

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO THE)	CASE NO.
FINANCIAL AND OPERATING CAPACITY OF)	2021-00340
RATTLESNAKE RIDGE WATER DISTRICT)	

ORDER

The Commission, on its own motion, finds that the style of this case should be amended to reflect the substance of the ongoing investigation. Several issues, which cause concern, have arisen since the Commission held a hearing on January 12, 2022. These issues are discussed below, and the Commission finds that the style of this proceeding should be amended to:

Electronic Investigation into the Financial and Operating Capacity of Rattlesnake Ridge Water District Including Rattlesnake Ridge Water District, its Individual Commissioners, and Manager, David Gifford for Alleged Failure to Comply with KRS 278.300 as well as Possible Vacancies on the Board of Commissioners of Rattlesnake Ridge Water District.

Dodge Truck Loan

In its 2019 Annual Report, Rattlesnake Ridge Water District (Rattlesnake Ridge District) included a “Dodge Truck Loan” in a list of long-term debt.¹ The report was not accepted for publication by the Public Service Commission until August 31, 2020. The indebtedness allegedly occurred on December 1, 2019, and is to mature on

¹ *Annual Report of Rattlesnake Ridge District to the Public Service Commission for the Year Ending December 31, 2019* (2019 Annual Report) at 40.

December 1, 2024, a period of five years.² The Commission has no record of approving the indebtedness.

The Commission will continue this investigation in order to investigate Rattlesnake Ridge District, its individual commissioners, and its manager, David Gifford, for allegedly failing to comply with KRS 278.300 by issuing evidence of indebtedness without prior Commission approval. A willful 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 Rattlesnake Ridge District's Board and manager subject to the penalties of KRS 278.990 or removal pursuant to KRS 74.025(3).

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."³ 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.

² 2019 Annual Report at 40.

³ KRS 278.300(1).

Pursuant to KRS 278.300(8), notes issued by a utility, for a proper purpose and not in violation of law, that are payable at periods of two years or less, do not require prior approval of the Commission. However, this exception does not appear to apply to the Dodge Truck Loan as it is payable over a five-year period.⁴ Upon a finding that Rattlesnake Ridge 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 74.025(1) authorizes the Commission to utilize the removal procedures of KRS 74.025(2) to remove water commissioners from office for good cause, including incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance.

The Commission finds that a prima facie case exists that Rattlesnake Ridge District, its individual commissioners, and its manager, David Gifford, acting in their respective individual capacities, willfully aided and abetted in one or more violations of KRS 278.300.

Commissioner Vacancies

On August 4, 2022, Rattlesnake Ridge District's Annual Report for the year-ending December 31, 2021, was accepted for publication on the Public Service Commission's website. Contained with the report, was a list of Commissioners, each of

⁴ 2019 Annual Report at 40, which lists a five-year term.

whom had an expired term.⁵ If a vacancy exists, the Commission will identify a qualified candidate to fill the vacancy or vacancies.

KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states in relevant part:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67. 710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

The Commission has not received notification of a vacancy or a subsequent appointment on the Rattlesnake Ridge District. If the vacancy has remained unfilled for more than 90 days, the Commission has exclusive authority to fill the position pursuant to KRS 74.020(4). Accordingly, the Commission finds that this investigation should be continued to confirm if a vacancy(ies) has existed for more than 90 days on the Rattlesnake Ridge District's Board and, if so, identify qualified candidates for appointment to those positions and fill the position.

To ensure that a wide range of candidates are considered, the Commission will permit all interested persons the opportunity to nominate candidates for the position(s) and will then determine whether each of these candidates meets the constitutional and statutory requirements for the office of water district commissioner and, of those

⁵ *Annual Report of Rattlesnake Ridge District to the Public Service Commission for the Year Ending December 31, 2021* (2021 Annual Report) at 15. The individual commissioners listed are: Chairman Billy Gilbert, term expires February 1, 2021; Commissioner Jason Carrol, term expires February 8, 2022; and Commissioner Steve Ison, term expires October 1, 2021.

candidates that meet these requirements, which is best suited to sit on Rattlesnake Ridge District's Board. The Commission also will direct that a copy of this Order be served upon the County Judge/Executive of each of the counties in the Rattlesnake Ridge District service area, the Fiscal Court for each county in the Rattlesnake Ridge District service area, the County Attorney for each county in the Rattlesnake Ridge District service area,⁶ and Rattlesnake Ridge District's Board to notify them of the continued, broadened investigation.

Rate Case

In 2019, Rattlesnake Ridge District was a party to Case No. 2019-00041.⁷ The Commission investigated several water districts or associations for excessive unaccounted-for water loss. In Case No. 2013-0038, Rattlesnake Ridge District filed an application for an alternative rate adjustment.⁸ Since the 2013 alternative rate adjustment, Rattlesnake Ridge District has filed eight annual reports⁹ reflecting an annual operating loss, which raises the Commission's concerns regarding the ongoing financial viability of the district.

Water loss and financial stability of a water district are inextricably intertwined. Even after a rate case, the district has not been able to operate within its budget and there has been no reduction in water loss, even after improvement projects to address

⁶ According to the 2021 Annual Report at 12, Rattlesnake Ridge District serves customers in Carter, Elliot, Lawrence, Lewis, and Morgan counties, Kentucky.

⁷ Case No. 2019-00041, *Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities*, (Ky. PSC July 30, 2021).

⁸ Case No. 2013-00338 *Alternative Rate Adjustment Filing of Rattlesnake Ridge Water District* (Ky. PSC Feb. 7, 2014).

⁹ 2014 Annual Report at 24, 2015 Annual Report at 24, 2016 Annual Report at 19, 2017 Annual Report at 19, 2018 Annual Report at 20, 2019 Annual Report at 20, 2020 Annual Report at 20, 2021 Annual Report at 20.

the water loss and increased awareness of the issue.¹⁰ Rattlesnake Ridge District appears to have paid the Dodge Truck Loan off in full¹¹ even though all financial records would indicate negative operating income. Rattlesnake Ridge District continually fails to make marked improvements in the area of unaccounted-for water loss or in its general financial stability. Based on the evidence as discussed above, the Commission finds that the district should file an alternative rate adjustment, pursuant to 807 KAR 5:076 or general rate case, pursuant to KRS 278.180 and 807 KAR 5:001, Section 16 within six months of the date of service of this Order.

IT IS THEREFORE ORDERED that:

1. Rattlesnake Ridge District shall file 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 within six months of service of this Order.

2. Rattlesnake Ridge District and its unknown Board of Commissioners and Manager, David Gifford, 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 service of this Order.

3. The case style of this case shall be amended to reflect the expanded investigation and shall read as follows:

Electronic Investigation into the Financial and Operating Capacity of Rattlesnake Ridge Water District Including Rattlesnake Ridge Water District and its Individual Commissioners, and Manager David Gifford for Alleged Failure to Comply With KRS 278.300 as well as Possible

¹⁰ 2019 Annual Report at 57, unaccounted-for water loss percentage 63.1033; 2020 Annual Report at 57, unaccounted-for water loss percentage 63.3080; and 2021 Annual Report at 57, unaccounted-for water loss percentage 64.2511.

¹¹ The 2021 Annual Report at 40 shows a zero principal balance for the Dodge Truck Loan.

Vacancies on the Board of Commissioners of Rattlesnake
Ridge Water District

4. In addition to the alleged violation of KRS 278.300, this investigation is expanded to determine whether a vacancy or vacancies have existed on the Rattlesnake Ridge District's Board of Commissioners for more than 90 days.

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 service and electronic filing of papers shall be followed in this proceeding.

6. Any interested party, may, by counsel, file a motion to intervene no later than November 18, 2022. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of entry of an Order of the Commission, granting intervention, file with the Commission a written statement that: (1) It or its authorized agent possesses the facilities to receive electronic transmissions; and (2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

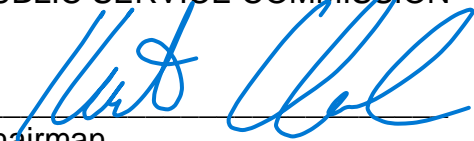
7. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

8. The Executive Director shall serve a copy of this Order upon the County Judge/Executive of each of the counties in the Rattlesnake Ridge District service area, the Fiscal Court for each county in the Rattlesnake Ridge District service area, the County Attorney for each county in the Rattlesnake Ridge District service area, and Rattlesnake Ridge District's Board of Commissioners to notify them of this expanded proceeding.

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

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



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