

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF EAST CASEY	)	
COUNTY WATER DISTRICT AND ITS OFFICERS,	)	
KEVIN ATWOOD, LILY SANDUSKY, RICKY	)	CASE NO.
CARMAN, TRACY GOSSAGE, JOHN MCQUERY,	)	2022-00228
AND ITS MANAGER, ANDY GREYNOLDS, TO	)	
COMPLY WITH A COMMISSION ORDER, KRS	)	
278.990	)	

ORDER

On August 22, 2022, the Commission opened an investigation into East Casey Water District's (East Casey 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. 2021-00371.<sup>1</sup> On September 9, 2022, East Casey District, its Board of Commissioners, and its manager filed an answer to the opening Order.<sup>2</sup> On October 10, 2022, East Casey District filed an affidavit from Ricky Carman.<sup>3</sup> On October 19, 2022, East Casey District, its Board of Commissioners and its manager, in their individual capacities, filed a motion to submit the case on the

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<sup>1</sup> Case No. 2021-00371 *Electronic Purchased Water Adjustment Filing of East Casey County Water District* (Ky. PSC Oct. 15, 2021).

<sup>2</sup> East Casey District's Response to Opening Order of August 22, 2022 (filed on Sept. 9, 2022).

<sup>3</sup> Case No. 2022-00316 *Electronic Application of East Casey County Water District for a Certificate of Public Convenience and Necessity to Construct a System Improvements Project and an Order Approving an Increase in Rates and Authorizing the Issuance of Securities Pursuant to KRS 278.023* (Ky. PSC Oct. 28, 2022).

record and waived their rights to a hearing.<sup>4</sup> The Commission finds that the record is complete, and the matter stands ready 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, including incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance.

### BACKGROUND

East Casey District is a water district organized pursuant to KRS Chapter 74. It operates water distribution facilities that serve approximately 5,052 residential customers,

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<sup>4</sup> East Casey District's Waiver of Right to Hearing and Motion to Submit for a Decision (filed on Oct. 19, 2022).

96 commercial customers, and one public authority in Casey and Lincoln counties, Kentucky.<sup>5</sup> It is a utility subject to the Commission's jurisdiction.<sup>6</sup>

On September 15, 2021, East Casey District filed a purchased water adjustment filing due to an increase in the price paid for water produced by and purchased from the City of Campbellsville.<sup>7</sup> As part of the final Order in that case, issued on October 15, 2021, East Casey District was ordered to file for an adjustment in base rates within six months of the date of the Order's issuance.<sup>8</sup> On September 29, 2022, after this investigation was opened, East Casey District filed an application for a Certificate of Public Convenience and Necessity (CPCN) as well as a rate increase pursuant to KRS 278.023.<sup>9</sup> The Commission's records indicate that East Casey District has never been before the Commission for a general adjustment of rates. East Casey District does not dispute this information.<sup>10</sup>

In its initial response to this investigation, East Casey District, its manager, and the named commissioners acknowledged that its manager, Andy Greynolds, received the

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<sup>5</sup> *The Annual Report of East Casey District's to the Public Service Commission for the Year Ending December 31, 2021* at 49, 12.

<sup>6</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>7</sup> Case No. 2021-00371 *Electronic Purchased Water Adjustment Filing of East Casey County Water District* (Ky. PSC Oct. 15, 2021).

<sup>8</sup> Case No. 2021-00371, (Ky. PSC Oct. 15, 2021) Order, ordering paragraph 6.

<sup>9</sup> Case No. 2022-00316 *Electronic Application of East Casey County Water District for a Certificate of Public Convenience and Necessity to Construct a System Improvements Project and an Order Approving an Increase in Rates and Authorizing the Issuance of Securities Pursuant to KRS 278.023* (Ky. PSC Oct. 28, 2022).

<sup>10</sup> East Casey District's Response to Order (filed on Sept. 9, 2022) at 7-8.

final Order in the purchased water adjustment proceeding in October of 2021 but indicated that he failed to read it.<sup>11</sup> They also stated that Mr. Greynolds did not pass the Order along to any of the named commissioners.<sup>12</sup> Stopping short of admitting willfulness, they stated that the behavior of Mr. Greynolds was negligent and acknowledged failure on the part of the water district commissioners to meet their legal responsibilities to properly control and manage the water district's affairs.<sup>13</sup> East Casey District implemented a procedure requiring all Commission orders to be forwarded immediately to the Board of Commissioners.<sup>14</sup>

### DISCUSSION AND FINDINGS

Based upon the case record, the Commission finds that there was a clear violation of a Commission Order. Specifically, East Casey District, its manager, and the named commissioners 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. 2021-00371 as required by that Order. However, they claimed there was no "willful" violation of the Order.

While a willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily,<sup>15</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

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<sup>11</sup> East Casey District's Response to Order (filed on Sept. 9, 2022) at 4.

<sup>12</sup> East Casey District's Response to Order (filed on Sept. 9, 2022) at 5. All named commissioners were serving in 2021 and 2022 according to the East Casey District's 2021 Annual Report and 2022 Annual Report on file with the Public Service Commission.

<sup>13</sup> East Casey District's Response to Order (filed on Sept. 9, 2022) at 6.

<sup>14</sup> East Casey District's Response to Order (filed on Sept. 9, 2022) at 8.

<sup>15</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).

conduct which reflects an indifference to its natural consequences.<sup>16</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>17</sup>

Here, the manager intentionally and knowingly chose to not read the Order and then intentionally and knowingly chose not to disseminate the Order to the district's Board of Commissioners, which naturally resulted in East Casey District's failure to comply with the Order. Similarly, the failure of the individual water district commissioners named in this matter to review the final Order in Case No. 2021-00371, which was just over six pages in length and was publicly available on the Commission's website, and their apparent failure to inquire over a six-month period as to its contents exhibited an indifference to ensuring the district's compliance with the Order that rose to the level of willful violation given the water commissioners statutory obligations to manage and control the district. Thus, based on the record and being otherwise sufficiently advised, the Commission finds that the manager and the named commissioners willfully violated the Commission's final Order in Case No. 2021-00371, and therefore, are subject to penalties pursuant to KRS 278.990.

Pursuant to KRS 278.990, the Commission finds that Andy Greynolds, Kevin Atwood, Lily Sandusky, Ricky Carman, Tracy Gossage, and John McQuery, individually, shall each be assessed a civil penalty in the amount of \$250 due within one year of service

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<sup>16</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>17</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) (Emphasis added).

of this Order. However, the Commission will waive the fine for each individual who attends 12 hours of Commission approved training within 335 days of service of this Order.

The Commission expects that, as demonstrated in their response, the district, its manager, and the named commissioners will use this opportunity to improve the policies and procedures of East Casey District. Their response included several steps taken to assist in ensuring this would not happen again.<sup>18</sup> The Commission considered those proactive steps when it determined to waive the penalty if a named individual attended training. However, the Commission also intends for this Order to serve as notice that no further violations of Commission Orders will be tolerated.

The Commission also still finds that East Casey District should 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, because as noted in Case No. 2022-00316,<sup>19</sup> the Commission has very little review of a utility's finances as part of an application filed pursuant to KRS 278.023. Further, the Commission finds that an application for an adjustment in East Casey District's rates based upon 2022 data and East Casey District's 2022 annual report will provide the clearest picture of East Casey District's current operations.

Commission regulation 807 KAR 5:076, Section 3(1) provides that the record upon which a decision will be made in an alternative rate filing proceeding is the applicant's

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<sup>18</sup> East Casey District's Response (filed Sept. 9, 2022) at 8.

<sup>19</sup> Case No. 2022-00316 *Electronic Application of East Casey County Water District for a Certificate of Public Convenience and Necessity to Construct a System Improvements Project and an Order Approving an Increase in Rates and Authorizing the Issuance of Securities Pursuant to KRS 278.023* (Ky. PSC Oct. 28, 2022).

annual report for the immediate past year and the annual reports for the prior two years. Commission regulations 807 KAR 5:006, Section 4(1) and (2) require utilities to file a gross annual operating revenue report and a financial and statistical report no later than March 31 each year. Thus, the Commission finds that East Casey District should 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 by June 30, 2023.

The Commission notes that it has extended the period within which East Casey District was required to file a general rate case following a willful violation of a Commission Order. For that reason, the Commission strongly advises East Casey District to take whatever steps are necessary to file its annual report by the regulatory deadline of March 31, 2023, so it can file its request for a rate adjustment by June 30, 2023. The Commission will not look favorably upon any motion for an extension of time to file an application for an adjustment in East Casey District's rates that is based on its failure to timely file its annual report with the Commission.

IT IS THEREFORE ORDERED that:

1. Andy Greynolds, Kevin Atwood, Lily Sandusky, Ricky Carman, Tracy Gossage, and John McQuery, individually, are each assessed and shall each pay a civil penalty of \$250 within one year of service of this Order for their willful violation of a Commission Order.
2. Payment pursuant to ordering paragraph 1 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.

3. The Commission shall waive the civil penalty of \$250 for each individual 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.

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

5. Any newly adopted or amended policies and procedures for East Casey District as result of this case shall include the case number for this case and be maintained in the post-case correspondence file for this case.

6. East Casey 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, by June 30, 2023.

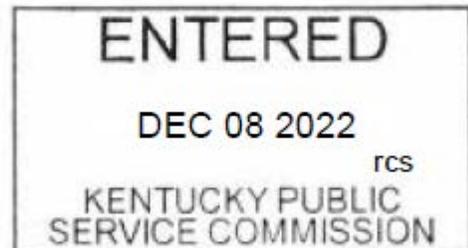
7. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

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