

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF NORTH)	
MANCHESTER WATER ASSOCIATION, INC., ITS)	
OFFICERS, STEVE DAVIS, BILL HURD, CARL)	
GREGORY HOSKINS, BOBBY WOLFE, HENRY)	CASE NO.
SMITH, TED WOODS, CARL DAVID CRAWFORD,)	2021-00339
AND ITS MANAGER, JERRY RICE, TO COMPLY)	
WITH KRS 278.140, KRS 278.230, 807 KAR 5:006,)	
SEC. 4, AND KRS 278.990)	

ORDER

On September 22, 2021, on its own motion, the Commission initiated an investigation pursuant to KRS 278.250 into North Manchester Water Association, Inc. (North Manchester Water), its officers, Steve Davis, Bill Hurd, Carl Gregory Hoskins, Bobby Wolfe, Henry Smith, Ted Woods, and Carl David Crawford, and its manager, Jerry Rice, for allegedly failing to comply with KRS 278.140, KRS 278.230, and 807 KAR 5:006 Section 4.

The Commission opened the investigation into North Manchester Water for failing to file its 2020 Gross Report and 2020 Annual Report, the failure to file the required documents in Case No. 2019-00041,¹ and general concerns about the association's financial situation.² During the discovery process of the case information was gathered that caused the Commission to be concerned with the general management of the water

¹ Case No. 2019-00041, *Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC Nov. 22, 2019), Order at 9.

² Order (Ky. PSC Sept. 22, 2021) at 2-4.

association. Specifically, the record was developed to include information about the board voting to install board member Ted Woods as the accountant for the association and voting for a compensation increase for Mr. Woods.³ The Commission held a formal hearing on January 11, 2023, to take evidence regarding Mr. Woods's dual role at North Manchester Water and information about the management and financial status of the utility.

LEGAL STANDARD

With certain inapplicable exceptions, a water association is subject to the jurisdiction of the Kentucky Public Service Commission in the same manner and to the same extent as any other utility except as provided in KRS 278.023.⁴ 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. KRS 74.020(3) states that a water commissioner may be removed if an official action results in a direct benefit to them.⁵ KRS 74.025 authorizes the Commission to utilize certain removal procedures to remove any water commissioner of a water district from office for good cause, including incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance.⁶ Using the prescribed conditions, the

³ See North Manchester Water Association's Responses to Commission Staff's Fourth Request for Information (Response to Staff's Fourth Request) (filed Oct. 10, 2022), Items 1 and 2.

⁴ KRS 278.012.

⁵ KRS 74.020(3).

⁶ KRS 74.025.

Commission may remove a member of a water association's board of directors in the same manner as a water commissioner.⁷

BACKGROUND

North Manchester Water is a water association organized pursuant to KRS Chapter 273. It operates water distribution facilities that serve approximately 1,969 residential customers, 17 commercial customers, 3 industrial customers, and 8 public authorities in Clay County, Kentucky.⁸ It is a utility subject to the Commission's jurisdiction.⁹

North Manchester Water was a party to Case No. 2019-00041.¹⁰ In the November 22, 2019 Order (Final Order) the Commission ordered North Manchester Water to accomplish several tasks that would improve the operations and financial health of the utility within six months.¹¹ North Manchester Water submitted some of the required information from the Final Order, but failed to respond to an additional request for information.¹² Based upon the limited compliance with the orders in Case No. 2019-00041 and insufficient annual filings, the Commission continued to have concerns about operational the financial health of the utility and initiated these proceedings.¹³

⁷ KRS 74.025(3).

⁸ *Annual Report of North Manchester Water Association to the Public Service Commission for the Year Ending December 31, 2021* at 49.

⁹ KRS 278.012.

¹⁰ Case No. 2019-00041, *Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities*

¹¹ Case No. 2019-00041, November 21, 2019 Order.

¹² Case No. 2019-00041, July 21, 2021 Order.

¹³ Order (Ky. PSC Sept. 22, 2021) at 2-4.

North Manchester Water responded to several rounds of discovery¹⁴ and an Informal Conference (IC) was held.¹⁵ Evidence was gathered through the discovery process and the IC that Ted Woods was acting as a board member and the accountant for the utility.¹⁶ On January 11, 2023, a formal hearing was held to gather additional information on Mr. Woods's role as the accountant and board member.¹⁷ At the hearing, Steve Davis, President of North Manchester Water, testified that the prior board was entirely removed in 2018 because of potential criminal activity of the past president Charles Stivers and other board members.¹⁸ During Mr. Stiver's tenure as president, he was also the accountant and received a salary of \$1,600 per month.¹⁹ After Mr. Stivers left the board there were not adequate financial records for the utility to determine its financial position, either because he had possession of the records and would not return them or the records were never created in the first place.²⁰

After the board was replaced in 2018, there was a board meeting on October 1, 2018, where a vote was taken, and Mr. Woods, who was a member of the utility board, was selected to be the accountant for the utility at the rate of \$600 per month.²¹ Upon

¹⁴ North Manchester Water's Response to Commission's Order (filed Nov. 11, 2012); North Manchester Water's Response to Staff's Second Request (filed Nov. 12, 2021); North Manchester Water's Response to Staff's December 10, 2021 Request for Information (filed Jan. 5, 2022); Response to Staff's Fourth Request.

¹⁵ PSC IC Memo (filed Mar. 2, 2022).

¹⁶ See PSC IC Memo and Response to Staff's Fourth Request, Items 1 and 2.

¹⁷ See Hearing Video Testimony (HVT) of the January 11, 2023 Hearing.

¹⁸ HVT of the January 11, 2023 Hearing at 09:25:06–09:25:30.

¹⁹ HVT of the January 11, 2023 Hearing at 10:26:20.

²⁰ HVT of the January 11, 2023 Hearing at 09:25:06–09:25:30.

²¹ See Response to Staff's Fourth Request, Item 2 and HVT of the January 11, 2023 Hearing at 09:22:34–09:22:52.

questioning, Mr. Davis indicated there were no other accountants in Manchester and Mr. Woods had displayed the appropriate professional concern for the utility.²² Mr. Davis stated that Mr. Woods did not vote for himself, even though the minutes indicate that he did.²³ Mr. Davis testified that Mr. Woods did not request any particular salary for the services and was not involved in the discussions about what North Manchester Water would pay Mr. Woods.²⁴ Mr. Davis stated he was responsible for the minutes and incorrectly noting the Mr. Woods voted for himself to be the account for the utility.²⁵

On June 6, 2022, during the pendency of these proceedings, North Manchester Water held a board meeting and again discussed Mr. Woods's services as the accountant.²⁶ Mr. Davis testified that at the board meeting it was spontaneously brought up that Mr. Woods should receive an increase in pay to \$1,200 per month for accounting services, twice the current arrangement.²⁷ Mr. Davis testified that no board member told Mr. Woods the payment increase would be discussed prior to the meeting.²⁸ Mr. Davis stated that Mr. Woods did not participate in the discussions or the vote, despite the

²² HVT of the January 11, 2023 Hearing at 09:23:40.

²³ HVT of the January 11, 2023 Hearing at 10:19:00.

²⁴ HVT of the January 11, 2023 Hearing at 10:19:27.

²⁵ HVT of the January 11, 2023 Hearing at 09:21:30.

²⁶ Response to Staff's Fourth Request, Item 2.

²⁷ HVT of the January 11, 2023 Hearing at 10:20:02.

²⁸ HVT of the January 11, 2023 Hearing at 10:29:15.

minutes indicating that he voted on the salary increase for his accounting services.²⁹ Mr. Davis again stated it was his mistake that Mr. Woods was noted as voting.³⁰

Mr. Woods testified at the hearing that he did not request that he be made the accountant for the utility in 2018. He also stated that he did not request any amount of payment for the accounting services. Mr. Woods stated he did not request an increase in the amount of payment in 2022. Mr. Woods stated he did not vote for himself to be the accountant in 2018 or 2022.³¹ Mr. Woods further testified his duties include paying the bills of the utility, preparing payroll, making quarterly filings, maintaining documents with the United States Internal Revenue Service and Kentucky Department of Revenue, and maintaining the utilities bank accounts.³²

DISCUSSION AND FINDINGS

Based upon the case record, the Commission finds Mr. Woods has a clear conflict of interest in acting as a board member and accountant for North Manchester Water. The dual role of the accountant and a board member eliminates outside financial oversight of the utility. Mr. Woods gives financial information to the board, of which he is a member.³³ Presenting financial information to the board with his opinions as an accountant is a clear conflict of interest.

²⁹ HVT of the January 11, 2023 Hearing at 09:57:10.

³⁰ HVT of the January 11, 2023 Hearing at 09:57:30.

³¹ HVT of the January 11, 2023 Hearing at 10:43:14 and HVT at 10:36:43.

³² North Manchester Water Association Brief on Ted Woods' Dual Role as Accountant and Board Member (Post-Hearing Brief) at 7 (filed Feb. 17, 2023).

³³ North Manchester Water's Post-Hearing Brief at 7.

Commission Staff informed North Manchester Water they believed it was a conflict of interest for Mr. Woods to serve in this role during the IC held on January 11, 2022.³⁴ However, after that warning, the board again voted for Mr. Woods to serve as the accountant and even voted to increase his salary.³⁵ The testimony provided at the hearing was that there were no other accountants in Manchester and that the utility has always had a board member as the accountant.³⁶ The Commission concludes this demonstrates the poor management decisions of the board because there is no reason the accountant must be located in the city of Manchester, nor do questionable past practices excuse the conflict of interest.

The information provided in response to discovery requests indicate that Mr. Woods did in fact vote for himself as the accountant for North Manchester Water.³⁷ At the hearing, there was conflicting testimony presented that Mr. Woods was present at both board meetings but did not vote.³⁸ Mr. Davis attempted to take responsibility for the inconsistency by claiming he did not record the minutes properly.³⁹ The conflicting evidence leads the Commission to err on the side of caution and hold the official records

³⁴ PSC IC Memo unnumbered at 3.

³⁵ See North Manchester Water's Response to Staff's Fourth Request, Item 2 and the testimony provided at the January 11, 2023 hearing.

³⁶ HVT of the January 11, 2023 Hearing at 09:22:20 and North Manchester Water Post-Hearing Brief at 2–3 discussing the previous two accountants for the utility also being on the board.

³⁷ North Manchester Water Response to Staff's Fourth Request, Item 2.

³⁸ HVT of the January 11, 2023 Hearing at 09:49:29 and 09:57:10.

³⁹ HVT of the January 11, 2023 Hearing at 09:49:17 and 09:57:30.

are the true representation of what occurred at the board meetings because the minutes were compiled in real time and not years or months later.⁴⁰

North Manchester Water argued that Mr. Woods serving as the accountant is not a conflict of interest pursuant to KRS 273.219(1)(b).⁴¹ North Manchester Water argued that this statute allows a conflict of interest if the material facts were disclosed or known, and the board approved of the transaction.⁴² North Manchester Water stated the board of directors knew there was a conflict of interest in this situation and approved of it when it voted to approve the salary.⁴³

The Commission is not persuaded by North Manchester Water's argument that KRS 273.219(1)(b) applies because it is not apparent that at the time of the board meetings, the board understood that this was a conflict of interest that it was approving. KRS 74.025(1) allows removal of the board member for good cause. KRS 74.025(1) is a stricter statute than KRS 273.219 and does not have an exception that allows the self-dealing to be ratified by the board. The Commission believes the members of a water association's board of directors should be held to this stricter standard because of the great public interest in a water association functioning properly. Additionally, KRS 74.020(3) allows the removal of a water commissioner who merely participates in an official action that results in a direct benefit for themselves.⁴⁴ While not directly

⁴⁰ The Commission notes it is within the Commission's authority as the fact finder to determine the credibility of witness testimony. See *Smith v. Teachers' Retirement System of Kentucky*, 515 S.W.3d 672, 676 (Ky. App. 2017).

⁴¹ North Manchester Water's Post-Hearing Brief at 10.

⁴² See KRS 273.219(1)(b) and North Manchester Water's Post-Hearing Brief at 10.

⁴³ North Manchester Water's Post-Hearing Brief at 10.

⁴⁴ KRS 74.020(3).

applicable to a water association, the Commission finds Mr. Woods would have violated KRS 74.020(3) by even being in the room while this issue was being discussed if North Manchester Water was a water district. The Commission believes that the board of directors of a water association should be held to this same standard in this instance.


KRS 74.025(3) allows the Commission to remove a board member of a water association in the same manner as the removal of a water commissioner from a water district. KRS 74.025(1) permits the commission to remove a board member of a water association for good cause.⁴⁵ Based upon the case record, the Commission finds that there is good cause to remove Mr. Woods as a board member for North Manchester Water. The Commission directs North Manchester Water to inform the Commission of the person replacing Mr. Woods on the board.

IT IS THEREFORE ORDERED that:

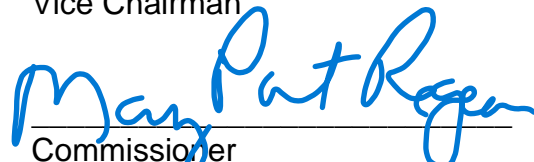
1. Ted Woods shall be removed as a board member for North Manchester Water based upon KRS 74.025(3).
2. North Manchester Water shall notify the Commission the person who will be replacing Mr. Woods on the board of directors within 30 days of the date of this Order.
3. Nothing shall prevent the Commission from entering further Orders in this case.

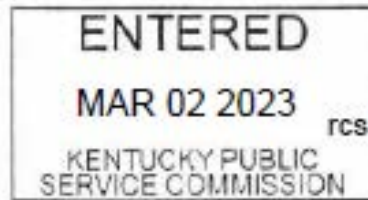
⁴⁵ KRS 74.025(1).

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