

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

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. 807 KAR 5:006, Section 4(2), requires every utility, on or before March 31 of each year, to file with the Commission, on forms furnished by the Commission, a financial and statistical report of its utility operations for the preceding calendar year. 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. KRS 278.990 provides penalties for utilities that fail to file the required reports.

Marshall County Environmental Services, LLC (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.<sup>1</sup> KRS 278.990(1) states that any utility which willfully violates any provision of KRS Chapter 278 or any Commission regulation shall be subject to a civil penalty not less than

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<sup>1</sup> KRS 278.010(3)(f).

\$25.00 and not more than \$2,500.00. 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. According to Commission records, Marshall Environmental has failed to file its annual financial and statistical report and its report of gross earnings from intrastate business for the 2017 calendar year. The failure to file these reports by March 31, 2018, is *prima facie* evidence that Marshall Environmental willfully failed to comply with KRS 278.230(3).

The Commission initiated a similar action against Marshall Environmental on February 7, 2017, for failing to file its annual financial and statistical reports for the 2013, 2014, and 2015 calendar years, and its reports of gross earnings from intrastate business for the 2014 and 2015 calendar years.<sup>2</sup> In Case No. 2017-00032, the Commission, after a hearing, issued an Order<sup>3</sup> 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. The September 28, 2017 Order provided that the suspended \$6,000 portion of the \$10,000 fine would become due and payable if Marshall Environmental failed to timely pay the \$4,000 portion of the fine, or did not timely file its 2017, 2018, and 2019 annual and gross operating reports.

On October 16, 2017, Marshall Environmental timely paid the \$4,000 portion of the fine. However, by not timely filing its 2017 annual report nor its 2017 gross operating report, Marshall Environmental violated the Commission's September 28, 2017 Order

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<sup>2</sup> PSC Case No. 2017-00032, *Alleged Failure of Marshall County Environmental Services, LLC to File Required Reports*, (Ky. PSC Feb. 7, 2017).

<sup>3</sup> Attached as an Appendix to this Order.

issued in Case No. 2017-00032. Consequently, the suspended \$6,000 portion of the \$10,000 fine is now due and payable.

IT IS THEREFORE ORDERED that Marshall Environmental shall appear on January 31, 2019, at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of showing cause why it should not be subjected to the penalties of KRS 278.990 for its failure to comply with KRS 278.140 and 278.230(3) by not timely filing the required reports for the 2017 Calendar year, and for the penalties assessed, and subsequently suspended, in Case No. 2017-00032.

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By the Commission

ENTERED  
DEC 06 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2018-00264

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2018-00264 DATED **DEC 06 2018**

[SIX PAGES TO FOLLOW]

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALLEGED FAILURE OF MARSHALL COUNTY	)	CASE NO.
ENVIRONMENTAL SERVICES, LLC TO FILE	)	2017-00032
REQUIRED REPORTS	)	

ORDER

On February 7, 2017, the Commission ordered Marshall County Environmental Services, LLC ("Marshall County Environmental") to show cause why it should not be penalized for failing to comply with KRS 278.140 and 278.230(3). Due to the health concerns of Marshall County Environmental's witness, the Commission continued a hearing originally scheduled for March 28, 2017. The Commission subsequently conducted the deposition of Marshall County Environmental's representative, and held a formal hearing on August 23, 2017, at which counsel for Marshall County Environmental appeared.

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

1. Marshall County 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. 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.

3. 807 KAR 5:006, Section 4(2), 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.

4. 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.

5. On December 16, 2014, the Commission provided to Marshall County Environmental an electronic link to the standard forms for the annual financial and statistical report and the report of gross earnings from intrastate business.

6. As of April 1, 2015, Marshall County Environmental had filed neither of these reports for the 2014 calendar year operations and had not requested an extension of time in which to make such filing.

7. On January 14, 2016, the Commission provided to Marshall County 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 April 1, 2016, Marshall County Environmental had filed neither of these reports for the 2015 calendar year operations and had not requested an extension of time in which to make such filing.

9. Where the act which a utility is required to do is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance.<sup>1</sup>

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

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<sup>1</sup> See *Re Dyke Water Company*, 55 PUR3d 342 (Cal. P.U.C. 1964).

11. Marshall County Environmental has willfully failed to comply with KRS 278.230(3) by failing to timely file its annual and statistical report for the 2014 calendar year.

12. Marshall County Environmental has willfully failed to comply with KRS 278.230(3) by failing to timely file its annual and statistical report for the 2015 calendar year.

13. Marshall County 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 2014 calendar year.

14. Marshall County 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 2015 calendar year.

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 County Environmental is subject to penalties of up to \$10,000.

17. Marshall County Environmental should be assessed a penalty of \$5,000 for its willful failure to comply with KRS 278.230(3).



18. Marshall County Environmental should be assessed a penalty of \$5,000 for its willful failure to comply with KRS 278.140.

19. Because Marshall County was responsive to the Commission and filed its delinquent reports, \$6,000 of the total \$10,000 fine should be suspended contingent upon the timely filing of the required reports for the 2017, 2018 and 2019 calendar years.

20. The remaining \$6,000 of the suspended fine shall be due and payable if Marshall County fails to timely file any of the required reports for the 2017, 2018 or 2019 calendar years.

IT IS THEREFORE ORDERED that:

1. Marshall County Environmental is assessed a penalty of \$5,000 for its willful failure to comply with KRS 278.230 and 807 KAR 5:006, Section 4(2).

2. Marshall County Environmental is assessed a penalty of \$5,000 for its willful failure to comply with KRS 278.140.

3. A portion of the fine is suspended, and Marshall County shall be required to pay \$4,000 for violations of KRS 278.230, 807 KAR 5:006, Section 1(3) and KRS 278.140.

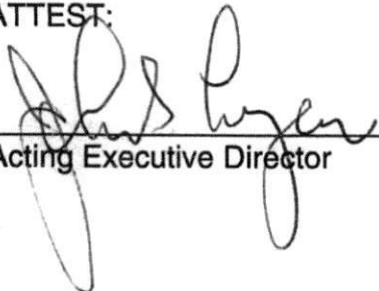
4. Marshall County Environmental shall pay the assessed penalties, totaling \$4,000, within 30 days of the date of this Order. Payment shall be by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602-0615.

5. If Marshall County fails to timely pay the \$4,000 fine, or to timely file the required reports for the 2017, 2018, and 2019 calendar years, the \$6,000 suspended fine shall become due and payable.

By the Commission

ENTERED  
SEP 28 2017  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Acting Executive Director

Case No. 2017-00032

\*Honorable John N Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, KENTUCKY 40601

\*Marshall County Environmental Services, LLC  
P. O. Box 431  
Benton, KY 42025

\*Marshall County Environmental Servic  
Marshall County Environmental Services, LLC  
P. O. Box 431  
Benton, KY 42025

\*William C Adams, III  
291 Main St.  
PO Box 1419  
Murray, KENTUCKY 42071

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

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