

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF UNION	)	
COUNTY WATER DISTRICT AND ITS	)	
INDIVIDUAL COMMISSIONERS, RAYMOND	)	CASE NO.
ARNOLD AND JOYCE GREENWELL, AND	)	2023-00120
MANAGER GARY SHEFFER ALLEGED FAILURE	)	
TO COMPLY WITH KRS 278.300 AND KRS	)	
278.020	)	

ORDER

The Commission, on its own motion, establishes this proceeding, pursuant to KRS 278.250, KRS 278.260, and KRS 278.280, to conduct a formal investigation into the alleged failure of Union County Water District (Union District) and its individual commissioners, Raymond Arnold and Joyce Greenwell, and its Manager, Gary Sheffer, to comply with KRS 278.300 by entering into an indebtedness without the Commission's prior approval and alleged failure to comply with KRS 278.020(1) by purchasing and renovating an office building to be used as the utility's headquarters. If the Commission finds that that Mr. Arnold, Ms. Greenwell, and Mr. Sheffer willfully failed to comply with KRS 278.300 and KRS 278.020, then, pursuant to KRS 278.990, each party may be subject to the assessment of a civil penalty up to \$2,500 per person per occurrence. Additionally, upon a finding that the parties willfully failed to comply with a Commission Order, Mr. Arnold and Ms. Greenwell may be removed from office pursuant to KRS 74.025.

## 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, the Commission has the authority to determine the just, reasonable, safe, proper, adequate, or sufficient practice or act or method to be observed.

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.”<sup>1</sup> 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.

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<sup>1</sup> KRS 278.300(1).

Under KRS 278.020(1), no utility may construct any facility to be used in providing utility service to the public until it has obtained a Certificate of Public Convenience and Necessity (CPCN) from this Commission. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.

Upon a finding of a willful violation of 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.

Pursuant to KRS 74.025(1) and (2), following a hearing on the matter, and upon a finding of good cause, the Commission may remove water district commissioners from office. Good cause includes incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including failure to comply with rules, regulations, and Orders issued by the Commission.<sup>2</sup>

### BACKGROUND

Union District, a water district organized pursuant to KRS Chapter 74, provides water service to approximately 2,300 residential and commercial customers in Union County, Kentucky.<sup>3</sup> Union District is administered by a board of commissioners which control and manage the affairs of the district in accordance with KRS 74.020(1). Union District is a utility subject to the Commission's jurisdiction under KRS 278.010(3)(d), KRS 278.015, and KRS 278.040. According to Union District's 2021 Annual Report on

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<sup>2</sup> KRS 74.025(1).

<sup>3</sup> *Annual Report of Union District to the Public Service Commission for Water Service for the Calendar Year Ended December 21, 2021* (2021 Annual Report) at 12 and 49.

file with the Commission, Raymond Arnold and Joyce Greenwell are commissioners of Union District's Board of Commissioners and Gary Sheffer serves as Manager of Union District.<sup>4</sup>

In the course of processing Union District's application for a rate adjustment in Case No. 2022-00160,<sup>5</sup> the Commission became aware of a promissory note that was entered into without approval of the Commission, as required by KRS 278.300. The ten-year \$75,000 promissory note in question is a loan held by United Community Bank of West Kentucky (United Bank) that was issued in August of 2021.<sup>6</sup> Union District used the loan proceeds to purchase its office building located at 409 North Court Street in Morganfield, Kentucky from the Union County Fiscal Court.<sup>7</sup>

In the final Order in Case No. 2022-00160, the Commission found it was necessary to open a separate proceeding to investigate the alleged violation of KRS 278.300 and KRS 278.020(1).<sup>8</sup> The Commission noted that utilities have been required to follow the requirements of KRS 278.020(1) by obtaining a CPCN before purchasing an existing

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<sup>4</sup> 2021 Annual Report at 14–15.

<sup>5</sup> Case No. 2022-00160, *Electronic Application of Union County Water District for an Alternative Rate Adjustment* (Ky. PSC May 5, 2022).

<sup>6</sup> Case No. 2022-00160, (filed June 3, 2022) Application at 52.

<sup>7</sup> Case No. 2022-00160, May 5, 2023 Order at 20.

<sup>8</sup> Case No. 2022-00160, May 5, 2022 Order at ordering paragraph 4.

building and performing any minimal construction to retrofit the building for use as a water utility headquarters or to remodel existing facilities already in use by a utility.<sup>9</sup>

As an initial matter, the promissory note is not payable in under two years, and the *prima facie* evidence indicates the exception in KRS 278.300(8) regarding two-year notes is not applicable here, and the general rule requiring Commission approval prior to issuing evidence of indebtedness applies to the promissory note. There is no evidence in Case No. 2022-00160, or prior cases, that Union District obtained Commission approval before entering into the promissory note at issue.

According to Union District's 2021 Annual Report, Mr. Arnold, and Ms. Greenwell were board members, and Mr. Sheffer was Manager of Union District at the time the 2021 United Bank Loan was taken.<sup>10</sup>

### FINDINGS

Based on the evidence developed in Case No. 2022-00160 and being otherwise sufficiently advised, the Commission finds that prima facie evidence exists that Union District and its individual commissioners, Raymond Arnold and Joyce Greenwell, and its Manager, Gary Sheffer, acting in their respective individual capacities, failed to comply with KRS 278.300 and KRS 278.020(1), and that in accord with the final Order in Case

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<sup>9</sup> See Case No. 2016-00392, *Application of North Mercer Water District for a Certificate of Public Convenience and Necessity to Acquire a Building and Make Minimal Adaptions Thereto* (Ky. PSC Dec. 22, 2016); Case No. 2005-00277, *Application of Fleming-Mason Energy Cooperative Corporation for an Order and Certificate of Public Convenience and Necessity Authorizing Applicant to Construct a Garage, Warehouse, fieldhouse, and Remodeling at Flemingsburg, Kentucky* (Ky. PSC Oct. 14, 2005); and Case No. 2016-00181, *Electronic Application of Columbia Gas of Kentucky, Inc. for a Declaratory Order that the Construction of Proposed Gas Safety Training Facilities is in the Ordinary Course of Business and Does Not Require a Certificate of Public Convenience* (Ky. PSC Sept. 9, 2016) (the Commission required a CPCN for the remodeling necessary to retro-fit a portion of an existing building to accommodate a training facility).

<sup>10</sup> *Annual Report of Union District to the Public Service Commission for Water Service for the Calendar Year Ended December 21, 2021*, at 49. (Gerald Hunter was the Chairman of the Board at the time the loan was taken, but has since retired as of June 2022.)

No. 2022-00160 entered on May 5, 2023, an investigation should be opened into the compliance of Union District, Mr. Hunter, Mr. Arnold, and Ms. Greenwell with KRS 278.300 and KRS 278.020(1). The Commission further finds that the record in Case No. 2022-00160 should be incorporated into this case by reference and a procedural schedule should be established for the orderly processing of this proceeding. A procedural schedule is attached as an Appendix to this Order.

IT IS HEREBY ORDERED that:

1. This proceeding is established to investigate whether Union District, and commissioners Raymond Arnold, Chairman; and Joyce Greenwell, Secretary; and Gary Sheffer, Manager, individually and in their respective capacities, are in violation of KRS 278.300, KRS 278.020(1) or any other provisions of KRS Chapter 278 or 807 KAR, Chapter 5.

2. Union District, and commissioners Raymond Arnold, Chairman; and Joyce Greenwell, Secretary; and Gary Sheffer, Manager, individually and in their respective capacities, shall submit to the Commission individual written responses to the allegations contained herein within 30 days of service of this Order.

3. Counsel for the parties shall enter an appearance or appearances within 20 days of the date of service of this Order.

4. Pursuant to 807 KAR 5:001E, Section 8(9), within seven days of the date of service of this Order, counsel for each party shall file a written statement with the Commission that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

5. The Commission directs Union District and the individual parties to the Commission's July 22, 2021 Order in Case No. 2020-00085<sup>11</sup> regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

6. The record in Case No. 2022-00160 shall be incorporated into this case by reference only.

7. The procedural schedule set forth in the Appendix to this Order shall be followed.

8. The parties shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

9. Union District shall give notice of any scheduled hearing in accordance with the provisions set forth in 807 KAR 5:001E, Section 9(2). 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](http://psc.ky.gov)"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listing on the PSC website, [psc.ky.gov](http://psc.ky.gov)." At the time publication

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<sup>11</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

is requested, Union District shall forward a duplicate of the notice and request to the Commission.

10. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

11. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001E, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.

12. Witnesses who sponsor schedules, testimony, or responses to data requests shall participate in person at any hearing scheduled in this matter.

13. Pursuant to KRS 278.360 and 807 KAR 5:001E, Section 9(9), a digital video recording shall be made of the hearing.

14. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

15. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

16. The Executive Director shall serve a copy of this Order on Union District, and commissioners Raymond Arnold, Chairman; and Joyce Greenwell, Secretary; and



Gary Sheffer, Manager, by U.S. Certified Mail, sent to 409 North Court Street, P. O. Box 146, Morganfield, KY 42437.

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PUBLIC SERVICE COMMISSION

*[Handwritten Signature]*  
Chairman

*MPK signing w/ approvals*

*[Handwritten Signature]*  
Vice Chairman

*[Handwritten Signature]*  
Commissioner

ENTERED  
MAY 22 2023 bsb  
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

*[Handwritten Signature]*  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2023-00120 DATED MAY 22 2023

All initial requests for information to any party  
shall be filed no later than ..... 06/12/2023

Parties shall file responses to initial requests for  
information no later than..... 07/03/2023

All supplemental requests for information to parties  
shall be filed no later than ..... 07/17/2023

Parties shall file responses to supplemental requests  
for information no later than ..... 07/31/2023

Last day for Parties to request a Public Hearing or submit a  
request for the matter be decided based upon the written record ..... 08/21/2023

\*Robert K. Miller  
Straightline Kentucky LLC  
113 North Birchwood Ave.  
Louisville, KENTUCKY 40206

\*Wm. Clint Prow  
Attorney  
112 North Broadway  
Providence, KENTUCKY 42450

\*Gary Sheffer  
Manager  
Union County Water District  
409 North Court Street  
P. O. Box 146  
Morganfield, KY 42437

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409 North Court Street  
P. O. Box 146  
Morganfield, KY 42437