

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ROWAN	)	CASE NO.
WATER, INC. FOR AN ALTERNATIVE RATE	)	2022-00252
ADJUSTMENT	)	

ORDER

The Commission, on its own motion, finds that this proceeding should be expanded based on information provided in this matter. Specifically, the Commission finds that this proceeding should be expanded to include an investigation into Rowan Water, Inc. (Rowan Water) and its individual directors, Larry Johnson, Danny Stevens, Danny Cox, Mike Collins, Enoch Blair, and its Manager, Jerry Patrick, for allegedly failing to comply with KRS 278.300 and a Commission Order.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.<sup>1</sup> 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. 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

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<sup>1</sup> See KRS 278.040(1), (2).

or method to be observed.<sup>2</sup> With certain inapplicable exceptions, a water association is subject to the jurisdiction of the Commission in the same manner and to the same extent as any other utility.<sup>3</sup>

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.”<sup>4</sup> 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 that service, and is reasonably necessary and appropriate for such purpose.

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<sup>2</sup> KRS 278.280.

<sup>3</sup> See KRS 278.012.

<sup>4</sup> KRS 278.300(1).

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. Long term lease agreements for property and equipment used to provide service to customers have been considered evidences of indebtedness that require approval pursuant to the KRS 278.300.<sup>5</sup>

### DISCUSSION AND FINDINGS

As part of the final Order in Case No. 2021-00042, entered on April 19, 2021, Rowan Water was ordered to file for an adjustment in base rates or file for an alternative rate filing within one year of the date of filing of this Order.<sup>6</sup> Rowan Water did not file a motion for an extension nor did the utility file a rate application by April 19, 2022. Those actions present prima facie evidence of a willful failure of to comply with a Commission

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<sup>5</sup> See Case No. 2018-00038, *Electronic Application of McCreary County Water District for Authorization to Execute Lease-Purchase Agreement and Related Relief* (Ky. PSC Jun. 28, 2018), Order (noting that the lease-purchase agreement for metering equipment in that case was the equivalent of a purchase agreement and a note that required approval pursuant to KRS 278.300); Case No. 92-178, *In the Matter of: Burkesville Gas Company, Inc., Ken-Gas of Kentucky, Inc., and Ken Turner* (Ky. PSC Oct. 28, 1992) (finding that a long term capital lease with a purchase option at the termination of the lease required approval pursuant to KRS 278.300); Case No. 2020-00275, *Electronic Application of Monroe County Water District for Approval of Financing* (Ky. PSC Oct. 22, 2020), Order (granting financing approval pursuant to KRS 278.300 for leases for five service trucks); see also Case No. 2008-00170, *Application of Bullock Pen Water District for a CPCN and for Approval of Proposed Plan of Financing, Increase in Rates, Nonrecurring Charges, Tariff Revisions* (Ky. PSC Nov. 20, 2009), Staff's Report (noting Staff's opinion that a capital lease for a vehicle with a five-year term required approval pursuant to KRS 278.300).

<sup>6</sup> Case No. 2021-00042 *Electronic Application of Rowan Water, Inc. to Issue Securities in the Approximate Principal Amount of \$2,450,000 for the Purpose of Refunding Certain Outstanding Indebtedness of the Association Pursuant to the Provisions of KRS 278.300 and 807 KAR 5:001* (Apr. 19, 2021), Order at 7, Ordering paragraph 5.

Order sufficient to make Rowan Water and Rowan Water's officers and manager subject to the penalties of KRS 278.990.<sup>7</sup>

In addition, as part of the alternative rate filing, Rowan Water has provided information related to multiple leases, 11 total.<sup>8</sup> The length of the leases are 60 months with remaining outstanding balances ranging from \$15,457 to \$36,600 on eight (8) of the vehicles.<sup>9</sup> In accordance with the "Master Equity Lease Agreement,"<sup>10</sup> the Lessor, Enterprise FM Trust, can demand damages, the vehicle, or a combination of both remedies.<sup>11</sup> At the termination of the lease, the Lessor is entitled to the vehicle under certain conditions including a mileage overage penalty, or in the alternative, a payment for a lump sum calculated in accordance with the lease terms.<sup>12</sup>

Jerry Patrick, on behalf of Rowan Water, stated that "[a]t the time of leasing the vehicles, Rowan Water was not aware that Commission approval was required for leases."<sup>13</sup> The response acknowledged that approval was not sought from the Commission to enter any of the leases.<sup>14</sup> Given that failure and the nature of the leases

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<sup>7</sup> See Case No. 2022-00228, *Electronic Investigation of East Casey County Water District and Its Officers, Kevin Atwood, Lily Sandusky, Ricky Carman, Tracy Gossage, John McQuery, and Its Manager, Andy Greynolds to Comply with a Commission Order, KRS 278.990* (Ky. PSC Dec. 8, 2022), Order (in which the Commission imposed a \$250 penalty on each water district commissioner and the manager for failing to comply with a Commission Order to file a rate application but indicated the penalty would be waived for each individual who attended 12 hours of training within a specified period).

<sup>8</sup> Rowan Water's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Jan. 3, 2023), Item 4.

<sup>9</sup> Rowan Water's Response to Staff's Second Request, Item 4b and Item 4c.

<sup>10</sup> Rowan Water's Response to Staff's Second Request, Item 4 at PDF page 42-46.

<sup>11</sup> Rowan Water's Response to Staff's Second Request, Item 4 at PDF page 42-46.

<sup>12</sup> Rowan Water's Response to Staff's Second Request, Item 4 at PDF page 42-46.

<sup>13</sup> Rowan Water's Response to Staff's Second Request, Item 4a.

<sup>14</sup> Rowan Water's Response to Staff's Second Request, Item 4a.

at issue, the Commission finds that prima facie evidence exists that Rowan Water, its individual directors, and its manager, acting in their respective individual capacities, willfully violated KRS 278.300 or willfully aided and abetted in one or more violations of KRS 278.300.

The Commission finds that failures and actions mentioned above should be further investigated to determine whether a monetary penalty or other sanctions should be imposed but understands that opening a separate investigation could be unnecessarily costly to the district. The Commission finds that it would be more efficient to simply expand this matter to investigate those violations in this case. Thus, the Commission finds that this proceeding should be expanded to include an investigation into Rowan Water, its individual directors, and its manager for allegedly failing to comply with a Commission Order and KRS 278.300.

To facilitate its investigation, the Commission finds that Rowan Water, its individual directors, and its manager should each be required to show cause why they should not be sanctioned for failing to comply with the Commission's order to make a rate application by April 19, 2022, and for violating or aiding and abetting the violation KRS 278.300 with respect to the leases discussed above. Further, the Commission finds that Rowan Water, its directors, and its manager should respond to any requests for information served by Commission Staff, whether or not they are listed on the procedural schedule, by the date directed in such requests.

The Commission notes that water utilities are permitted to recover reasonable legal expenses for a rate case as a rate case expense to be amortized over time.<sup>15</sup> In order to determine the proper amount of the rate case expense to be amortized, given the expansion of this case, the Commission finds that Rowan Water should instruct its counsel to separately document legal fees and costs associated with the rate case and those associated with this investigation.<sup>16</sup> Rowan Water should submit the delineated legal fees and costs for both matters on a monthly basis, in this case, until the case is closed.<sup>17</sup>

IT IS HEREBY ORDERED:

1. Rowan Water and its directors, Larry Johnson, Danny Stevens, Danny Cox, Mike Collins, Enoch Blair, and its manager, Jerry Patrick, 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 service of this Order.

2. Rowan Water shall respond to any additional requests for information propounded by Commission Staff, as provided in those requests.

3. The docket case name shall be amended to the following:

Electronic Application of Rowan Water, Inc. for an Alternative Rate Adjustment and an Investigation into Rowan Water, Inc. and its individual directors, Larry Johnson, Danny Stevens, Danny Cox, Mike Collins, Enoch Blair, and its Manager, Jerry

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<sup>15</sup> Case No. 2021-00415 2021-00415 *Electronic Application of Bracken County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Sept. 27, 2022).

<sup>16</sup> The Commission notes that counsel did provide the rate case expense for 2022 on Feb. 1, 2023, and encourages counsel to continue updating rate case expense filings in ensure the most accurate amount to be amortized upon conclusion of the case.

<sup>17</sup> See Case No. 2021-00415 *Electronic Application of Bracken County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Sept. 27, 2022) (Bracken County Water District's attorney filed rate case expense filings.)

Patrick, for allegedly failing to comply with KRS 278.300 and a Commission Order.

4. Rowan Water shall file all legal bills to date for work in this case on or before February 28, 2023, as provided for in this Order and shall file updates for each subsequent month while the case is pending.<sup>18</sup>

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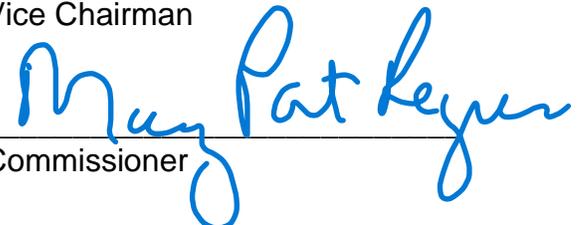
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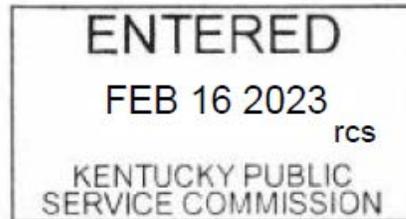
<sup>18</sup> Rowan Water may file more frequent updates if it deems that necessary to provide a complete accounting of its rate case expenses in this matter prior to Commission Staff's report of the final Order.

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

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