

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF)	
CUMBERLAND COUNTY WATER DISTRICT AND)	
ITS OFFICERS, ERIC CARVER, GARLAND)	CASE NO.
HIENEMAN, JAY CARY, MARK VIBBERT, TROY)	2022-00244
NORRIS, AND ITS MANAGER, MATTHEW DYER)	
TO COMPLY WITH A COMMISSION ORDER, KRS)	
278.990)	

ORDER

The Commission on its own motion, establishes this proceeding to investigate, Cumberland County Water District (Cumberland District), and its individual officers, Eric Carver, Garland Hieneman, Jay Cary, Mark Vibbert, Troy Norris and its manager, Matthew Dyer, for allegedly failing to comply with the Commission's July 28, 2020 Order in Case No. 2020-00188.¹ The willful failure to comply presents *prima facie* evidence of incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office sufficient to make Cumberland District's officers and manager subject to the penalties of KRS 278.990 or removal pursuant to KRS 74.025.

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

¹ Case No. 2020-00188 *Electronic Application of the Cumberland County Water District to Issue Securities in the Approximate Principal Amount of \$1,570,000 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 July 28, 2020), Order at 7, ordering paragraph 5.

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 Cumberland 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.

DISCUSSION

Cumberland District is a water district organized in 1995 pursuant to KRS Chapter 74.² Cumberland District provides water service for Cumberland County, Kentucky.³ According to information provided to the Commission by Cumberland District, the current commissioners are Eric Carver, Garland Hieneman, Jay Cary, Mark Vibbert, and Troy Norris.⁴

On June 25, 2020, Cumberland District filed an application seeking Commission approval to enter into a loan agreement with Kentucky Rural Water Finance Corporation (KRWFC) to borrow approximately \$1,570,000 (subject to adjustment of up to

² *Annual Report of Cumberland County Water District to the Public Service Commission for the year ended December 31, 2021* (2021 Annual Report) at 11.

³ 2021 Annual Report at 12.

⁴ [UMS-20150-Cumberland County Water District \(ky.gov\)](https://www.ky.gov/ums/20150-Cumberland-County-Water-District)

10 percent).⁵ The proceeds of which would be used to refinance eleven outstanding debt obligations to Cumberland District and to pay the costs of issuance of the Loan.⁶

As part of the final Order issued on July 28, 2020 in Case No. 2020-00188, Cumberland District was ordered to file for a base rate adjustment or an alternative rate filing within one year of the date of the final Order.⁷ On June 28, 2021, Cumberland District filed a motion in that proceeding for an extension of time to file the rate case that it was ordered to file.⁸ In the motion, Cumberland District said that it had contacted Kentucky Rural Water Association (KRWA) for assistance in preparing the rate case filing and, due to a backlog at KRWA, Cumberland District needed six additional months for KRWA to assist Cumberland District in preparing and filing a base rate case.⁹

By Order entered on July 15, 2021, in Case No. 2020-00188, the motion was deferred to obtain additional information and a data request issued with a response deadline of August 13, 2021.¹⁰ Cumberland District filed a response on August 4, 2021. On August 22, 2022, the Commission denied the request for additional time to file for a general rate adjustment.¹¹ To date, Cumberland District has not filed for a general rate adjustment as ordered in Case No. 2020-00188.

⁵ Case No. 2020-00188 *Electronic Application of the Cumberland County Water District to Issue Securities in the Approximate Principal Amount of \$1,570,000 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 July 28, 2020).

⁶ Case No. 2020-00188 Application (filed June 25, 2020) at 1.

⁷ Case No. 2020-00188, July 28, 2020 Order at 7, ordering paragraph 5.

⁸ Case No. 2020-00188, Motion for Extension of Time (filed on June 28, 2021).

⁹ Case No. 2020-00188, Motion for Extension of Time at 1.

¹⁰ Case No. 2020-00188, July 15, 2021 Order at 2, ordering paragraphs 1 and 2.

¹¹ Case No. 2020-00188, Aug. 22, 2022 Order.

Cumberland District has not filed a traditional base rate adjustment or alternative rate filing since 2002.¹² Instead, Cumberland District relied on cases filed under KRS 278.023, which may require a utility to increase rates as a condition for federal financing of a construction project. Because the Commission is prohibited from reviewing such rate increases under KRS 278.023(4), the Commission has not conducted a comprehensive review of Cumberland District's financial stability for more than 22 years. This is concerning given that the July 28, 2020 Order in Case No. 2020-00188 noted that Cumberland District's last three annual reports reflected significant net operating losses.¹³

For the reasons set forth above, the Commission finds that a *prima facie* case exists that Cumberland District violated the Commission's July 28, 2020 Order in Case No. 2020-00188 by failing to file an adjustment in base rates or an alternative rate filing. Pursuant to KRS 74.020(1), a water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The Commission finds that a *prima facie* case exists in that Cumberland District, its officers: Eric Carver, Garland Hieneman, Jay Cary, Mark Vibbert, and Troy Norris, acting in their respective official and individual capacities as officers of Cumberland District's Board of Commissioners; and Matthew Dyer, in his capacity as manager of Cumberland District, an employee of the utility, willfully aided and abetted in the above violations and may be subject to penalties pursuant to KRS 278.990 or removal pursuant to KRS 74.025 for incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance.

¹² Case No. 2002-00477 *Application of the Cumberland County Water District for the Approval of the Proposed Increase in Rates for Water Service* (Ky. PSC May 6, 2002).

¹³ Case No. 2020-00188, July 28, 2020 Order at 3.

IT IS THEREFORE ORDERED that:

1. Cumberland District; Matthew Dyer, in his capacity as manager; Eric Carver, Garland Hieneman, Jay Cary, Mark Vibbert, and Troy Norris, acting in their respective official and individual capacities as officers of Cumberland District's Board of Commissioners, 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 Cumberland District to the Commission's July 22, 2021 Order in Case No. 2020-00085¹⁴ regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

¹⁴ 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).

PUBLIC SERVICE COMMISSION

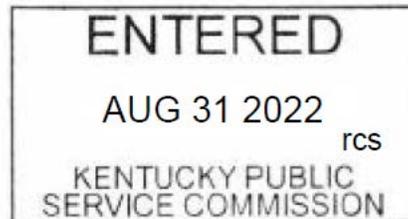


Chairman

Vice Chairman



Commissioner



ATTEST:



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