

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

The Commission, on its own motion, establishes this proceeding, pursuant to KRS 278.250, KRS 278.260, KRS 278.280, and KRS 278.390, to investigate Sharpsburg Water District (Sharpsburg District) and its individual officers, Alfred Bailey, Cecil Duncan, Judy Harmon, Randy Warner, Billy Martin, and its Manager, Gayle Haney, for allegedly failing to comply with the Commission’s May 27, 2021 Order in Case No. 2021-00189¹ and the September 13, 2022 Order entered in Case No. 2022-00273.² If the Commission finds that the parties willfully failed to comply with a Commission Order, pursuant to KRS 278.990, each party may be subject to the assessment of a civil penalty up to \$2,500 per person per occurrence. Additionally, upon a finding that the parties willfully failed to comply with a Commission Order, Alfred Bailey, Cecil Duncan, Judy Harmon, Randy Warner, and Billy Martin may be removed from office pursuant to KRS 74.025.

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

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

LEGAL STANDARD

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.

KRS 278.015 provides that a water district created under the provisions of KRS 74.420–.520 is a utility subject to the Commission’s jurisdiction.

KRS 278.390 provides that an Order entered by the Commission continues in force until the expiration of the time, if any, named by the Commission in the order, or until revoked or modified by the Commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.

KRS 74.070 states that all corporate powers of a water district shall be exercised under the authority of its commission.

KRS 74.025 provides the Commission with the authority to remove a water district commissioner from office for good cause, which includes failure to comply with a Commission Order, rules, and regulations; or incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office.

KRS 278.990 provides that, upon the Commission’s finding of a willful failure to comply with a Commission Order, or any provision of KRS Chapter 278 or Commission regulations, a utility and its officers, agents, or employees may be assessed a civil penalty not to exceed \$2,500 per person per occurrence.

DISCUSSION

Sharpsburg District is a water district organized in 1961, pursuant to KRS Chapter 74,³ and is subject to the Commission's jurisdiction. Sharpsburg District provides retail water service for Bath and Nicholas counties, Kentucky.⁴

Currently, serving as commissioners are: Alfred Bailey, Cecil Duncan, Billy Martin, Roger Wills and Chairman, Randy Warner.⁵

In the May 27, 2021 Order issued in Case No. 2021-00189, the Commission directed Sharpsburg District to file an application for a traditional adjustment in rates or an alternative rate adjustment within one year of the date of that Order. In the September 13, 2022 Order in Case No. 2022-00273, 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, 2022,⁶ Sharpsburg District filed a motion in Case No. 2021-00189 for an extension of time to permit it 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 was not yet completed. Sharpsburg District further stated that it contacted the Kentucky Rural Water Association

³ *Annual Report of Sharpsburg Water District to the Public Service Commission for the Year Ended December 31, 2021* (2021 Annual Report) at 9.

⁴ 2021 Annual Report at 12.

⁵ 2021 Annual Report at 15.

⁶ The May 5, 2022 motion duplicated the April 20, 2022 motion.

(KRWA) on April 11, 2022, for assistance and that KRWA would require an additional six months.⁷ 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 ARF application to be based upon financial data in the utility's annual report and not on an audit.⁸ The Commission directed Sharpsburg District to file an application as soon as possible.⁹ On October 28, 2022, Sharpsburg District filed an ARF application.¹⁰

Based upon the above, and being otherwise sufficiently advised, the Commission finds that *prima facie* evidence exists that Sharpsburg District, Alfred Bailey, Cecil Duncan, Judy Harmon, Billy Martin, Randy Warner, and Gayle Haney failed to comply with the Commission's March 10, 2020 Order in Case No. 2021-00189. Upon a finding that the named parties willfully failed to comply with a Commission Order, pursuant to KRS 278.990 each party may be subject to the assessment of a civil penalty up to \$2,500 per person per occurrence. Additionally, upon a finding that the parties willfully failed to comply with a Commission Order, Alfred Bailey, Cecil Duncan, Judy Harmon, Billy Martin, and Randy Warner may be removed from office pursuant to KRS 74.025.

The Commission further finds that a public hearing should be held on the merits of the allegations set forth in this Order. The hearing will be established by separate Order.

⁷ Case No. 2021-00189, Motion for Extension of Time to file an Application (filed Apr. 20, 2022) and (filed May 5, 2022).

⁸ Case No. 2021-00189, Order (Ky. PSC June 3, 2022) at ordering paragraph 1.

⁹ Case No. 2021-00189, June 3, 2022 Order at ordering paragraph 2.

¹⁰ Case No. 2022-00348, *Electronic Application of Sharpsburg Water District for a Rate Adjustment Pursuant 807 KAR 5:076* (filed Oct. 28, 2022).

IT IS THEREFORE ORDERED that:

1. Sharpsburg District; Alfred Bailey, Cecil Duncan, Judy Harmon, Billy Martin, Randy Warner, and Gayle Haney shall submit individual written responses to the allegations contained in this Order within 20 days of the date of service of this Order, including but not limited to any, and all written testimony or documentation that would dispute the allegations.
2. Counsel for the parties shall enter an appearance or appearances within 20 days of the date of service of this Order.
3. The Commission directs Sharpsburg District, Alfred Bailey, Cecil Duncan, Judy Harmon, Billy Martin, Randy Warner, and Gayle Haney to the Commission's July 22, 2021 Order in Case No. 2020-00085¹¹ regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.
4. The record of Commission Case No. 2021-00189 is incorporated by reference into this proceeding.
5. Bath County Judge Executive Forrest McKenzie shall be served with a copy of this Order at P.O. Box 39, Owingsville, Kentucky 40360.
6. Nicholas County Judge Executive Steve Hamilton, shall be served with a copy of this Order at 125 East Main Street, Carlisle, Kentucky 40311.

¹¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

7. Alfred Bailey, Cecil Duncan, Judy Harmon, Billy Martin, Randy Warner, and Gayle Haney, respectively, shall each be served with a copy of this Order by certified mail, return receipt requested, at 16 East Mill Street, Sharpsburg, Kentucky 40374.

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PUBLIC SERVICE COMMISSION



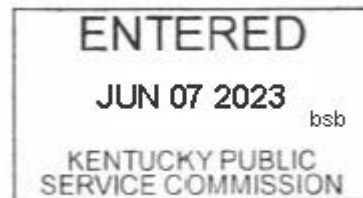
Chairman



Vice Chairman



Commissioner



ATTEST:



Executive Director

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