

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ROWAN)	
WATER, INC. FOR AN ALTERNATIVE RATE)	
ADJUSTMENT AND AN INVESTIGATION INTO)	
ROWAN WATER, INC. AND ITS INDIVIDUAL)	
DIRECTORS, LARRY JOHNSON, DANNY)	CASE NO.
STEVENS, RANDALL COX, MIKE COLLINS,)	2022-00252
ENOCH BLAIR, AND ITS MANAGER, JERRY)	
PATRICK, FOR ALLEGEDLY FAILING TO)	
COMPLY WITH KRS 278.300 AND A)	
COMMISSION ORDER)	

ORDER

On February 16, 2023, the Commission amended and expanded this proceeding, which originated as an application for a rate adjustment pursuant to 807 KAR 5:076, to include an investigation into Rowan Water, Inc. (Rowan Water), its manager, and, individually, the Rowan Water Board of Commissioners (Board) for an alleged violation(s) of KRS 278.300 and for an alleged failure to comply with a Commission Order.¹ On March 8, 2023, Jerry Patrick, as manager, filed a response on behalf of Rowan Water as well as himself.² Each individual on Rowan Water’s Board filed an answer.³ Rowan Water responded to two requests for information after the expansion of the case.⁴

¹ Order (Ky PSC Feb. 16, 2023).

² Response of Rowan Water and Jerry Patrick, in his capacity as manager (filed on Mar. 8, 2023).

³ Responses of Larry Johnson, Randall Cox, Michael Collins, and Enoch Blair (filed Mar. 8, 2023).

⁴ Rowan Water’s Response to Commission Staff’s Rehearing Request for Information (filed Mar. 30, 2023) and Rowan Water’s Response to Commission Staff Post-Hearing Request for Information (Staff’s Post-Hearing Request) (filed Aug. 17, 2023). The request for information issued prior to the hearing was related to a rehearing matter.

The Commission scheduled a hearing for August 1, 2023.⁵ On June 30, 2023, the Commission issued a final Order addressing the rate application.⁶ The Commission denied Rowan Water's request for the rates requested in the application and left the case open to address the remaining issues.⁷ The Commission granted a motion⁸ for the chairman of the Board to appear virtually.⁹ On August 1, 2023, the Commission held a hearing in regard to the issues under investigation. The Commission heard testimony from Enoch Blair, Michael Collins, Randall Cox, Jerry Patrick, and Larry Johnson. On September 13, 2023, Rowan Water filed a post-hearing brief, reiterating its position that it and named parties did not willfully violate a Commission Order or KRS 278.300.

There are no intervenors in this proceeding. This matter now stands submitted for a decision.

LEGAL STANDARD

Pursuant to 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. Pursuant to 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.

⁵ Order (Ky. PSC May 24, 2023).

⁶ Order (Ky. PSC June 30, 2023).

⁷ Order (Ky. PSC June 30, 2023), ordering paragraph 1.

⁸ Rowan Water's Motion to Excuse Witness or in the Alternative, to Appear Virtually (filed July 17, 2023).

⁹ Order (Ky. PSC July 21, 2023).

KRS 278.300 requires Commission approval before a utility may “issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person.”¹⁰ The legal standard contained in KRS 278.300(3) establishes the purview of Commission review, stating:

The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

Additionally, KRS 278.300(8) establishes that KRS 278.300 does not apply if the proposed issuance of securities or indebtedness is payable at periods of not more than two years from the issuance date and any renewals of such notes do not exceed six years from the initial issuance date. Long-term lease agreements for property and equipment used to provide service to customers have been considered evidences of indebtedness that require approval pursuant to the KRS 278.300.¹¹

¹⁰ KRS 278.300(1).

¹¹ Case No. 2018-00038, *Electronic Application of McCreary County Water District for Authorization to Execute Lease-Purchase Agreement and Related Relief* (Ky. PSC Jun. 28, 2018), Order (noting that the lease-purchase agreement for metering equipment in that case was the equivalent of a purchase agreement and a note that required approval pursuant to KRS 278.300); Case No. 92-178, *In the Matter of: Burkesville Gas Company, Inc., Ken-Gas of Kentucky, Inc., and Ken Turner* (Ky. PSC Oct. 28, 1992) (finding that a long term capital lease with a purchase option at the termination of the lease required approval pursuant to KRS 278.300); Case No. 2020-00275, *Electronic Application of Monroe County Water District for Approval of Financing* (Ky. PSC Oct. 22, 2020), Order (granting financing approval pursuant to KRS 278.300 for leases for five service trucks); Case No. 2008-00170, *Application of Bullock Pen Water District for a CPCN and for Approval of Proposed Plan of Financing, Increase in Rates, Nonrecurring Charges, Tariff Revisions* (Ky. PSC Nov. 20, 2009), Staff’s Report (noting Staff’s opinion that a capital lease for a vehicle with a five-year term required approval pursuant to KRS 278.300).

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 Chapter 278, Commission regulations, or Orders. 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.

BACKGROUND

Rowan Water is a non-profit water association created pursuant to the provisions Chapter 273 of the Kentucky Revised Statutes and operates a water distribution system through which it provides retail water service to approximately 7,250 residential customers and 174 commercial customers located in Carter, Elliott, Fleming, Morgan, and Rowan counties, Kentucky.¹² It is a utility subject to the Commission's jurisdiction.¹³

Investigation into Alleged Violation of KRS 278.300

As part of the alternative rate filing, Rowan Water provided information related to 11 vehicle leases.¹⁴ The length of the leases are 60 months with remaining outstanding

¹² *Annual Report of Rowan Water, Inc. to the Public Service Commission for the Calendar Year Ended December 31, 2021* (2021 Annual Report) at 12 and 49.

¹³ KRS 278.012, "Notwithstanding any other provision of the Kentucky Revised Statutes, any water association formed for the purpose of furnishing water or sewer services to the general public pursuant to KRS Chapter 273 is deemed to be and shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission." See KRS 278.015 ("Any water district; combined water, gas, or sewer district; or water commission, except a joint commission created under the provisions of KRS 74.420 to 74.520, shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010, except [as provided in KRS 278.023 and KRS 278.015(2)].").

¹⁴ Rowan Water's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Jan. 3, 2023), Item 4.

balances ranging from \$15,457 to \$36,600 on eight vehicles.¹⁵ In accordance with the “Master Equity Lease Agreement,”¹⁶ the Lessor, Enterprise FM Trust, can demand damages, the vehicle, or a combination of both remedies.¹⁷ At the termination of the lease, the Lessor is entitled to the vehicle under certain conditions including a mileage overage penalty, or in the alternative, a payment for a lump sum calculated in accordance with the lease terms.¹⁸

In response to Staff’s Post-Hearing Request, Rowan Water provided a list of all current Enterprise leases.¹⁹ Rowan Water currently has four vehicles leased with terms over two years.²⁰ Rowan Water was not able to provide a signed lease agreement but only open-end equity lease schedules.²¹

Investigation into an Alleged Failure to Comply with a Commission Order

As part of the final Order in Case No. 2021-00042, entered on April 19, 2021, Rowan Water was ordered to file for an adjustment in base rates or file for an alternative rate filing within one year of the date of the Commission’s final Order in that proceeding.²²

¹⁵ Rowan Water’s Response to Staff’s Second Request, Item 4.b. and Item 4.c.

¹⁶ Rowan Water’s Response to Staff’s Second Request, Item 4 at PDF pages 42–46.

¹⁷ Rowan Water’s Response to Staff’s Second Request, Item 4 at PDF pages 42–46.

¹⁸ Rowan Water’s Response to Staff’s Second Request, Item 4 at PDF pages 42–46.

¹⁹ Rowan Water’s Response to Staff’s Post-Hearing Request (filed Aug. 17, 2023), Item 2.

²⁰ Rowan Water’s Response to Commission Staff’s Post-Hearing Request (filed Aug. 17, 2023), Item 2.

²¹ Rowan Water’s Response to Commission Staff’s Post-Hearing Request (filed Aug. 17, 2023), Item 2.

²² Case No. 2021-00042, *Electronic Application of Rowan Water, Inc. to Issue Securities in the Approximate Principal Amount of \$2,450,000 for the Purpose of Refunding Certain Outstanding Indebtedness of the Association Pursuant to the Provisions of KRS 278.300 and 807 KAR 5:001* (Ky. PSC Apr. 19, 2021), Order at 7, ordering paragraph 5.

Rowan Water did not file a motion for an extension nor did the utility file a rate application by April 19, 2022.

DISCUSSION AND FINDINGS

As an initial matter, Danny Stevens is a named party to this case. Based on the information the Commission had at the time the investigation began, Danny Stevens served on Rowan Water's Board of Directors. However, Danny Stevens passed away on October 24, 2022.²³ As such, the Commission finds that Danny Stevens should be dismissed as a party to this matter. The Commission also finds that the case heading should be amended to reflect the dismissal of Mr. Stevens as a party.

Alleged Violation of KRS 278.300

Based upon the case record, the Commission concludes that there are four clear violations of KRS 278.300 by Rowan Water for failure to obtain approval for the issuance of indebtedness for several vehicles. In each of these occurrences, Rowan Water issued an evidence of indebtedness, in the form of a lease, payable over a period greater than two years, without receiving prior Commission approval.²⁴ Several vehicle leases were reported as long-term debt on Rowan Water's 2020 Annual Report.²⁵ In the Annual Report form, there is a question regarding whether all of the long term debt has been approved by the Commission; Rowan Water did not provide an answer for the question.²⁶

²³ Rowan Water's Notice (filed Aug. 4, 2023). The case was amended to include the investigations in February 2023.

²⁴ Rowan Water's Response to Commission Staff's Post-Hearing Request (filed Aug. 17, 2023), Item 2.

²⁵ *Annual Report of Rowan Water to the Public Service Commission for the Calendar Year Ended December 31, 2020* (2020 Annual Report), Capital Lease 2019 6/18/19 6/18/23 \$4,643.00 \$45,255.00
Capital Lease 2020 7/28/20 7/28/25 \$586.00 \$53,158.00.

²⁶ 2020 Annual Report at 2.

At the hearing, Larry Johnson stated that some of the initial leased vehicles were no longer in the utility's fleet.²⁷ As part of the post hearing data request, Rowan Water updated the current list of vehicles leased by the utility. Specifically, Rowan Water provided the following information:

2020 Chevrolet Silverado 2500 HD	60 months	\$567.92/month
2021 Chevrolet Silverado 2500HD	60 months	\$525.27/month
2021 Chevrolet Silverado 3500HD	60 months	\$443.65/month
2021 Chevrolet Silverado 1500	48 months	\$448.54/month ²⁸

Throughout this proceeding, Rowan Water, the manager, Jerry Patrick, and the named Board members have maintained that they should not be subject to penalties pursuant to KRS 278.990, as they did not know that leasing the vehicles required Commission approval, and they further maintained that any violation of KRS 278.300 for failure to obtain approval for the issuance of indebtedness was not a "willful violation".²⁹ However, no one disputes that the district did not obtain prior authorization for the indebtedness. Ignorance of Commission regulations or a statute is not a defense.

While a willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily,³⁰ it has also been stated that a willful violation does not necessarily and solely entail an intention to do wrong and inflict injury but may include

²⁷ Hearing Video Testimony (HVT) of Larry Johnson at 09:21:35–09:21:45. Rowan Water's Response to Staff's Post-hearing Request (filed Aug. 17, 2023), Item 2.

²⁸ Rowan Water's Response to Commission Staff's Post–Hearing Request (filed Aug. 17, 2023), Item 2.

²⁹ Response of Rowan Water and Jerry Patrick, in his capacity as manager (filed on March 8, 2023). Responses of Larry Johnson, Randall Cox, Michael Collins, and Enoch Blair (filed Mar. 8, 2023). Jerry Patrick HVT at 09:54:00–09:54:09:

³⁰ Case No. 1992-00016, *M.A. V.I.S.S., Inc. and Mr. Darby Alleged Failure to Comply with Commission Regulations* (Ky. PSC July 1, 1992).

conduct which reflects an indifference to its natural consequences.³¹ For civil and administrative proceedings, a willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.³² Here, the testimony of the manager, Jerry Patrick, acknowledged that a violation did occur, as the named commissioners voted to approve a resolution to enter into financing, and ultimately issued indebtedness, as evidenced by the Lease Agreements. Several persons admitted that the Board did not analyze different options before entering into the Enterprise leases but instead looked at maintenance costs and figured that the leases would save the utility money.³³

Therefore, the Commission finds that Rowan Water, the manager and the named Board members intentionally, knowingly, and voluntarily issued indebtedness on at least four occasions prior to authorization by the Commission, and that they are subject to penalties pursuant to KRS 278.990 for violation of KRS 278.300. The Commission further finds no merit to the contention of Rowan Water, the manager and the named members that their actions were not willful because they didn't know KRS 278.300 applied to leases.

Although each case must be examined individually, the Commission has two goals in mind when issuing a final Order in an investigation into a violation of KRS 278.300. First, the Commission's goal has been to obtain compliance with the requirements of the statute and not to merely exact a penalty. Second, the Commission seeks to put utilities

³¹ Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC Aug. 14, 1996), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

³² Case No. 1999-00001, *Bluegrass Gas Sales, Inc., Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999) at 5, citing *Woods v. Carsey*, 200 P.2d 208 (Cal. App. 1948).

³³ HVT of Jerry Patrick 10:04:00–10:05:00. HVT of Larry Johnson 09:20:00–09:22:00.

and commissioners on notice that certain actions place the utility and individual commissioners out of compliance with applicable statutes and regulations and that future violations could result in individual penalties as well as a separate penalty against the utility.

The Commission finds that the practice of borrowing money subjects the ratepayer to an unreasonable risk of loss of service and to an unacceptable burden through increased rates to pay off unauthorized debt. Any unauthorized debt incurred after the date of service of this order may well result in substantial civil penalties being assessed and collected against all parties in future show cause cases.

Thus, based on the record and being otherwise sufficiently advised, the Commission finds that the named individuals—Enoch Blair, Michael Collins, Randall Cox, Jerry Patrick, and Larry Johnson—willfully violated KRS 278.300 on at least four separate occasions. Pursuant to KRS 278.990, the Commission finds that Enoch Blair, Michael Collins, Randall Cox, Jerry Patrick, and Larry Johnson, individually, shall each be assessed a civil penalty of a total amount of \$250 due within one year of service of this Order. However, the Commission will waive the civil penalty for each individual who attends 12 hours of Commission approved training within 335 days. This training should be in addition to any other yearly required training.

Alleged Violation of a Commission Order

Based upon the case record, the Commission finds that there was a clear violation of a Commission Order. Rowan Water, Enoch Blair, Michael Collins, Randall Cox, Jerry Patrick, and Larry Johnson acknowledged that Rowan Water failed to file an application

for an adjustment in base rates within one year of the final Order in Case No. 2021-00042 as required by that Order.³⁴

However, Rowan Water and its Board members claimed there was no “willful” violation of the Order.³⁵ As discussed above, in civil and administrative proceedings, it is not necessary for an act to be done with the purpose to violate the law for an action to be considered willful,³⁶ nor must it be done with an intention to do wrong, but may include conduct that reflects an indifference to its natural consequences.³⁷

The failure of the named individual Board members and the manager in this matter to review the final Order in Case No. 2021-00042, which was seven pages, excluding signatures, in length and was publicly available on the Commission’s website is intentional. The Board did not intend to harm Rowan Water; but the manager and the Board’s failure was intentional, knowing, and indifferent to the consequences. Directors and officers have a fiduciary duty and responsibility to the utility³⁸ when they accept appointment. Before a manager, director, and officer can act in the best interest of a utility and its customers, it stands to reason that the person must seek to be reasonably informed about the issues confronting the utility. Becoming and remaining informed requires a person to actively seek information. At a minimum, an individual with a

³⁴ Response of Rowan Water and Jerry Patrick, in his capacity as manager (filed Mar. 8, 2023). Responses of Larry Johnson, Randall Cox, Michael Collins, and Enoch Blair (filed Mar. 8, 2023).

³⁵ Response of Rowan Water and Jerry Patrick, in his capacity as manager (filed Mar. 8, 2023). Responses of Larry Johnson, Randall Cox, Michael Collins, and Enoch Blair (filed Mar. 8, 2023).

³⁶ Case No. 1999-00001, *Bluegrass Gas Sales, Inc., Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999) at 5, citing *Woods v. Carsey*, 200 P.2d 208 (Cal. App. 1948).

³⁷ Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC Aug. 14, 1996), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

³⁸ KRS 273.215(1) and KRS 273.229(1).

fiduciary duty to act in the best interest of a public utility and its customers should seek to stay informed concerning the utility's obligations to its regulating body and seek to enable the utility to meet those obligations.

To summarize the timeline based on testimony and Board meeting minutes, no actions were taken to comply with the final Order in Case 2021-00042 until Rowan Water was notified that it had missed the deadline to file the alternative rate application.³⁹ The final Order in Case No. 2021-00042 granted Rowan Water authority to borrow approximately \$2,450,000 (subject to adjustment of up to 10 percent) in order to refinance several loans.⁴⁰ Based on the testimony, no named party actually read the Order thoroughly.⁴¹ These actions exhibit an indifference to ensuring Rowan Water's compliance with the Commission's Order in Case No. 2021-00042 that rose to the level of willful violation.

Thus, based on the record and being otherwise sufficiently advised, the Commission finds that the named individuals—Enoch Blair, Michael Collins, Randall Cox, Jerry Patrick, and Larry Johnson—willfully violated the Commission's final Order in Case No. 2021-00042. Pursuant to KRS 278.990, the Commission finds that Enoch Blair, Michael Collins, Randall Cox, Jerry Patrick, and Larry Johnson, individually, shall each be assessed a civil penalty in the amount of \$250 due within one year of service of this

³⁹ Response of Rowan Water and Jerry Patrick, in his capacity as manager (filed on Mar. 8, 2023). Responses of Larry Johnson, Randall Cox, Michael Collins, and Enoch Blair (filed Mar. 8, 2023). HVT of Jerry Patrick 09:52:55–09:53:21.

⁴⁰ Case No. 2021-00042, Apr. 19, 2021 Order.

⁴¹ HVT of Larry Johnson at 09:25:50–09:26:00. Response of Rowan Water and Jerry Patrick, in his capacity as manager (filed Mar. 8, 2023). Responses of Larry Johnson, Randall Cox, Michael Collins, and Enoch Blair (filed Mar. 8, 2023).

Order. However, the Commission will waive the civil penalty for each individual who attends 12 hours of Commission approved training within 335 days. The penalty for this violation is in combination with the penalties set forth in the previous section.

Of additional concern is Rowan Water's failure to seek appropriate advice from professionals. The Commission encourages Rowan Water to seek experienced legal counsel as well as accounting advice on a regular basis so that it may understand the legal expectations of the statutory and regulatory guidelines of the Commission, as well as the financial implications of its endeavors. It appears that Rowan Water has taken steps to improve its policies and procedures in this area.⁴²

Finally, in order to avoid continued managerial and operational concerns and in lieu of any penalty being levied against the utility that would inevitably be shouldered by ratepayers, the Commission finds Rowan Water's Board members should complete six hours of water commissioner training yearly, or until further orders of the Commission. This requirement for annual training extends to all current and future Board members of Rowan Water regardless of prior service or qualifications. This will ensure, going forward, that regardless of who is on Rowan Water's Board, each Board member should have the basic training required to successfully manage a water association.

IT IS THEREFORE ORDERED that:

1. Danny Stevens shall be dismissed from these proceedings.
2. As of the date of service of this Order, the case style of this proceeding is revised as follows: *Electronic Application of Rowan Water, Inc. for an Alternative Rate Adjustment and an Investigation Into Rowan Water, Inc. and Its Individual Directors, Larry*

⁴² Rowan Water's Notice of Filing Board Policies and Minutes (filed July 17, 2023).

Johnson, Randall Cox, Mike Collins, Enoch Blair, and Its Manager, Jerry Patrick, for Allegedly Failing to Comply With KRS 278.300 and a Commission Order.

3. Larry Johnson, Randall Cox, Mike Collins, Enoch Blair, and its Manager, Jerry Patrick, individually, are each assessed and shall each pay a total civil penalty of \$250 within 335 days of the date of service of this Order for their willful violation of a Commission Order as well as for the four violations of KRS 278.300.

4. Payment pursuant to ordering paragraph 3 shall be made 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.

5. The Commission shall waive the civil penalty of \$250 for each individual, Larry Johnson, Randall Cox, Mike Collins, Enoch Blair, and Jerry Patrick, who attends a total of 12 hours of Commission approved training within 335 days of the date of service of this Order, in addition to any other required yearly training, and provides written notice that they attended the training within one year of the date of service of this Order.

6. Proof of completion of the water commissioner training shall be filed in the record of this case no later than one month after each Board member's completion of the water training program.

7. Any written notice provided pursuant to ordering paragraphs 5 or 6 shall reference this case number and shall be retained in the post-case correspondence file.

8. In lieu of a fine for Rowan Water itself, all current and future Board members for Rowan Water shall attend six hours of water commissioner training approved and certified by the Commission yearly, or until further orders of the Commission.

9. Counsel for Rowan Water is relieved from filing monthly accounting statements.

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

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PUBLIC SERVICE COMMISSION

Kent Bell
Chairman

by KAC
w/permission { Angie Habben
Vice Chairman

Mary Pat Roquem
Commissioner

ENTERED
OCT 17 2023
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

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