

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF	)	
SHARPSBURG WATER DISTRICT AND ITS	)	
OFFICERS, ALFRED BAILEY, CECIL DUNCAN,	)	CASE NO.
JUDY HARMON, RANDY WARNER, BILLY	)	2023-00125
MARTIN AND ITS MANAGER, GAYLE HANEY, TO	)	
COMPLY WITH A COMMISSION ORDER	)	

ORDER

On June 7, 2023, the Commission opened an investigation into Sharpsburg Water District's (Sharpsburg District) failure to file for an adjustment in base rates pursuant to 807 KAR 5:076 or 807 KAR 5:001 as ordered in Case No. 2021-00189<sup>1</sup> and Case No. 2022-00273.<sup>2</sup> On June 19, 2023, Sharpsburg District, its board of commissioners (Board), and its general manager filed a response to the opening Order.<sup>3</sup> Sharpsburg District responded to two requests for information from Commission Staff. An evidentiary hearing was held on January 18, 2024. Sharpsburg District filed its responses to Commission Staff's Post-Hearing Request for Information on January 25, 2024, and its post-hearing brief on February 15, 2024. The Commission finds that the record is complete, and the matter stands ready for a decision.

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<sup>1</sup> Case No. 2021-00189, *Electronic Purchased Water Adjustment Filing of Sharpsburg Water District* (Ky. PSC May. 27, 2021), Order at 5, ordering paragraph 8.

<sup>2</sup> Case No. 2022-00273, *Electronic Purchased Water Adjustment Filing of Sharpsburg Water District* (Ky. PSC Sep. 13, 2022), Order at 6, ordering paragraph 5.

<sup>3</sup> Response of Sharpsburg District and Officers to Commission Order of June 7, 2023 (filed June 19, 2023) (June 19, 2023 Response).

## 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.

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 Commission 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

Sharpsburg District is a water district organized in 1961, pursuant to KRS Chapter 74,<sup>4</sup> and is subject to the Commission's jurisdiction. Sharpsburg District provides retail water service for Bath and Nicholas counties, Kentucky.<sup>5</sup> Currently serving as commissioners on Sharpsburg District's Board are Alfred Bailey, Cecil Duncan, Billy Martin, Roger Wills, and Chairman Randy Warner.<sup>6</sup>

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<sup>4</sup> *Annual Report of Sharpsburg Water District to the Public Service Commission for the Year Ended December 31, 2022* (2022 Annual Report) at 9.

<sup>5</sup> 2022 Annual Report at 12.

<sup>6</sup> 2022 Annual Report at 15.

In an Order entered on May 27, 2021 (the May 27, 2021 Order) in Case No. 2021-00189, which was a purchased water adjustment (PWA) proceeding, the Commission directed Sharpsburg District to file an application for a general adjustment in rates or an alternative rate adjustment within one year of the date of service of that Order. Similarly, in an Order entered on September 13, 2022 (the September 13, 2022 Order) in Case No. 2022-00273, another PWA proceeding, the Commission directed Sharpsburg District to file, as soon as possible, an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, or an application for an alternative rate adjustment pursuant to 807 KAR 5:076, or file a motion with a detailed analysis of its rates and revenues explaining the reasons why no modifications are necessary.

On April 20, 2022, and May 5, 2022,<sup>7</sup> Sharpsburg District filed a motion in Case No. 2021-00189 for an extension of time for up to six months to file the application for a rate adjustment. As a basis for the request, Sharpsburg District stated that it would rely on its 2021 audit report for the application, but the audit report was not yet completed. Sharpsburg District further stated that it contacted the Kentucky Rural Water Association (KRWA) on April 11, 2022, for assistance and that KRWA would require an additional six months.<sup>8</sup> In an Order issued April 26, 2021, the Commission rejected the extension to file because Sharpsburg District should have begun preparing its application sooner than six weeks prior to the deadline and noted that Commission regulations require an alternative rate adjustment application to be based upon financial data in its annual report

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<sup>7</sup> The May 5, 2022 motion duplicated the April 20, 2022 motion

<sup>8</sup> Case No. 2021-00189, Sharpsburg District's Motion for Extension of Time to file an Application (filed Apr. 20, 2022, and May 5, 2022).

and not on an audit.<sup>9</sup> The Commission directed Sharpsburg District to file an application as soon as possible.<sup>10</sup> On October 28, 2022, Sharpsburg District filed an alternative rate adjustment application.<sup>11</sup>

### DISCUSSION AND FINDINGS

In its initial response to this investigation, Sharpsburg District, its general manager, and the named commissioners acknowledged that the application for rate adjustment was not timely filed in compliance with the May 27, 2021 Order and stated the failure to timely file the application was an error and mistake on the part of the general manager. The initial response stated that the general manager failed to inform the Board of the Commission Order and forgot about the requirement to file an application within one year until April 11, 2022, at which time she sought assistance from KRWA, and discovered the application could not be filed within the time required. The initial response stated these mistakes were not intentional or willful. Sharpsburg District did provide that it had implemented a procedure requiring all Commission Orders to be provided to the Board.<sup>12</sup>

At the January 18, 2024 hearing, the general manager and chairman confirmed that, while the general manager normally handled matters of regulatory compliance, the general manager was never given any written job description or verbal direction from the Board defining that handling matters of regulatory compliance was one of the general manager's job duties. The chairman acknowledged that Sharpsburg District had relied

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<sup>9</sup> Case No. 2021-00189, Order (Ky. PSC June 3, 2022) at ordering paragraph 1.

<sup>10</sup> Case No. 2021-00189, June 3, 2022 Order at ordering paragraph 2.

<sup>11</sup> Case No. 2022-00348, *Electronic Application of Sharpsburg Water District for a Rate Adjustment Pursuant 807 KAR 5:076* (filed Oct. 28, 2022).

<sup>12</sup> June 19, 2023 Response.

solely on the general manager for all regulatory compliance matters and that their Board was ill-informed as to the regulatory requirements of the Public Service Commission.<sup>13</sup> Further testimony confirmed that Board commissioners Warner and Harmon, who have served as Commissioner for approximately 24 years and 35 years, respectively, had never attended commissioner training,<sup>14</sup> and for the more recently appointed Board commissioners, the most recent training was attended in 2019.<sup>15</sup> It was acknowledged that plans should be made to attend commissioner training for all the commissioners on Sharpsburg District's Board.<sup>16</sup>

Based upon the case record, the Commission finds that there was a clear violation of two Commission Orders. Specifically, Sharpsburg District, its general manager, and the named commissioners acknowledged that Sharpsburg District failed to file an application for an adjustment in base rates within one year of the final Order in Case No. 2021-00189 and Case No. 2022-00273 as required by those Orders. However, they claimed there was no "willful" violation of the Orders.

While a willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily,<sup>17</sup> it has also been stated that a willful violation does not

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<sup>13</sup> Hearing Video Transcript (HVT) of the January 18, 2024 Hearing at 10:51:44.

<sup>14</sup> HVT of the January 18, 2024 Hearing at 10:50:04 (Chairman Warner and Commissioner Harmon believed they were grandfathered in, and did not recall training as a requirement when they began service as a Commissioner with Sharpsburg District).

<sup>15</sup> See Sharpsburg District's Response to Commission Staff's First Request for Information, Item 1. (Commissioner Billy Martin, appointed in 2019, attended training in 2019; Commissioner Alfred Bailey, appointed in 2016, attended training in 2016; and Commissioner Cecil Duncan, appointed in 2014, attended training in 2015.)

<sup>16</sup> HVT of the January 18, 2024 Hearing at 10:50:45

<sup>17</sup> 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).

necessarily and solely entail an intention to do wrong and inflict injury, but may include conduct that reflects an indifference to its natural consequences.<sup>18</sup> For civil and administrative proceedings, a willful violation has been explained as one that is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.<sup>19</sup>

Here, the parties sought to explain the failure to follow Commission Orders by claiming the general manager failed to provide a copy of the Commission Orders to Sharpsburg District's Board. However, there was no written policy or clear direction from Sharpsburg District or the Board provided to the general manager specifying that responsibility.<sup>20</sup> Instead, the Board admitted they assumed the general manager would handle all matters of regulatory compliance, and it was made clear they were generally unfamiliar with Commission regulations or aware of their duties and responsibilities as commissioners of a water district to ensure compliance with Commission Orders.<sup>21</sup> The Board admitted that they were made aware of the Commission's approvals of the PWAs in Commission Case No. 2021-00189 and Case No. 2022-00273, but at no time did they review those Orders or inquire as to any requirements included in those Orders.<sup>22</sup> Likewise, it was acknowledged that the Board was aware that a motion for extension in

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<sup>18</sup> Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

<sup>19</sup> 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) (Emphasis added).

<sup>20</sup> HVT of the January 18, 2024 Hearing at 11:02:09–11:03:20 and 11:20:58–11:22:43.

<sup>21</sup> HVT of the January 18, 2024 Hearing at 11:13:08–11:14:28, 11:20:58, 11:23:35, and 11:26:17.

<sup>22</sup> HVT of the January 18, 2024 Hearing at 10:52:42–10:54:55

Case No. 2021-00189 had been filed, but they never requested a copy of that Order or inquired as to the requirements in the final Order of that case, despite the apparent need for that motion.<sup>23</sup>

The Commission finds that the failures discussed above on the part of the Board, and not the alleged inaction on the general manager's part, ultimately resulted in Sharpsburg District's failure to comply with the Commission Orders. The Commission would stress the necessity on the part of Sharpsburg District's Board to be informed in all aspects of Sharpsburg District, as well as Commission regulations and requirements moving forward, instead of the sole reliance on the general manager.

The failure of the individual water district commissioners named in this matter to review the final Orders in Case No. 2021-00189 and Case No. 2022-00273, which were publicly available on the Commission's website, and their apparent failure to inquire as to those Orders' contents, exhibited an indifference to ensuring Sharpsburg District's compliance with the Orders that rose to the level of willful violation, given the water commissioners' statutory obligations to manage and control Sharpsburg District.<sup>24</sup> Thus, based on the record and being otherwise sufficiently advised, the Commission finds that the named commissioners willfully violated the Commission's final Orders in Case No. 2021-00189 and Case No. 2022-00273, and therefore are subject to penalties pursuant to KRS 278.990.

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<sup>23</sup> HVT of the January 18, 2024 Hearing at 10:54:56–10:55:49

<sup>24</sup> See KRS 74.020(1) ("A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district."); see also KRS 74.070 (2) ("All corporate powers of the water district shall be exercised by, or under the authority of, its commission. The business and affairs of the water district shall be managed under the direction and oversight of its commission.").

Pursuant to KRS 278.990, the Commission finds that Alfred Bailey, Cecil Duncan, Judy Harmon, Randy Warner, and Billy Martin, individually, should each be assessed a civil penalty in the amount of \$500 for each of the two violations, to run concurrently, due within one year of the date of service of this Order. However, the Commission will waive the fine for each individual who attends 12 hours of training approved by the Commission pursuant to KRS 74.020 within one year of the date of service of this Order.

The Commission expects that, as demonstrated in their response, Sharpsburg District, its general manager, and the named commissioners will use this opportunity to improve the policies and procedures of Sharpsburg District. Their response included steps taken to assist in ensuring this would not happen again.<sup>25</sup> The Commission considered those mitigating steps when it determined to waive the penalty if the named individuals attended training. However, the Commission also intends for this Order to serve as notice that no further violations of Commission Orders will be tolerated.

IT IS THEREFORE ORDERED that:

1. Alfred Bailey, Cecil Duncan, Judy Harmon, Randy Warner, and Billy Martin, individually, are each assessed and shall each pay two civil penalties of \$500 each, to run concurrently, within one year of service of this Order for their willful violation of a Commission Order.

2. Payment pursuant to ordering paragraph 1 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.

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<sup>25</sup> June 19, 2023 Response.




3. The Commission shall waive the two civil penalties of \$500 for each individual who attends 12 hours of Commission-approved training within one year of the date of service of this Order and provides written notice that they attended the training within 13 months of the date of service of this Order.

4. Any written notice provided pursuant to ordering paragraph 3 shall include the case number for this case and be maintained in the post-case correspondence file for this case.

5. Any newly adopted or amended policies and procedures for Sharpsburg District as result of this case shall include the case number for this case and be maintained in the post-case correspondence file for this case.

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

PUBLIC SERVICE COMMISSION

  
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Chairman

  
\_\_\_\_\_  
Vice Chairman

  
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Commissioner

ENTERED  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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