

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF LYON)	
COUNTY WATER DISTRICT AND ITS)	
INDIVIDUAL COMMISSIONERS DON)	CASE NO.
ROBERTSON AND CHARLES MURPHY, AND)	2021-00343
SUPERINTENDENT, WILLIAM ASHER, TO)	
COMPLY WITH KRS 278.230, 807 KAR 5:006,)	
SEC. 4(2), AND KRS 278.990)	

ORDER

By the Commission's December 14, 2021 Order in Case No. 2021-00391,¹ this matter was held in abeyance pending a determination in that case and the record of this case was incorporated into Case No. 2021-00391. The final Order in Case No. 2021-00391 was entered on May 13, 2022. This matter now stands submitted for a final decision.

LEGAL STANDARD

Under KRS 278.250 and KRS 278.260, the Commission is authorized to investigate and examine the condition of any utility subject to its jurisdiction, including any practice or act relating to the utility service. Under KRS 278.280, if the Commission finds that any practice or act is unjust, unreasonable, unsafe, improper, inadequate, or insufficient, then the Commission has the authority to determine the just, reasonable, safe, proper, adequate, or sufficient practice or method to be observed. Upon a finding

¹ Case No. 2021-00391, *Electronic Application of Lyon County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC May. 13, 2022).

that Lyon County Water District (Lyon District), its commissioners, or superintendent willfully violated any provision of KRS Chapter 278, Commission regulations, or a Commission Order, KRS 278.990 authorizes the Commission to assess civil penalties not to exceed \$2,500 for each offense against a utility and against any officer, agent, or employee of a utility who willfully violates any provisions of KRS 278, Commission regulations, or Orders.

BACKGROUND

On its own motion, the Commission initiated this proceeding to investigate, Lyon District, and its individual commissioners, Don Robertson, Charles Murphy, and its superintendent, William Asher, for allegedly failing to comply with KRS 278.230, and 807 KAR 5:006 Section 4(2). Lyon District filed its response on October 19, 2021, and Mr. Robertson and Mr. Murphy included verified statements that the Lyon District commissioners were aware of the Commission's Order of June 15, 2020,² requiring the utility to file an alternative rate filing within a year of that Order.³ Mr. Robertson's and Mr. Murphy's statements were identical and restated a series of events further documented in Commissioners' Exhibit A that show that the utility had sought a rate study prior to the June 15, 2020 Order through HDR Engineering, Inc. (HDR Engineering).⁴ Additionally, the statements filed by Mr. Robertson and Mr. Murphy note that the utility applied for a

² Case No. 2019-00444, *Electronic Proposed Adjustment of the Wholesale Water Service Rates of Princeton Water and Wastewater* (Ky PSC June 15, 2020).

³ Response of Don Robertson and Response of Charles Murphy (filed Oct.19, 2021) at 1-4.

⁴ Response of Don Robertson and Response of Charles Murphy (filed Oct.19, 2021) at 1-4, Commissioner's Exhibit A.

purchase water adjustment in Case No. 2021-00195.⁵ The statements filed by Mr. Robertson and Mr. Murphy explain that it was the “sincere belief” that Lyon District was meeting the requirements of the Commission based upon the information the board received about a “rate increase” from HDR Engineering.⁶ Additionally, Mr. Robertson and Mr. Murphy stated that the Lyon District board of commissioners did not receive correspondence from the Commission regarding the failure to file its annual report and included a letter as Commissioner’s Exhibit D from the managing partner of Thurman Campbell Group, PLC, its accounting service, that describes a combination of factors, including staffing issues related to Covid-19 and a problem in receiving the necessary data to complete the annual report, that led to the late filing of Lyon District’s 2020 annual report.⁷ Mr. Asher, the former superintendent filed an affidavit with the utility’s response that addressed the utility’s failure to file quarterly meter reports required by the Commission’s Division of Inspections. Mr. Asher was hired in July 2020 and resigned August 31, 2021.⁸ Mr. Robertson and Mr. Murphy stated that Lyon District has a new superintendent and that the commissioners have put policies in place to address the communication failures regarding the failure to file its annual report.⁹

DISCUSSION AND FINDINGS

⁵ Case No. 2021-00195, *Electronic Purchased Water Adjustment Filing of Lyon County Water District* (Ky. PSC June 4, 2021).

⁶ Response of Don Robertson and Response of Charles Murphy (filed Oct.19, 2021) at 5.

⁷ Response of Don Robertson and Response of Charles Murphy (filed Oct.19, 2021) at 5-6, Commissioner’s Exhibit D.

⁸ Response of William Asher (filed Oct. 19, 2021) at 1.

⁹ Response of Don Robertson and Response of Charles Murphy (filed Oct.19, 2021) at 6.

Based upon the record, the Commission finds Lyon District and its commissioners in violation of the June 15, 2020 Commission Order in Case No. 2019-00444 by not filing a base rate case or alternative rate filing by June 15, 2021, the deadline ordered by the Commission. The requirement to file a general base rate adjustment or alternative rate filing was clearly stated in the Commission's June 15, 2020 Order and the Commission specifically distinguished Lyon District's cases of financing approval or applications for approval of construction projects from traditional rate adjustment cases or alternative rate adjustments.¹⁰ Mr. Roberston and Mr. Murphy's statements refer to the efforts to perform a rate study and the purchased water adjustment case generally as "the rate increase"¹¹ throughout the description of the reports given to the Lyon District board of commissioners to support the statement that the board thought the utility was complying with the Commission's June 15, 2020 Order. However, these actions do not constitute filing an application for an adjustment in base rates or alternative rate filing as required by the Commission's June 15, 2020 Order.¹²

The Commission further finds that Lyon District and its commissioners violated 807 KAR 5:006, Section 4(2)(a) by failing to timely file its 2020 Annual Report. The Commission notes that Lyon District filed its 2020 Annual Report on September 1, 2021, which is five months after the March 31 deadline to file annual reports. The Commission further notes that Lyon District's 2021 Annual Report was filed on March 24, 2022.

¹⁰ Case No. 2019-00444, *Electronic Proposed Adjustment of the Wholesale Water Service Rates of Princeton Water and Wastewater* (Ky PSC June 15, 2020), Order at 38.

¹¹ Response of Don Robertson and Response of Charles Murphy (filed Oct.19, 2021) at 2-4.

¹² Case No. 2019-00444, *Electronic Proposed Adjustment of the Wholesale Water Service Rates of Princeton Water and Wastewater* (Ky PSC June 15, 2020), Order at 41, ordering paragraph 5.

Because its annual report was filed prior to the March 31 deadline, Lyon District is in compliance for the 2021 annual filing requirement.

The Commission finds that Lyon District and its commissioners willfully failed to comply with the Commission's June 15, 2020 Order and willfully failed to comply with 807 KAR 5:006, Section 4(2)(a) by failing to file the 2020 annual report prior to the regulatory deadline. This is because when an act that a utility, and its officers, agents, and employees are required to perform is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance.¹³ Here, Lyon District's commissioners admitted they were aware of the requirement to file a rate case in the July 15, 2020 Order and they failed to perform that act. Similarly, Lyon District and its commissioners failed to comply with the requirement to timely file the 2020 annual report.

Based upon the above findings, the Commission finds that Lyon District shall be assessed a civil penalty of \$5,000 for the cited willful violations, and the current superintendent and commissioners shall attend 12 hours of Commission training within one year of this Order. The Commission further finds that \$4,750 of the \$5,000 civil penalty shall be suspended for one year on the condition that the current superintendent and commissioners comply with the requirement to attend 12 hours of Commission training within one year of this Order.

The Commission found it necessary to increase the annual legal expense for Lyon District in its recent rate case to ensure that Lyon District has adequate legal assistance to ensure compliance with legal requirements of the utility, including but not limited to

¹³ See *Re Dyke Water Company*, 55 PUR 3d 342 (Cal. P.U.C. 1964).

compliance with Commission orders.¹⁴ Additionally, the Commission expressed its concern with Lyon District's response to its sustained excessive water loss and explained that Lyon District will need assistance to develop a plan to address the issue to maintain the utility's financial and operational stability.¹⁵ Adequate rates are a key factor to assure the financial and operational health of a utility, and Lyon District should consider adopting a policy of reviewing for rate sufficiency annually, and filing for a base rate adjustment or alternative rate filing every 3-5 years.

IT IS THEREFORE ORDERED that:

1. Lyon District is assessed a fine of \$5,000 for violating the Commission's June 15, 2020 Order for failure to file a timely base rate case, and 807 KAR 5:006 Section 4(2)(a) for failure to timely file the 2020 annual report.

2. Lyon District's current superintendent and commissioners shall attend 12 hours of Commission training within one year of the date of this Order.

3. Lyon District shall pay \$250 of the \$5,000 assessed penalty within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer, and mailed or delivered to the Office of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky, 40602. The remaining \$4,750 of the civil penalty shall be suspended on the condition that the current superintendent and commissioners attend 12 hours of Commission training within one year of this Order.

¹⁴ Case No. 2021-00391, *Electronic Application of Lyon County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC May. 13, 2022) at 7.

¹⁵ Case No. 2021-00391, *Electronic Application of Lyon County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC May. 13, 2022) at 8, 10-11.

4. Lyon District shall file notice with the Commission within ten days of its current superintendent and commissioners completing the 12 hours of Commission training.

5. Any document filed pursuant to ordering paragraph 4 shall reference this case number and be filed in the post-case correspondence file.

6. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman

*by KAC
w/permission*

Commissioner

ENTERED
JUL 15 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

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