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MAR 27 2025

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of :

Futrell Holding Co., LLC,	)	
	)	
Complainant	)	
v.	)	Case No. 2023-00367
	)	
Barkley Lake Water District	)	
	)	
Defendant	)	

**Response of Futrell Holding Co., LLC to the Commission's March 10, 2025 Order**

Futrell Holding Co., LLC ("Futrell") respectfully files its response to the Public Service Commission of Kentucky's ("Commission") March 10, 2025 Order rejecting Futrell's complaint for failing to state a *prima facie* case, failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c), and granting Futrell 20 days to file a conforming complaint ("Order"). Futrell also is filing simultaneously with this response its Verified Amended Complaint. Futrell responds herein to the portions of the Commission's Order concerning the Commission's jurisdiction over and redressability of the matters contained in the Complaint and Verified Amended Complaint. Futrell respectfully avers that the Commission does have jurisdiction over Barkley Lake Water District ("BLWD") and the matters complained of herein, and requests that the Commission assert its jurisdiction over BLWD to address and remedy the unlawful and unreasonable service provided by BLWD. Futrell states as follows in support of its response to the Commission's Order:

**A. Introduction.**

Generally, Futrell's complaint alleged that BLWD illegally and unreasonably placed a meter and water service lines on Futrell's property in order to serve an adjacent customer of

BLWD.<sup>1</sup> Neither the adjacent property owner nor BLWD ever requested or eventually obtained consent or an easement from Futrell to place the BLWD facilities on Futrell's property.<sup>2</sup> BLWD initially moved the meter to a different property, which also happened to be owned by Futrell, and again, upon which BLWD never obtained consent or an easement from Futrell to place the facilities.<sup>3</sup> When Futrell discovered that BLWD had illegally and unlawfully placed the meter and lines on its property again, Futrell immediately demanded that they be removed or that BLWD immediately cease providing water service through the lines to the adjacent property.<sup>4</sup> Counsel for BLWD agreed in writing that BLWD would cease providing service through the lines until the matter could be resolved.<sup>5</sup> Nonetheless, without notice to Futrell and in breach of the written agreement between the parties, BLWD failed to remove the offending facilities from Futrell's property and again began providing service through the water lines to the adjacent property.<sup>6</sup> Despite Futrell's repeated demands, BLWD has never obtained an easement from Futrell, has refused to remove the offending facilities from Futrell's property, and has continued providing service to the adjacent property owner through the lines.<sup>7</sup> Futrell filed its complaint against BLWD with the Commission on November 15, 2023 alleging the above facts in detail and providing a copy of the written agreement between Futrell and BLWD.

On March 10, 2025, the Commission issued its Order rejecting Futrell's complaint for failing to state a *prima facie* case and to conform to the requirements of 807 KAR 5:001, Section

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<sup>1</sup> Complaint at ¶¶ 7-9.

<sup>2</sup> *Id.* at ¶ 10.

<sup>3</sup> *Id.* at ¶¶ 11-12.

<sup>4</sup> *See id.* at ¶ 14.

<sup>5</sup> *Id.* at ¶¶ 16-17.

<sup>6</sup> *Id.* at ¶ 18.

<sup>7</sup> *See id.*

20(1)(c), and granting Futrell 20 days to file a conforming complaint. Specifically, the Commission held that it has “exclusive jurisdiction over the rates and service of utilities,” and “while expansive in scope with regards to ensuring ‘fair, just and reasonable’ service, the Commission’s authority is not limitless.”<sup>8</sup> It further held that KRS 278.260 “makes clear [that] complaints must be related, in some causal way, to the Commission’s jurisdiction over rates and service.”<sup>9</sup> Because Futrell’s complaint did not allege any rate violations, “the complaint must show that a service provided by the utility is ‘unreasonable, unsafe, insufficient, or unjustly discriminatory, or inadequate.’”<sup>10</sup>

**B. The Commission has jurisdiction over the matters complained of.**

As a threshold matter, Futrell’s complaint, even before amendment, clearly concerned matters over which the Commission has jurisdiction under KRS 278.040(2) and KRS 278.260, and over which it has authority to investigate and address under KRS 278.260 and KRS 278.280. First, Futrell’s complaint concerns service provided by BLWD. The placement of utility facilities and the extension of water service lines through Futrell’s property is part of the utility service provided by BLWD. Second, that service provided by BLWD was clearly unreasonable. The placement of utility facilities on property not owned by the customer to be served, without notice, consent, or obtaining an easement is clearly unreasonable because it violates 807 KAR 5:005, Section 6(3)(a), which requires utilities to obtain easements or rights-of-way prior to providing service.

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<sup>8</sup> Order at 5.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.*

Moreover, the Commission is empowered and obligated by statute to investigate and provide a remedy for complaints made against utilities over which it has jurisdiction. Indeed, KRS 278.280(1) states:

Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that the rules, regulations, practices, equipment, appliances, facilities or service of any utility subject to its jurisdiction, or the method of manufacture, distribution, transmission, storage or supply employed by such utility, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation.

The Commission also misconstrues Futrell’s complaint and requested remedies. The Commission held that “[i]n essence, Futrell is requesting that the Commission, on its behalf, order a utility to stop water service to an unrepresented third party because of a property dispute,”<sup>11</sup> and that “the cessation of service to a Barkley District customer is unlikely to resolve Futrell’s complaint and is not likely to be in the public interest.”<sup>12</sup> However, Futrell’s complaint alleges that BLWD, whose services the Commission has exclusive jurisdiction over, unreasonably and unlawfully placed its facilities on Futrell’s property without obtaining Futrell’s consent or an easement, and refuses to remove them. Futrell’s complaint to the Commission *does not* arise from a property dispute.

The Commission also avers that “these facts are far removed from the jurisdiction created by KRS 278.260 and sound in tort and contract law, beyond the Commission’s competency to adjudicate.”<sup>13</sup> The Commission’s own orders controvert this statement. In a very factually similar

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<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 6.

case to the one at hand, the complainant filed a complaint against his local water district alleging that the district had “installed a submeter on his service line in order to serve an adjoining property owner, and that [the district had] no easement or right-of-way over [complainant] to serve that adjoining property.”<sup>14</sup> In that case, the Commission ultimately found:

The Commission has no jurisdiction to determine a real property dispute as it applies to any determination of an easement or ownership of any waterline between [Plaintiff and adjoining land owner]. The Commission does have the jurisdiction to determine what are just, reasonable and adequate practices, service, and methods that a utility shall employ, and to fix the same by its order. KRS 278.280 . . . The Commission further finds that . . . Henry Water also violated 807 KAR 5:006, Section 5, when it failed to obtain an easement for the extension of service. The Commission finds that Henry Water is in violation of KRS Chapter 278 and regulations thereunder and should be assessed civil penalties under KRS 278.990(1).<sup>15</sup>

Because the matters complained of Futrell’s complaint are indistinguishable from the *Kallenberger* case, the Commission likewise has jurisdiction to investigate and remedy the matters complained of here.

**C. The matters complained of are redressable by the Commission.**

Moreover, the matters asserted in the complaint are redressable by the Commission. Futrell’s complaint does not aim solely to prevent BLWD from providing service through the water lines to the Horners. Rather, Futrell’s complaint requests that the Commission “initiat[e] an investigation...into BLWD’s violations of Kentucky statutes and/or regulations in relation to the Service Lines,”<sup>16</sup> which is explicitly contemplated by KRS 278.280(1). Futrell also suggested and requested other remedies, including that BLWD immediately cease providing water through the service lines, which would remedy the matters complained of because BLWD would be

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<sup>14</sup> Order at 1, *In the Matter of: Hans W. Kallenberger, Complainant v. Henry Cnty. Water District No. 2, Defendant*, Case No. 96-479 (Ky. P.S.C. Aug. 4, 1998).

<sup>15</sup> *Id.* at 3.

<sup>16</sup> Complaint at ¶ 1, Request for Relief ¶ (b).

prevented from the illegal and unreasonable use of Futrell’s property to provide its services.<sup>17</sup>

Nonetheless, Futrell’s complaint has been amended to also explicitly state that the Commission should compel BLWD to *remove* the meter and water service lines.

Further, the Complaint also requests that the Commission grant Futrell “all other relief to which it might appear entitled.”<sup>18</sup> If the Commission’s investigation of Futrell’s complaint reveals that BLWD has, in fact, violated Kentucky law as alleged in the complaint, then the Commission also is empowered to impose civil penalties upon BLWD pursuant to KRS 278.990, which also could remedy the violations alleged.

**D. The Commission misconstrued the allegations in the complaint.**

The Commission further misconstrued the law and its application to the complaint when it held that “the burden for obtaining easements rests with the utility and not the customer” and that the “Horner property owners were not obligated to secure easements prior to requesting service, and Barkley Lake District was forbidden from conditioning its service on the owners of the Horner property’s success regarding obtaining such an easement.”<sup>19</sup> The Commission then concluded that “Futrell’s allegations regarding easements are insufficient to support this complaint.”<sup>20</sup> But, the Commission’s conclusion is directly contradictory to its initial holding that “the burden for obtaining easements rests with the utility and not the customer.” Futrell’s complaint clearly alleges that BLWD placed its facilities on Futrell’s property *without* obtaining an easement—an action that plainly violates the Commission’s own holding and the law. Just because the Horners are not responsible under the law for obtaining an easement, and because

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<sup>17</sup> See *id.*

<sup>18</sup> Complaint, Request for Relief ¶ (d).

<sup>19</sup> Order at 8.

<sup>20</sup> *Id.*

the utility cannot refuse to provide service before obtaining one, does not mean that the utility is absolved of the obligation to first obtain the easement before providing service. 807 KAR 5:006, Section 6(3)(a) is clear and unqualified: “Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility.”

The Commission also misinterpreted and misapplied an adjacent section of that regulation when it held, “Barkley Lake District was forbidden from conditioning its service on the owners of the Horner property’s success regarding obtaining such an easement [from Futrell].”<sup>21</sup> 807 KAR 5:006, Section 6(3)(b)(2) reads, “A utility shall not...Refuse to provide service to a prospective or existing customer on the basis of that customer’s refusal to grant an easement for facilities that do not serve the customer.” This regulation prevents the utility from refusing to provide service to a customer that had previously refused to grant an easement for facilities not serving that customer (for example, if Futrell had requested service from BLWD and BLWD refused to provide service to Futrell because Futrell had previously refused to grant BLWD an easement to provide service to another customer, like the Horners, then BLWD would have violated 807 KAR 5:006, Section 6(3)(b)(2)). That is not the situation alleged here and that part of the regulation does not apply.

**E. The complaint conformed to the requirements of 807 KAR 5:006, Section 20(1)(c).**

Finally, the Commission held that “Futrell’s remaining allegations must also be rejected.”<sup>22</sup> The Commission supported this rejection by stating that the allegations in the complaint “that the pipes serving the Horner property were not adequately inspected prior to being placed in service,” and regarding the “length of the pipe exceeding the maximum allowed

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

by regulation are likewise without any supporting documentation” were not supported by documentation.<sup>23</sup> As an initial matter, Futrell provided a copy of the written agreement between Futrell and BLWD concerning the cessation of service while the dispute between Futrell and the Horners was worked out (documentation) as Exhibit A to the complaint. Regardless, neither KRS 278.260 nor 807 KAR 5:005, Section 20(1)(c) require the complainant to provide documentation supporting the allegations in order to state a *prima facie* case and to be further investigated by the Commission. The Commission’s records show numerous formal complaints that have been accepted as stating a *prima facie* case and further investigated without any supporting documentation. Nonetheless, the complaint has been amended to include verification of the facts alleged therein.

**F. Conclusion.**

In sum, Futrell’s complaint alleges that BLWD unreasonably and unlawfully placed its facilities on Futrell’s property in order to serve an adjacent customer without obtaining Futrell’s consent or an easement, and it refuses to remove them. The Commission has jurisdiction over BLWD and the unreasonable services alleged to have been provided in the complaint. The Verified Amended Complaint further supports Futrell’s allegations, and the Commission should find that the Verified Amended Complaint states a *prima facie* case against BLWD, accept the Complaint, order BLWD to satisfy the matters complained of therein or answer the Verified Amended Complaint within 10 days, and provide the relief requested by Futrell.

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<sup>23</sup> *Id.* at 8-9.



Respectfully submitted,



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COUNSEL FOR FUTRELL HOLDING CO.,  
LLC

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Futrell Holding Co., LLC,	)	
	)	
Complainant	)	
v.	)	Case No. 2023-00367
	)	
Barkley Lake Water District	)	
	)	
Defendant		

**VERIFIED AMENDED COMPLAINT**

**Introduction**

1. Futrell Holding Co., LLC (“**Futrell**”) respectfully requests that the Public Service Commission of Kentucky (“**Commission**”) exercise its authority pursuant to KRS 278.040, KRS 278.260(1), and KRS 278.280 to initiate an investigation into Barkley Lake Water District’s (“**BLWD**”) violations of Kentucky statutes and/or regulations, including, but not limited to 807 KAR 5:066. Futrell further requests that the Commission issue an order requiring BLWD to immediately remove its unlawful facilities from the Futrell property and immediately cease providing water service in a manner that violates Kentucky law.

**Parties**

2. Futrell is a limited liability company organized under the laws of the Commonwealth of Kentucky, with its principal office located at 50 Main Street, P.O. Box 631, Cadiz, Kentucky.

3. Barkley Lake Water District is a regional water district utility providing water service in Trigg County in the Commonwealth of Kentucky, operating under the jurisdiction of the Commission.

### **Jurisdiction**

4. The jurisdiction of the Commission extends to all utilities in the Commonwealth of Kentucky. The Commission has exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.040(2).

5. The Commission has “original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained.” KRS 278.260(1); *Bulldog’s Enterprises, Inc. v. Duke Energy*, 412 S.W.3d 210, 211 (Ky. Ct. App. 2013).

6. Further, jurisdiction is proper pursuant to KRS 278.280(1), which provides that upon receiving a complaint, the Commission “shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed enforced or employed, and shall fix the same by its order, rule or regulation.”

7. This Complaint relates to the unreasonable and unlawful “services” provided by BLWD, a utility operating in Kentucky as defined by KRS 278.010(13).

### **Factual Allegations**

8. Futrell owns certain real property located in Trigg County, Kentucky, and more specifically described as the Lakeway Shores Subdivision (“**Lakeway Shores**”). Futrell also owns other real property located in Trigg County, and more specifically described as PVA Parcel Numbers 15-009 and 15-016 (the “**Wesvaco Property**” and together with Lakeway Shores, the “**Futrell Property**”).

9. BLWD provides water service to a parcel of real property located adjacent to the Futrell Property, and which is commonly referred to as 426 Anonymous Road, Cadiz, Kentucky 42211 (the “**Horner Property**”).

10. BLWD does not provide water service to any part of the Futrell Property.

11. The water service lines (“**Service Lines**”) through which BLWD provides water service to the Horner Property encroach on Futrell’s property, which is located between BLWD’s water meter (“**Meter**”) and the Horner Property.

12. 807 KAR 5:006, Section 6(3)(a) clearly states that [o]btaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility.”

13. BLWD placed the Meter and the Service Lines on the Futrell Property, without an easement and without Futrell’s consent.

14. In June 2022, Futrell contacted BLWD and requested that it remove the Meter because it was located on Futrell’s property. The grounds for Futrell’s request were that BLWD did not have an easement allowing it to place the Meter on Futrell’s property, and no easement existed for the Service Lines which were connected to the meter.

15. BLWD failed to provide a substantive response to Futrell’s request. Rather, BLWD, without providing notice to Futrell, relocated the Meter to another parcel of property also owned by Futrell.

16. Again, BLWD placed the Meter on Futrell property without an easement and without Futrell’s consent. Futrell has never provided consent as of the date of this pleading and neither the Horner nor BLWD have obtained an easement to place the BLWD facilities on Futrell’s property as of the date of this pleading.

17. On September 20, 2022, and again on September 27, 2022, Futrell's managing member met with BLWD manager, J. Herring, to discuss issues relating to the Meter and Service Lines.

18. In the course of his discussions with Futrell, Mr. Herring represented that BLWD's policy is to require customers to demonstrate that their service lines are not encroaching on land owned by others before BLWD will provide water service. Upon information and belief, the Horners did not demonstrate to BLWD that the lines were not encroaching on land owned by others before BLWD placed its facilities on the Futrell Property and provided service to the Horner Property.

19. Furthermore, during the September 27 meeting, Mr. Herring, on behalf of BLWD, entered into an agreement with Futrell, pursuant to which BLWD agreed it would not provide water to the Service Lines until the issue could be resolved with the Horners.

20. BLWD reduced its agreement with Futrell to writing in a September 27, 2022 email from its legal counsel, which provided in pertinent part that "BLWD will not move forward to provide water to Ms. Horner. . . as long as your lawsuit with Ms. Horner is pending." A copy of the September 27, 2022 email is attached as **Exhibit A**.

21. The written agreement that BLWD would not provide service to the Horner Property through the facilities located on the Futrell Property was intended to maintain the *status quo* while Futrell and the Horners resolved the dispute between them. Futrell never provided consent for the BLWD facilities to remain on the property and BLWD still never obtained an easement from Futrell to do so. The written agreement did not operate to provide such consent or easement.

22. Nonetheless, BLWD subsequently breached its written agreement with Futrell when it began supplying water to the Horner Property through the Service Lines.

23. In addition to violating its express written agreement with Futrell, BLWD's actions also violate Kentucky law. BLWD placed its utility facilities on Futrell property without Futrell's consent and without first obtaining an easement. *See* 807 KAR 5:006, Section 6(3)(a).

24. BLWD further violated 807 KAR 5:066(9)(3), which provides:

In the installation of the service line, the utility shall require the customer to leave the trench open and pipe uncovered, and the utility shall inspect the line to determine it is free from any tee, branch connection, irregularity or defect. The utility may substitute for its inspection an inspection by the appropriate state or local plumbing inspector, if proof of that inspection is presented to the utility by the customer.

25. BLWD is providing water service in violation of 807 KAR 5:066(9)(3) because it connected the Service Lines to the Meter and began providing water to the Horner Property without conducting an inspection of the Service Lines and without receiving proof that the Service Lines were inspected by a state or local plumbing inspector as required by 807 KAR 5:066(9)(3).

26. Furthermore, BLWD violated 807 KAR 5:066(10)(2) because the Service Lines exceed the maximum length allowed under the regulation. Pursuant to KAR 5:066(10)(2), the maximum allowable length for an individual small pipe line, such as the Service Lines, is 500 feet. The length of such pipes may only be extended with the approval of the Public Service Commission.

27. Here, the distance between the Meter and the Service lines is approximately 3,696 feet, more than seven times longer than what is allowed under Kentucky law. Upon information and belief, BLWD did not seek, nor did the Public Service Commission provide, approval for the non-conforming Service Lines.

28. By placing utility facilities intended to serve another customer on Futrell's property without consent and without an easement, BLWD has committed multiple violations of Kentucky law.

29. Therefore, Futrell asks the Public Service Commission to investigate the matters alleged in this complaint pursuant to KRS 278.260 and KRS 278.280, and address these violations, for example, by compelling BLWD to immediately remove the offending facilities from Futrell property and/or immediately cease providing water through the Service Lines.

**Requested Relief**

WHEREFORE, Futrell Holding Co., LLC respectfully requests that this Commission issue an Order:

(a) Initiating an investigation pursuant to KRS 278.260(1) by the Commission into BLWD's violations of Kentucky statutes and/or regulations in relation to the Service Lines and the facts alleged herein;

(b) Compelling BLWD to immediately remove the Service Lines from Futrell's property;

(c) Compelling BLWD to immediately cease providing water through the Service Lines;

(d) Requiring BLWD to raise and plead any objections it might have to the allegation of violations of Commission regulations; and

(e) Granting Futrell all other relief to which it might appear entitled.

Dated: March 27, 2025

Respectfully submitted,



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COUNSEL FOR FUTRELL HOLDING CO.,  
LLC



VERIFICATION

I, Tim Futrell, Member, Futrell Holding Co. LLC, after being duly sworn, state that the facts contained in this Verified Amended Complaint are true and accurate to the best of my knowledge.

Tim Futrell

Tim Futrell

STATE OF TENNESSEE     )  
  )  
COUNTY OF DAVIDSON    )

Subscribed and sworn to before me by Tim Futrell on this the 25<sup>th</sup> day of March, 2025.



Kellie Highfill  
Notary Public State at Large

My Commission Expires: 2/19/29

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 27th day of March, 2025, the forgoing document was filed electronically by email with the Public Service Commission of Kentucky, and served by U.S. First Class Mail, postage prepaid, upon:

Barkley Lake Water District  
c/o Scott Bridges, Chairman of the Board of  
Commissioners  
P.O. Box 308  
Cadiz, KY 42211

/s/ Katie M. Glass  
Katie M. Glass

# EXHIBIT A

To: [REDACTED]  
Cc: Barkley Lake Water District <blwd@att.net>  
Sent: Tue, Sep 27, 2022 3:04 pm  
Subject: BLWD/Carrie Horner

Tim,

In accordance with the agreement we reached today, this email is to inform you that BLWD will not move forward to provide water to Ms. Horner. We will maintain the status quo as long as your lawsuit with Ms. Horner is pending. Further, as was stated, should the BLWD Board not agree with the agreement we have reached today, I will contact you with that information.

I will attempt to monitor the case on CourtNet but should you have any news of settlement, agreement or court resolution, I'd appreciate hearing from you. If I have misstated anything in this email, please respond as soon as possible

H. B. Quinn  
Attorney At Law  
PO Box 1549  
Cadiz, KY 42211  
[REDACTED]

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