

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF GREEN	)	
RIVER VALLEY WATER DISTRICT AND ITS	)	
OFFICERS, JOHN BUNNELL, PAT TUCKER,	)	CASE NO.
ADRIAN GOSSETT, DEBBIE FOWLER, LELAND	)	2022-00215
GLASS AND ITS MANAGER, DAVID PAIGE, TO	)	
COMPLY WITH A COMMISSION ORDER, KRS	)	
278.990	)	

ORDER

On July 18, 2022, the Commission opened an investigation into Green River Valley Water District's (Green River Valley District) failure to file for an adjustment in base rates pursuant to 807 KAR 5:076 or 807 KAR 5:001 as ordered in Case No. 2019-00458.<sup>1</sup> On August 3, 2022, David Paige, as former manager, filed a response.<sup>2</sup> On August 7, 2022, Green River Valley District and its Board of Commissioners filed an answer.<sup>3</sup> Green River Valley District responded to three total requests for information.<sup>4</sup> Green River Valley also filed a supplemental response on November 27, 2022.<sup>5</sup>

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<sup>1</sup> Case No. 2019-00458 *Electronic Application of Green River Valley Water District to Issue Securities in the Approximate Principal Amount of \$5,325,000 for the Purpose of Refunding Certain Outstanding Obligations of the District Pursuant to the Provisions of KRS 278.300 and 807 KAR 5:001* (Ky. PSC Mar. 10, 2020), Order, at 5, Ordering paragraph 5. The deadline to file for a rate adjustment was extended until May 31, 2022, by Order issued April 26, 2021.

<sup>2</sup> David Paige's Response (filed on Aug 3, 2022).

<sup>3</sup> Green River Valley District's Response (filed on Aug. 7, 2022).

<sup>4</sup> Green River Valley's Response to Commission Staff's First Request for Information (filed on Sept. 1, 2022). Green River Valley's Response to Commission Staff' Second Request for Information (filed Oct. 12, 2022) and Green River Valley's Response to Commission Staff's Post-Hearing Requests for Information (filed Jan. 17, 2023).

<sup>5</sup> Green River Valley's Supplemental Response to Commission Staff's Second Request for Information (filed Nov. 27, 2022).

The Commission originally scheduled a hearing for December 15, 2022.<sup>6</sup> However, on December 12, 2022, Green River Valley District filed a motion to reschedule the hearing date.<sup>7</sup> On December 13, 2022, the Commission rescheduled the hearing for January 4, 2023.<sup>8</sup> On January 4, 2023, the Commission held a hearing. The Commission heard testimony from John Bunnell, Chairman of Green River Valley District's Board of Commissioners, Andrew Tucker, current manager, and David Paige, former district manager.

There are no intervenors in this proceeding. This matter now stands submitted for a decision.

#### LEGAL STANDARD

Pursuant to 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. Pursuant to 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 278.990 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 Chapter 278, Commission regulations, or Orders. KRS 74.025 authorizes the Commission to utilize certain removal procedures to remove any water commissioner of a water district from office for good cause,

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<sup>6</sup> Order (Ky. PSC. Nov. 4, 2022).

<sup>7</sup> Green River Valley District's Motion to Reschedule Hearing (filed Dec. 12, 2022).

<sup>8</sup> Order (Ky. PSC Dec. 13, 2022).

including incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance.

### BACKGROUND

Green River Valley District is a water district organized pursuant to KRS Chapter 74. It operates water distribution facilities that serve approximately 7,151 residential customers and 262 commercial customers in Barren, Green, Hart, Larue, and Metcalfe counties, Kentucky.<sup>9</sup> It is a utility subject to the Commission's jurisdiction.<sup>10</sup>

On January 14, 2020, Green River Valley District requested an Order authorizing the district to issue certain securities in the approximate principal amount of \$5,325,000.<sup>11</sup> As part of the final Order, issued on March 10, 2020, Green River Valley District was ordered to file for an adjustment in base rates or file for an alternative rate filing within one year of the date of the Order's issuance.<sup>12</sup> On April 16, 2021, Green River Valley District filed a motion for an extension of time to file the application for a rate adjustment. As a basis, Green River Valley District stated that submission of an application for rate adjustment pursuant to KRS 278.180 prior to completion of new waterworks improvements would likely result in rates that do not accurately reflect

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<sup>9</sup> *The Annual Report of Green River Valley District to the Public Service Commission for the Year Ending December 31, 2021* at 49, 12.

<sup>10</sup> See KRS 278.015 ("Any water district; combined water, gas, or sewer district; or water commission, except a joint commission created under the provisions of KRS 74.420 to 74.520, shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010, except [as provided in KRS 278.023 and KRS 278.015(2)].")

<sup>11</sup> Case No. 2019-00458 *Electronic Application of Green River Valley Water District to Issue Securities in the Approximate Principal Amount of \$5,325,000 for the Purpose of Refunding Certain Outstanding Obligations of the District Pursuant to the Provisions of KRS 278.300 and 807 KAR 5:001* (filed Jan. 14, 2020), Application.

<sup>12</sup> Case No. 2019-00458, (Ky. PSC Mar. 10, 2020), Order at 5, ordering paragraph 5.

Green River Valley District's cost of service.<sup>13</sup> In support, Green River Valley District stated that the rate adjustment would be required to use its operations for the year ending December 31, 2020, as its test period, and this period would not include any expenses associated with the waterworks improvements and if any expenses or depreciation were included in the test year, the operating costs, financing expenses, and depreciation would not be considered known and measurable changes.<sup>14</sup> In light of those circumstances, Green River Valley District requested that the Commission extend the time in which it must file an application for rate adjustment to May 31, 2022.<sup>15</sup> In an Order issued April 26, 2021, the Commission granted an extension to file a general rate adjustment until May 31, 2022.<sup>16</sup> As of July 18, 2022, Green River Valley District had not filed a rate case.<sup>17</sup> Green River Valley District has never been before the Commission for a general rate adjustment.

### DISCUSSION AND FINDINGS

Based upon the case record, the Commission finds that there was a clear violation of a Commission Order. Specifically, Green River Valley District, David Paige, its manager at the time, and the named commissioners John Bunnell, Pat Tucker,

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<sup>13</sup> Case No. 2019-00458, Green River Valley District's Motion for Extension of Time (filed Apr. 16, 2021).

<sup>14</sup> Case No. 2019-00458, Green River Valley District's Motion for Extension of Time (filed Apr. 16, 2021) at 3.

<sup>15</sup> Case No. 2019-00458, Green River Valley District's Motion for Extension of Time (filed Apr. 16, 2021) at 3.

<sup>16</sup> Case No. 2019-00458, Green River Valley District's Motion for Extension of Time (filed Apr. 16, 2021) at 3.

<sup>17</sup> Case No. 2023-00088, *Electronic Application of Green River Valley Water District for Adjustment of Rates*. As of March 15, 2023, Green River Valley District had filed its Notice of Intent to File a Rate Case. Green River Valley District tendered its application on May 1, 2023, and it was deemed filed on May 3, 2023.

Adrian Gossett, Debbie Fowler, and Leland Glass acknowledged that the district failed to file an application for an adjustment in base rates within six months of the final Order in Case No. 2019-00458 as required by that Order.

However, they claimed there was no “willful” violation of the Order.<sup>18</sup> While a willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily,<sup>19</sup> it has also been stated that a willful violation does not necessarily and solely entail an intention to do wrong and inflict injury but may include conduct which reflects an indifference to its natural consequences.<sup>20</sup> For civil and administrative proceedings, a willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.<sup>21</sup>

The failure of the individual water district commissioners named in this matter to review the final Order in Case No. 2019-00458, which was five pages, excluding signatures, in length and was publicly available on the Commission’s website is intentional. Commissioners have a fiduciary duty and responsibility to the utility<sup>22</sup> when they accept appointment to a Board of Commissioners. Before a commissioner can act in the best interest of a utility and its customers, it stands to reason that the

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<sup>18</sup> Green River Valley District’s Answer to Show Cause (filed on Aug. 7, 2022) at 9.

<sup>19</sup> Case No. 1992-00016, *M.A. V.I.S.S., Inc. and Mr. Darby Alleged Failure to Comply with Commission Regulations* (Ky. PSC July 1, 1992).

<sup>20</sup> Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

<sup>21</sup> Case No. 1999-00001, *Bluegrass Gas Sales, Inc., Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999) at 5, citing *Woods v. Carsey*, 200 P.2d 208 (Cal. App. 1948).

<sup>22</sup> KRS 74.020.

commissioner must seek to be reasonably informed about the issues confronting the utility. Becoming and remaining informed requires a commissioner to actively seek information. At a minimum, an individual with a fiduciary duty to act in the best interest of a public utility and its customers should seek to stay informed concerning the utility's obligations to its regulating body and seek to enable the utility to meet those obligations.

To summarize the timeline based on testimony and Board meeting minutes, no actions were taken to comply with the final Order in Case 2019-00458, a request for an extension was filed after the filing deadline had passed to request more time based on an ongoing construction project, the extension was granted, and the district's board members did not take any action toward preparing for the rate application.<sup>23</sup> Their apparent failure to inquire as to the steps the district was taking to comply with the Order after a request for an extension was filed and subsequently granted is, at a minimum, offensive. The Board did not begin to address the issue of noncompliance until July 2022, when this investigation was initiated.<sup>24</sup> These actions exhibit an indifference to ensuring the district's compliance with the Commission's Order in Case No. 2019-00458 that rose to the level of willful violation.

Thus, based on the record and being otherwise sufficiently advised, the Commission finds that the named commissioners John Bunnell, Pat Tucker, Adrian Gossett, Debbie Fowler, Leland Glass and its Manager, David Paige, willfully violated the Commission's final Order in Case No. 2019-00458. Pursuant to KRS 278.990, the Commission finds that Debbie Fowler, Leland Glass, Pat Tucker, and Adrian Gossett,

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<sup>23</sup> John Bunnell Hearing Video Testimony of the January 4, 2023 Hearing (HVT) at 09:30:00–09:33:00 and 2020, 2021, and 2022 Board of Commissioners minutes were filed into the record.

<sup>24</sup> Bunnell HVT at 09:38:00–09:45:00

individually, shall each be assessed a civil penalty in the amount of \$250 due within one year of service of this Order. However, the Commission will waive the civil penalty for each individual who attends 12 hours of Commission approved training within 335 days of service of this Order. This is in addition to any other statutorily required training hours.

Specifically, as to John Bunnell, Chairman of the Board of Commissioners, the Commission finds that he shall be assessed a civil penalty in the amount of \$250 due within 180 days of service of this Order. The Commission also finds that Mr. Bunnell should attend 12 hours of Commission approved training within 335 days of service of this Order. This is in addition to any other statutorily required training hours.

Mr. Bunnell has served on the Board of Commissioners since 2009. Within the first 30 minutes of his testimony, Mr. Bunnell used the word “assumed” or some version thereof at least three times.<sup>25</sup> He admitted to not reading the final Order in Case No. 2019-00458 and did not read the opening Order in this matter until the Hart County Judge Executive notified him of its existence.<sup>26</sup> As a long-serving member of the Board of Commissioners, Mr. Bunnell has the opportunity to demonstrate a consistent and knowledgeable voice in his guidance to fellow commissioners about Commission regulations, expectations, and Orders. Instead, it appears, based on his testimony, that he relied heavily on a manager for whom he had not provided any written expectations, responsibilities, or guidance.<sup>27</sup>

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<sup>25</sup> Bunnell HVT at 09:18:00-09:45:00.

<sup>26</sup> Bunnell HVT at 09:45:30.

<sup>27</sup> Bunnell HVT at 09:44:00.

The Commission does not make this statement to alleviate or lessen the former manager's, David Paige's, role in this investigation. Mr. Paige was the manager at the utility for approximately 25<sup>28</sup> years and filed a response to this investigation stating that he was retired as of July 26, 2022.<sup>29</sup> During the hearing, it became evident that there had been a breakdown in communication between the manager and the Board, particularly the Chairman.<sup>30</sup> A failure to communicate cannot be allowed to derail a utility's responsibility to provide adequate, efficient and reasonable service at fair, just and reasonable rates.<sup>31</sup> Mr. Paige's acknowledgement that the Commission had done all it could do to communicate its expectations to the utility substantiates the willful nature of this violation.<sup>32</sup> The expectations were "reasonably clear and specific".<sup>33</sup> The utility should have known exactly what to do or sought counsel for guidance on the Order, if necessary. Although the Commission cannot exercise any jurisdiction over a former utility employee in this context, the Commission does not condone the manager's behavior in handling this situation.

The Commission expects that the district, its new manager, and the named commissioners will use this opportunity to improve the policies and procedures of Green River Valley District. The Commission also intends for this Order to serve as notice that no further violations of Commission Orders will be tolerated.

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<sup>28</sup> Paige HVT at 11:45:00

<sup>29</sup> David Paige's Response (filed Aug. 3, 2022).

<sup>30</sup> Paige HVT at 11:50:00.

<sup>31</sup> KRS 278.030.

<sup>32</sup> Paige HVT at 12:35:00.

<sup>33</sup> *Cabinet for Health and Family v. J.M.G.*, 475 S.W.3d 600, 620 (Ky. 2015).

The Commission notes that had Green River Valley District filed its rate application when it was ordered to do so the utility could have availed itself of the filing procedures set out in 807 KAR 5:076. However, based on the most recent audit and annual report, Green River Valley District must file for a general rate adjustment.

Vice Chair Angela Hatton has had the opportunity to review the record and participate in this decision.

IT IS THEREFORE ORDERED that:

1. Green River Valley District Chairman John Bunnell is assessed a civil penalty for his willful violation of a Commission Order.

2. John Bunnell shall pay the assessed penalty of \$250 within 180 days of service of this Order. Payment shall be made by certified check or money order made payable to Kentucky State Treasurer and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602-0615.

3. John Bunnell shall attend 12 hours of Commission approved training within 335 days of the date of service this Order, in addition to any other required training, and provide written notice that he attended the training within one year of the service of this Order.

4. Pat Tucker, Adrian Gossett, Debbie Fowler, Leland Glass, individually, are each assessed and shall each pay a civil penalty of \$250 within 335 days of service of this Order for their willful violation of a Commission Order.

5. Payment pursuant to ordering paragraph 4 shall be made by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered

to the Office of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

6. The Commission shall waive the civil penalty of \$250 for each individual, Pat Tucker, Adrian Gossett, Debbie Fowler, or Leland Glass, who attends 12 hours of Commission approved training within 335 days of the date of service of this Order and provides written notice that they attended the training within one year of the service of this Order.

7. Any written notice provided pursuant to ordering paragraph 3 or ordering paragraph 6 shall include the case number for this case and be maintained in the post-case correspondence file for this case.

8. The Commission directs the Executive Director to provide copy of this Order to the Certification and Licensing Branch of the Environmental Compliance Assistance Program within the Kentucky Department for Environmental Protection.

9. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
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Commissioner

ENTERED  
AUG 24 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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