

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC CUMBERLAND COUNTY WATER)	
DISTRICT, ITS MANAGER, MATTHEW DYER,)	
AND ITS INDIVIDUAL COMMISSIONERS, TROY)	CASE NO.
NORRIS, ERIC CARVER, SANDY HEINEMAN,)	2023-00233
JAY CARY, AND MARK VIBBERT ALLEGED)	
FAILURE TO COMPLY WITH KRS 278.300)	

ORDER

The Commission, on its own motion, establishes this proceeding to investigate Cumberland County Water District (Cumberland District) and its individual commissioners, Jay Cary, Troy Norris, Mark Vibbert, Sandy Heineman, Eric Carver, and its Manager, Matthew Dyer, for allegedly failing to comply with KRS 278.300. A failure to comply with KRS 278.300 presents *prima facie* evidence of incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office sufficient to make Cumberland District's commissioners and manager subject to the penalties of KRS 278.990 or removal pursuant to KRS 74.025(3). The Commission finds that an investigation of the allegations set forth in this Order should be conducted.

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 that Cumberland District, its commissioners, or manager 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.

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.”¹ 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.

Pursuant to KRS 74.020(1), a water district shall be administered by a board of commissioners who shall control and manage the affairs of the district.

¹ KRS 278.300(1).

DISCUSSION

Cumberland District provides service to approximately 2,723 customers in Cumberland County, Kentucky.² In Case No. 2022-00244, the Commission was informed that Jay Cary, Troy Norris, Mark Vibbert, Sandy Heineman, Eric Carver sit on the Cumberland District's Board of Commissioners and Matthew Dyer serves as manager.³

On September 21, 2022, Cumberland District filed its alternative rate filing.⁴ In the Application, attached as an Exhibit was a Lease Agreement for a Ditchwitch.⁵ The term began on July 15, 2020, for 48 months for a financed amount of \$53,692.55⁶ with monthly payments are \$1,118.59, plus applicable taxes, if any, due on the 15th.⁷ At a hearing for Case No. 2022-00244, Troy Norris testified that the lease was part of an investment into newer equipment.⁸ The utility did not seek counsel prior to entering into the indebtedness.⁹ The Commission did not approve the indebtedness.

The Commission finds that a *prima facie* case exists that Cumberland District and its individual commissioners, Jay Cary, Troy Norris, Mark Vibbert, Sandy Heineman, Eric

² *Annual Report of Cumberland District's to the Public Service Commission for the Year Ending December 31, 2022* at 12, 49.

³ Case No. 2022-00244 *Electronic Alleged Failure of Cumberland Water District and Its Officers, Eric Carver, Sandy Hieneman, Troy Norris, Mark Vibbert, and Jay Cary and Its Manager, Matthew Dyer, to Comply with a Commission Order, KRS 278.990* (Ky. PSC July 5, 2023).

⁴ Case No. 2022-00291 *Electronic Application of Cumberland County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076*.

⁵ Exhibit G4.

⁶ Exhibit G4, Attachment A.

⁷ Exhibit G4, Municipal Lease Agreement, page 1 of 3.

⁸ Case No. 2022-00244, Hearing Video Testimony (HVT) of April 4, 2023 Hearing, Testimony of Troy Norris, 11:21:20-11:21:35.

⁹ Case No. 2022-00244, HVT of April 4, 2023 Hearing, Testimony of Troy Norris 11:21:36-11:22:00.

Carver and its Manager, Matthew Dyer, acting in their respective individual capacities, willfully aided and abetted in one or more violations of KRS 278.300.

IT IS THEREFORE ORDERED that:

1. Cumberland District and commissioners Jay Cary, Troy Norris, Mark Vibbert, Sandy Heineman, Eric Carver, and Manager, Matthew Dyer, individually and in their respective capacities, shall submit to the Commission individual written responses to the allegations contained in this Order within 20 days of the date of entry of this Order.

2. The record of Commission Case No. 2022-00244 and Commission Case No. 2022-00291 are made incorporated by reference into this case.

3. Motions to intervene shall be filed within 30 days of service of this Order.

4. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of service of this Order, Cumberland District, 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.

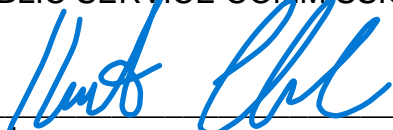
5. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to the service and electronic filing of papers shall be followed in this proceeding.

6. The Commission directs the parties to the Commission's July 22, 2021 Order in Case No. 2020-00085¹⁰ regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

7. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

¹⁰ 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).

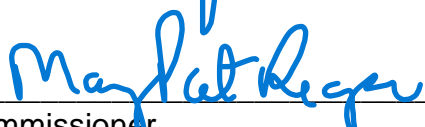
PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
OCT 06 2023
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*Cumberland County Water District
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*Matthew Dyer
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*Mark Vibbert
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*Eric Carver
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*Matthew Dyer
Manager
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*Sandy Heineman
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*Troy Norris
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