

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALLEGED FAILURE OF MARSHALL COUNTY)	CASE NO.
ENVIRONMENTAL SERVICES, LLC TO FILE)	2018-00264
REQUIRED REPORTS)	

ORDER

On December 6, 2018, the Commission initiated this proceeding and ordered Marshall County Environmental Services, LLC (Marshall Environmental), to show cause why it should not be penalized for failing to comply with KRS 278.230(3), 807 KAR 5:006, Section 4(2), KRS 278.140, and the September 28, 2017 Order¹ of the Commission in Case No. 2017-00032, which is incorporated by reference. The Commission served Marshall Environmental with a copy of the December 6, 2018 Order by electronic mail and by U.S. mail at the utility's contact addresses provided by Marshall Environmental pursuant to 807 KAR 5:006, Section 3. By Order entered December 6, 2018, the Commission commanded Marshall Environmental to appear on January 31, 2019, at 9 a.m. Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky. The Commission held a formal hearing on January 31, 2019, at which neither Marshall Environmental nor a representative for Marshall Environmental appeared.

¹ PSC Case No. 2017-00032, *Alleged Failure of Marshall County Environmental Services, LLC to File Required Reports*, (Ky. PSC Sept. 28, 2017).

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Marshall Environmental owns, controls, operates, and manages facilities in the Commonwealth of Kentucky, which are used for and in connection with the collection, transmission, or treatment of sewage for the public, for compensation. It is, therefore, a utility subject to Commission jurisdiction.

2. In Case No. 2017-00032, the Commission, after a hearing, issued the September 28, 2017 Order assessing Marshall Environmental a total \$10,000 fine and suspended the payment of \$6,000 of the fine, contingent upon Marshall Environmental's timely filing of its 2017, 2018, and 2019 annual and gross operating reports.

3. In the September 28, 2017 Order in Case No. 2017-00032, the Commission held that the remaining \$6,000 of the suspended fine would be due and payable if Marshall Environmental failed to timely file any of the required reports for the 2017, 2018, or 2019 calendar years.

4. KRS 278.230(3) directs every utility, when required by the Commission, to file with it any report or other information that the Commission reasonably requires.

5. Section 4(2) of 807 KAR 5:006 requires every utility to electronically file with the Commission, on or before March 31 of each year, a financial and statistical report of its utility operations for the preceding calendar year.

6. KRS 278.140 requires each utility to file, on or before March 31 of each year, a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year.

7. On December 7, 2017, the Commission provided to Marshall Environmental an electronic link to the standard forms for the annual financial and statistical report and the report of gross earnings from intrastate business.

8. As of January 31, 2019, Marshall Environmental had filed neither of these reports for the 2017 calendar year operations nor requested an extension of time in which to make such filing.

9. When a required action by a utility is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance.²

10. Marshall Environmental has willfully failed to submit reports by March 31, 2018, as required by 807 KAR 5:006, Section 4(2), and KRS 278.140.

11. Marshall Environmental has willfully failed to comply with KRS 278.230(3) by failing to timely file its annual and statistical report for the 2017 calendar year.

12. Marshall Environmental has willfully failed to comply with KRS 278.140 by failing to timely file its report of its gross earnings or receipts derived from intrastate business for the 2017 calendar year.

13. Marshall Environmental has willfully failed to comply with the September 28, 2017 Order of the Commission in Case No. 2017-00032 by failing to timely file its annual and statistical report for the 2017 calendar year.

14. Marshall Environmental has willfully failed to comply with the September 28, 2017 Order of the Commission in Case No. 2017-00032 by failing to timely file its report of its gross earnings or receipts derived from intrastate business for the 2017 calendar year.

² See *Re Dyke Water Company*, 55 PUR3d 342 (Cal. P.U.C. 1964).

15. KRS 278.990(1) provides that any utility that willfully violates any Commission order, provision of KRS Chapter 278, any regulation promulgated pursuant to KRS Chapter 278, or fails to perform any duty imposed upon it under those sections shall be subject to a civil penalty not less than \$25 and not more than \$2,500.

16. Marshall Environmental failed to timely file the required reports for 2017, and the remaining \$6,000 of the suspended fine is now due and payable.

17. The Commission served Marshall Environmental with a copy of the December 6, 2018 Order by electronic mail and by U.S. mail at the utility contact addresses provided by Marshall Environmental pursuant to 807 KAR 5:006, Section 3.

18. Marshall Environmental has willfully failed to comply with the Commission's December 6, 2018 Order by failing to appear or to send a representative to the January 31, 2019 formal hearing.

IT IS THEREFORE ORDERED that:

1. The record of Case No. 2017-00032 is hereby incorporated by reference.

2. The \$6,000 fine assessed against Marshall Environmental in Case No. 2017-00032, representing the suspended portion of the \$10,000 fine assessed in that proceeding, is now due and payable for Marshall Environmental's willful failure to comply with KRS 278.230(3), 807 KAR 5:006, Section 4(2), KRS 278.140 and the September 28, 2017 Order of Case No. 2017-00032.

3. Marshall Environmental is assessed a penalty of \$2,500, pursuant to KRS 278.990(1), for its willful failure to comply with the Commission's December 6, 2018 Order by failing to appear at the formal hearing held January 31, 2019, at which neither Marshall Environmental nor a representative for Marshall Environmental appeared.

4. Marshall Environmental shall pay the assessed penalties, totaling \$8,500, within 30 days of the date of this Order. Payment shall be by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602-0615.

5. The Executive Director shall serve a copy of this Order on Marshall Environmental by certified mail.

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By the Commission

ENTERED
FEB 21 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Marshall County Environmental Services, LLC
522 US Hwy 68 West
Benton, KY 42025

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