

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC CUMBERLAND COUNTY WATER)	
DISTRICT, ITS MANAGER, MATTHEW DYER,)	
AND ITS INDIVIDUAL COMMISSIONERS, TROY)	CASE NO.
NORRIS, ERIC CARVER, SANDY HEINEMAN,)	2023-00233
JAY CARY, AND MARK VIBBERT ALLEGED)	
FAILURE TO COMPLY WITH KRS 278.300)	

ORDER

On October 6, 2023, the Commission established this proceeding to investigate Cumberland County Water District (Cumberland District) and its individual commissioners, Jay Cary, Troy Norris, Mark Vibbert, Sandy Heineman, Eric Carver, and its manager Matthew Dyer (collectively, the Parties), for allegedly failing to comply with KRS 278.300. On October 25, 2023, the manager for Cumberland District, Matthew Dyer and each of the Commissioners filed a response.¹ On December 18, 2023, the Parties filed a response to Commission Staff's First Request for Information (Staff's First Request) On January 23, 2024, the Parties filed a waiver of formal hearing in this matter and requested that the Commission render a final decision on the written record.²

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

¹ Parties' Verified Response (filed Oct. 25, 2023).

² Cumberland District's Verified Response and Response of Individual Commissioners (filed Jan. 23, 2024).

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 the Commission's 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. 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 Chapter 278, Commission regulations, or Orders.

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."³ 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.

³ 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.

Pursuant to KRS 74.020(1), a water district shall be administered by a board of commissioners who shall control and manage the affairs of the district.

BACKGROUND

Cumberland District is a water district organized pursuant to KRS Chapter 74. It operates water distribution facilities that serve approximately 2,642 residential customers, 75 commercial customers, 5 industrial customers, and 1 public authority in Cumberland County, Kentucky.⁴ At the time of the alleged violation, Jay Cary, Troy Norris, Mark Vibbert, Gary Heineman, and Eric Carver sat on Cumberland District's board of commissioners (Board) and Matthew Dyer served as manager.⁵

On July 15, 2020, Cumberland District entered a 48-month lease for a Ditch Witch for a financed amount of \$53,692.55, with monthly payments of \$1,118.59, plus applicable taxes, if any, due on the 15th of each month.⁶ At the hearing conducted on April 4, 2023, in Case 2022-00244,⁷ Troy Norris, one of the current members of the Board, stated that

⁴ *Annual Report of Cumberland District to the Public Service Commission for the Year Ending December 31, 2022* (2022 Annual Report) at 49.

⁵ Parties' Verified Response (filed Oct.25, 2023) and *Annual Report of Cumberland District to the Public Service Commission for the Year Ending December 31, 2020* (2020 Annual Report) at 15.

⁶ Case No. 2021-00291, *Electronic Application of Cumberland District for A Rate Adjustment Pursuant to 807 KAR 5:076* (filed September 21, 2022), Application, G4, Attachment.

⁷ Case No. 2022-00244 *Electronic Alleged Failure of Cumberland Water District and Its Officers, Eric Carver, Sandy Hieneman, Troy Norris, Mark Vibbert, and Jay Cary and Its Manager, Matthew Dyer, to Comply with a Commission Order, KRS 278.990* (Ky. PSC July 5, 2023).

the Board did not seek legal counsel prior to entering into the lease agreement for the Ditch Witch.⁸ Mr. Norris stated that they know that the Commission has to approve financing but were not sure which things have to be approved.⁹ Mr. Norris further stated that the Board generally does not talk to an attorney prior to making investments in equipment.¹⁰

The Parties stated that the Ditch Witch was necessary for installing water lines.¹¹ The Parties claimed to be unaware of the prohibitions of KRS 278.300, that their violation was neither purposeful or intentional, and that they were acting in compliance with the Commission and all statutory and regulatory mandates.¹² Cumberland District also cited to the final Order in Case No. 2022-00244, noting that the utility was reviewing its policies and was seeking legal guidance when necessary.¹³ Jay Cary's response stated that he received water commissioner training in Pine Mountain on October 10 and 11, 2023, to become more knowledgeable about his role.¹⁴

On December 18, 2023, Cumberland District filed a response to Staff's First Request, which was nearly a month later than the response due date of November 22,

⁸ Case No. 2022-00244, Hearing Video Transcript (HVT) of April 4, 2023 Hearing, Testimony of Troy Norris at 11:21:36–11:22:00.

⁹ Case No. 2022-00244, HVT of April 4, 2023 Hearing, Testimony of Troy Norris at 11:21:51–11:22:01.

¹⁰ Case No. 2022-00244, HVT of April 4, 2023 Hearing, Testimony of Troy Norris at 11:22:23–11:22:25.

¹¹ Parties' Verified Response (filed Oct. 25, 2023).

¹² Parties' Verified Response (filed Oct. 25, 2023).

¹³ Parties' Verified Response (filed Oct. 25, 2023) at 2.

¹⁴ Parties' Verified Response (filed Oct.25, 2023) at 5.

2023.¹⁵ Cumberland District stated that policies have not been formally adopted by the Board and are still being developed with counsel, “although many have already been implemented.”¹⁶ Cumberland District stated that the amount due at this time is \$8,948.72, with an interest rate of zero percent, and that the Ditch Which had an estimated fair market value of \$35,000.¹⁷ The response confirmed that the agreement was a lease to own agreement.

DISCUSSION AND FINDINGS

As an initial issue, the Commission finds that Sandy Hieneman and Mark Vibbert should be dismissed as a party from this matter. Sandy Hieneman resigned from the Board on July 10, 2023, and the Commission has since found her seat vacant.¹⁸ The Commission found that Mark Vibbert had not completed his training within 12 months of his initial appointments and as a result, his seat was vacant as well.¹⁹

Based on the record and being otherwise sufficiently advised, the Commission finds that the manager and the named commissioners willfully violated KRS 278.300. The Parties failed to obtain Commission approval prior to entering into the lease agreement for the Ditch Witch. However, the Parties claimed that there was no “willful” violation of KRS 278.300, as any violation was neither intention nor purposeful.

¹⁵ Cumberland District’s Response to Staff’s First Request (Ky. PSC Dec.18, 2023).

¹⁶ Cumberland District’s Response to Staff’s First Request, Item 2.

¹⁷ Cumberland District’s Response to Staff’s First Request, Item 3.

¹⁸ Case No. 2023-00234 *Electronic Investigation Into Possible Vacancies on the Board of Commissioners of Cumberland County Water District* (Ky. PSC Jan. 5, 2024), Order.

¹⁹ Case No. 2023-00234, Jan. 5, 2024, Order.

While a willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily²⁰, 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.²¹ 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.²²

Here, Mr. Norris stated that he was aware that the Commission had to approve financing but was not sure which things would qualify.²³ Cumberland District did not seek legal counsel or approval by the Commission before entering a 48-month term of indebtedness on the Ditch Witch.²⁴ The agreement was entered into in July 2020 and as of December 18, 2023, there was still an amount due and owing of \$8,948.72, exceeding a two-year term.²⁵

Pursuant to KRS 278.990, the Commission finds that Troy Norris, Eric Carver, Jay Cary, and the manager, Matthew Dyer, individually, should each be assessed a civil

²⁰ 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).

²¹ Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC Aug. 14, 1996), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

²² 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).

²³ Case No. 2022-00244, HVT of April 4, 2023 Hearing, Testimony of Troy Norris at 11:21:51–11:22:01.

²⁴ Case No. 2022-00244, HVT of April 4, 2023 Hearing, Testimony of Troy Norris at 11:21:36–11:22:00.

²⁵ Cumberland District's Response to Staff's First Request, Item 3.

penalty in the amount of \$500. The Commission should waive the civil penalty of \$500 for each individual, Troy Norris, Eric Carver, Jay Cary, and the manager, Matthew Dyer, who attends a total of 12 hours of Commission-approved training in both calendar years 2024 and 2025, in addition to any other required yearly training and any other training that has been ordered by the Commission, and provides written notice that they attended the training within 30 days of attendance. The Commission finds that Cumberland District itself should not be assessed a civil penalty because it would not be in the best interest of the ratepayers to do so.

IT IS THEREFORE ORDERED that:

1. Mark Vibbert and Sandy Hieneman are dismissed as parties from this case.
2. The case style is amended to reflect the dismissal of Mark Vibbert and Sandy Hieneman. The case style of this matter is hereinafter: *Electronic Cumberland County Water District, Its Manager, Matthew Dyer, and Its Individual Commissioners, Troy Norris, Eric Carver and Jay Cary for Alleged Failure to Comply with KRS 278.300.*
3. Troy Norris, Eric Carver, Jay Cary, and its Manager Matthew Dyer are each assessed a civil penalty of \$500 to be paid within two years of the service of this Order for their willful violation of KRS 278.300.
4. Payment pursuant to ordering paragraph 3 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.
5. The Commission shall waive the civil penalty of \$500 for each individual, Troy Norris, Eric Carver, Jay Cary, and Matthew Dyer, who attends a total of 12 hours of

Commission approved training in calendar year 2024 and 2025, in addition to any other required yearly training and any other Commission ordered training, and provides written notice that they attended the training within 30 days of attendance.

6. Any written notice provided pursuant to ordering paragraphs 5 or 6 shall reference this case number and shall be retained in the post-case correspondence file.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
FEB 21 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Cumberland County Water District
133 Lower River Street
Burkesville, KY 42717-9622

*Matthew Dyer
Cumberland County Water District
133 Lower River Street
Burkesville, KY 42717-9622

*Jay Cary
Cumberland County Water District
133 Lower River Street
Burkesville, KY 42717-9622

*Mark Vibbert
Cumberland County Water District
133 Lower River Street
Burkesville, KY 42717-9622

*Eric Carver
Cumberland County Water District
133 Lower River Street
Burkesville, KY 42717-9622

*Matthew Dyer
Manager
Cumberland County Water District
133 Lower River Street
Burkesville, KY 42717-9622

*Sandy Heineman
Cumberland County Water District
133 Lower River Street
Burkesville, KY 42717-9622

*Troy Norris
Cumberland County Water District
133 Lower River Street
Burkesville, KY 42717-9622