

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KIRKSVILLE WATER ASSOCIATION, INC. AND)	
ITS INDIVIDUAL DIRECTORS, ARMON)	
SANDERS, WAYNE LONG, ALFRED WINKLER,)	CASE NO.
RANDAL WEBB, AND BOBBY POWELL, AND)	2022-00197
MANAGER MIKE AGEE ALLEGED FAILURE TO)	
COMPLY WITH KRS 278.300 AND KRS 278.020)	

ORDER

The Commission, on its own motion, establishes this proceeding to investigate Kirksville Water Association, Inc. (Kirksville Water) and its individual directors, Armon Sanders, Wayne Long, Alfred Winkler, Randal Webb, and Bobby Powell, and its Manager, Mike Agee, for allegedly failing to comply with KRS 278.020 and KRS 278.300, and to investigate Kirksville Water's alleged territorial sales and other income sources. A willful failure to comply with KRS 278.020 or KRS 278.300 presents prima facie evidence of incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office sufficient to make Kirksville Water's directors 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

With certain inapplicable exceptions, a water association is subject to the jurisdiction of the Kentucky Public Service Commission in the same manner and to the same extent as any other utility except as provided in KRS 278.023 or when increasing its rates commensurate with an increase from its wholesale supplier. 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 Kirksville Water, its directors, 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(3) authorizes the Commission to utilize the removal procedures of KRS 74.025(1) and (2) to remove the directors, trustees, or other governing persons of water associations for good cause, including incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance.

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

¹ KRS 278.300(1).

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.

Under KRS 278.020(1), no utility may construct any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.²

DISCUSSION

Kirksville Water is a water association created under and by the virtue of Chapter 273 of the Kentucky Revised Statutes. Kirksville Water provides service to approximately 1,959 customers³ in Madison and Garrard counties, Kentucky.⁴ According to Kirksville Water's 2021 Annual Report on file with the Commission, Armon Sanders, Wayne Long, Alfred Winkler, Randal Webb, and Bobby Powell, are officers of Kirksville Water's Board of Directors and Mike Agee serves as Manager of Kirksville Water.⁵

² *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (KY. 1952).

³ *Annual Report of Kirksville Water Association, Inc. to the Public Service Commission for the Year Ending December 31, 2021* (2021 Annual Report) at 49.

⁴ 2021 Annual Report at 12.

⁵ 2021 Annual Report at 14.

In Case No. 2022-00076,⁶ Kirksville Water tendered an application, pursuant to KRS 278.300, requesting permission to assume indebtedness for a recently purchased office building. After various filing deficiencies were cured, the application was deemed filed as of April 27, 2022. According to Kirksville Water's application, on November 22, 2021, Kirksville Water purchased a building located at 1613 Foxhaven Drive, Richmond, Kentucky, to house office and meeting space and provide a location for customers to pay bills (Foxhaven Property).⁷ Kirksville Water stated that time was of essence, as the contract on the current office space was to expire in June 2022 and was not being renewed, and, due to the competitive real estate market conditions, the Kirksville Board of Directors believed they needed to move quickly.⁸ Kirksville Water noted that the water association considered renting space, but was unable to find anything that was appropriate to fit-up or less expensive than the purchased location.⁹ Further, Kirksville Water asserted that the new Foxhaven Property was the ideal size, location and required very little fit-up.¹⁰

Kirksville Water requested approval to assume indebtedness for the Foxhaven Property. The purchase price was \$275,500 of which \$174,250 was financed through 1st Trust Bank in Richmond, Kentucky.¹¹ The terms of the loan included an interest rate of

⁶ Case No. 2022-00076, *Electronic Application of Kirksville Water Association, Inc. for Permission to Issue Indebtedness Pursuant to KRS 278.300* (Ky. PSC Jun. 20, 2022).

⁷ Case No. 2022-00076, Application (filed Mar. 15, 2022), paragraphs 2 and 3.

⁸ Case No. 2022-00076, March 15, 2022 Application, paragraphs 1 and 8.

⁹ Case No. 2022-00076, March 15, 2022 Application, paragraph 6.

¹⁰ Case No. 2022-00076, March 15, 2022 Application, paragraph 7.

¹¹ Case No. 2022-00076, Application (filed Apr. 26, 2022), paragraph 3.

4.5 percent over 84 months, with a balloon payment of \$131,136.16 due November 18, 2028.¹²

On May 13, 2022, Commission Staff issued Commission Staff's First Request for Information requesting responses to be filed by May 27, 2022. In lieu of responding to Commission Staff's First Request for Information, Kirksville Water filed a notice of withdrawal of the application stating that the debt incurred in the purchasing of the property had been retired via cash resources.¹³ On June 20, 2022, the Commission issued a final Order in Case No. 2022-00076, and found, among other things, that Kirksville Water had not met the legal standard for Commission approval of evidence of indebtedness. KRS 278.300(1) requires Commission approval prior to the issuance of any evidence of indebtedness, and Kirksville Water failed to request Commission approval until after it had entered into the 1st Trust Bank loan.¹⁴

Further, the Commission found that Kirksville Water failed to seek either a CPCN for its purchase and renovation of the Foxhaven Property or a declaratory order stating that a CPCN was not needed.¹⁵ As utilized by Kirksville Water, the Foxhaven Property is a facility for furnishing utility service to the public. KRS 278.020(1)(a) provides that no utility may construct any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission except as provided in KRS 278.020(1)(a)(1)-(3) and 807 KAR 5:001, Section 15(3), which are provisions not

¹² Case No. 2022-00076, April 26, 2022 Application, paragraph 4.

¹³ Case No. 2022-00076, Kirksville Water's Notice of Withdrawal (filed May 27, 2022).

¹⁴ Case No. 2022-00076, June 20, 2022 Order at 7.

¹⁵ Case No. 2022-00076, June 20, 2022 Order at 7.

applicable to Kirksville Water's purchase and renovation of an office building. Kirksville Water did not construct a newly built facility; it purchased an existing building and modified it for use as a public utility headquarters. The Commission has previously required a CPCN for the purchase of an existing building and the minimal construction necessary to retrofit the building for use as a water utility headquarters, as well as for the remodeling of existing facilities already in use by a utility.¹⁶

The Commission noted that information filed along with Kirksville Water's application¹⁷ indicated that Kirksville Water sold "territorial rights" for a gain of \$225,000.¹⁸ Kirksville Water was asked by Commission Staff to provide board or commission minutes approving this sale, a copy of the contract, and other details regarding this transaction during discovery in Case No. 2022-00076, but Kirksville Water failed to respond to Commission Staff's request. The Commission is concerned that nonrecurring income sources are contributing to Kirksville Water's positive cash basis income leading Kirksville Water's base rates to appear to be sufficient, when they, in fact, may be inadequate. The Commission will investigate the sale of territorial rights, and Kirksville Water's sources of nonrecurring income as part of this docket.

¹⁶ See Case No. 2016-00392, *Application of North Mercer Water District for a Certificate of Public Convenience and Necessity to Acquire a Building and Make Minimal Adaptions Thereto* (Ky. PSC Dec. 22, 2016); Case No. 2005-00277, *Application of Fleming-Mason Energy Cooperative Corporation for an Order and Certificate of Public Convenience and Necessity Authorizing Applicant to construct a Garage, Warehouse, fieldhouse, and Remodeling at Flemingsburg, Kentucky* (Ky. PSC Oct. 14, 2005); and Case No. 2016-00181, *Electronic Application of Columbia Gas of Kentucky, Inc. for a Declaratory Order that the Construction of Proposed Gas Safety Training Facilities is in the Ordinary Course of Business and Does Not Require a Certificate of Public Convenience* (Ky. PSC Sept. 9, 2016) (the Commission required a CPCN for the remodeling necessary to retro-fit a portion of an existing building to accommodate a training facility).

¹⁷ Case No. 2022-00076, Application (filed March 25, 2022), KWA2021operations.pdf, pdf page 6 of 6.

¹⁸ Case No. 2022-00076, June 20, 2022 Order at 8

In the final Order in Case No. 2022-00076, the Commission ordered Kirksville Water to file, within six months from the date of that Order's issuance, 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 in the alternative, to file a formal motion with a detailed analysis of its rates and revenues and a statement explaining the reasons why no modifications are necessary. The Commission reminds Kirksville Water that this filing is due on or before December 20, 2022.

The Commission finds that a prima facie case exists that Kirksville Water and its individual directors, Armon Sanders, Wayne Long, Alfred Winkler, Randal Webb, and Bobby Powell, and its Manager, Mike Agee, acting in their respective individual capacities, willfully aided and abetted in one or more violations of KRS 278.300 and KRS 278.020.

IT IS THEREFORE ORDERED that:

1. Kirksville Water and directors Armon Sanders, Wayne Long, Alfred Winkler, Randal Webb, and Bobby Powell, and Manager, Mike Agee, 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. 2022-00076 is made a part of the record by reference only.
3. Kirksville Water 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, or in the alternative, file a formal motion with a detailed analysis of its rates and revenues and a statement explaining the reasons why

no modifications are necessary, on or before December 20, 2022. Any filing for a rate adjustment filed under KRS 278.023 does not relieve Kirksville Water from this requirement.

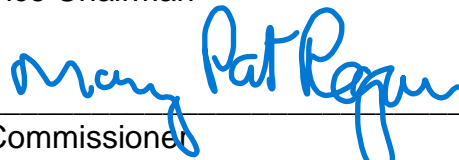
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PUBLIC SERVICE COMMISSION

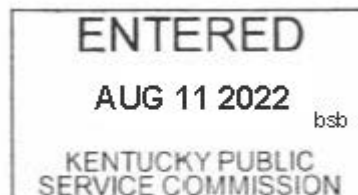


Chairman

Vice Chairman



Commissioner



ATTEST:



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