District customers. The Commission does not have the statutory authority to require Ohio District to make such a payment. However, a \$2,500 contribution towards bill payment assistance for Ohio District customers will provide greater benefit for those customers than payment of a \$2,500 civil penalty. If Ohio District opts to make the voluntary payment of \$2,500, then Ohio District must file notice of its intention within 30 days of the date of this Order, specifying the non-profit community organization to whom Ohio District will make the donation and provide documentation how that organization will ensure that the funds are earmarked solely for bill payment assistance to Ohio District customers. The Commission will waive payment of the civil penalty upon filing of documentation that the voluntary payment was made to a non-profit community organization.

Similarly, the Commission concludes that requiring Ohio District to refund late payment fees collected since 2005 would harm Ohio District's ability to provide safe, adequate, and reasonable service, and thus would ultimately harm Ohio District's customers. For that reason, the Commission agrees that Ohio District should not be required to refund late payment fees collected since 2005.

The Commission finds the settlement terms regarding water district commissioner and general manager certified water management training, manager and commissioners' annual reviews of Ohio District's tariff, notice regarding modification of the annual tariff review schedule, and Ohio District's offer to forego collecting late payment penalties for

late payments on or before January 1, 2022 to be reasonable terms that will improve the operation of Ohio District and benefit Ohio District customers. The Commission also agrees that it is reasonable for Ohio District to move for dismissal with prejudice of Franklin Circuit Court Action No. 2021-CI-00106 within 30 days of acceptance of the settlement.

To carry out this settlement, the Commission concludes that Ohio District should adopt a policy of annual tariff reviews no later than February 28, 2022. The Commission also concludes that Ohio District commissioners and the general manager should attend six hours of certified water management training no later than December 31, 2022.

IT IS THEREFORE ORDERED that:

1. The settlement proposed by Ohio District, as modified in this Order, is accepted.
2. Within 30 days of the date of entry of this Order, Ohio District shall file notice whether it will pay the \$2,500 civil penalty or whether it will make a voluntary payment of \$2,500 to a non-profit community organization with the funds earmarked solely for bill payment assistance for Ohio District's customers.
3. If Ohio District provides notice that it will make a voluntary payment of \$2,500 to a non-profit community organization, then within 30 days of the date of that filing, Ohio District shall provide documentation of the donation. Upon the filing of the notice, the Commission shall enter an Order waiving the \$2,500 civil penalty.
4. Ohio District shall file written notice on an annual basis of the report of the tariff review conducted by the general manager and Ohio District commissioners.
5. Current Ohio District commissioners and general manager shall attend six hours of certified water management training by December 31, 2022.

6. Current Ohio District commissioners and general manager shall file written notice no later than January 30, 2023, that they attended six hours of certified water management training by December 31, 2022.

7. All filings made pursuant to order paragraphs 4 and 6 shall be made in the post-case correspondence file in this proceeding and shall include the case number.

8. This case shall remain open until Ohio District either pays the \$2,500 civil penalty or files documentation of the voluntary donation of \$2,500 to a non-profit community organization to be used solely for bill assistance for Ohio District customers.

By the Commission



ATTEST:

  
Executive Director



APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2021-00017 DATED DEC 27 2021

FIVE PAGES TO FOLLOW

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ELECTRONIC INVESTIGATION INTO )**  
**LATE PENALTY OF OHIO COUNTY ) CASE NO. 2021-00017**  
**WATER DISTRICT )**

**OFFER OF SETTLEMENT**

Ohio County Water District (“Ohio District”) submits the following offer of settlement to resolve this matter.

Ohio District proposes that this matter be resolved in the following manner:

1. Should the Public Service Commission issue an Order accepting this Offer of Settlement, Ohio District will pay the sum of \$2,500 to the Commonwealth of Kentucky.
2. All current members of Ohio District’s Board of Commissioners and Ohio District’s General Manager will attend six (6) hours of certified water management training no later than December 31, 2022.
3. No later than December 31, 2021, Ohio District’s Board of Commissioners shall adopt and enforce a policy requiring annual reviews of Ohio District’s tariff by its General Manager and legal counsel to ensure the tariff complies with KRS 278.160 and all applicable provisions of KRS Chapter 278, Commission regulations and Commission Orders. This policy shall further require

Ohio District's General Manager and Ohio District's legal counsel to submit a written report to the Board of Commissioners containing the findings of their review.

4. Should Ohio District modify or rescind the required policy, it will notify the Public Service Commission in writing at least 30 days in advance of the proposed modification or rescission.

5. Ohio District will undertake no effort to collect any late payment fees for late payments occurring on or before January 1, 2022.

6. The Public Service Commission will not enter any Order in this proceeding in which it finds Ohio District willfully violated KRS 278.160 or any current or former member of Ohio District's Board of Commissioners, or any current or former Ohio District employee willfully aided and abetted a violation of KRS 278.160.

7. The Public Service Commission will not enter any Order requiring the refund of any late payment fees that Ohio District assessed prior to March 16, 2020 on the basis that the assessment of such fees violated KRS 278.160. This provision does not preclude the Public Service Commission from ordering the refund of late payment fees if the collection of such fees is related to unlawful conduct not involving the presence or absence of a reference to a late payment fee in Ohio District's filed tariff.

8. Should the Public Service Commission issue an Order accepting this Offer of Settlement, Ohio District will within 30 days of the issuance of an Order move for dismissal with prejudice of Franklin Circuit Court Action No. 2021-CI-00106.

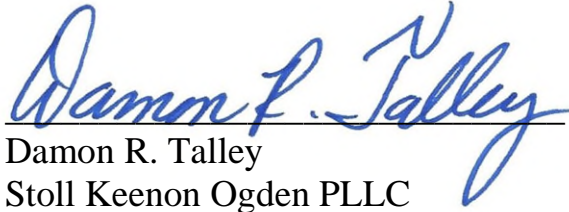
9. Should the Public Service Commission issue an Order accepting this Offer of Settlement, Ohio District waives its right to a hearing in this matter and will not petition the Public Service Commission for rehearing or bring an action for review of any order accepting this Offer of Settlement.

10. Should the Public Service Commission issue an Order accepting this Offer of Settlement and Ohio District fails to comply with the terms of this Offer of Settlement, Ohio District's failure shall be deemed a failure to comply with a lawful order of the Public Service Commission and Ohio District may be subject to penalties pursuant to KRS 278.990(1).

11. In making this Offer of Settlement, Ohio District does not admit or acknowledge that it willfully violated KRS 278.160 or any other provision of KRS Chapter 278, any Commission regulation or order or that any member of Ohio District's Board of Commissioners or Ohio District employee aided or abetted any willful violation of KRS 278.160 or any other provision of KRS Chapter 278, any Commission regulation or order.

Dated: October 28, 2021

Respectfully submitted,



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*Counsel for Ohio County Water District*

## CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of October 28, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on October 28, 2021 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.

  
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*Counsel for Ohio County Water District*

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