

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO CITY OF	)	
ALBANY FOR ALLEGED ASSESSMENT OF AN	)	CASE NO.
UNAPPROVED RATE FOR CUMBERLAND	)	2025-00390
COUNTY WATER DISTRICT	)	

ORDER

On June 3, 2026, the city of Albany (Albany) and intervenor Cumberland County Water District (Cumberland District), jointly filed a Joint Stipulation and Settlement and a joint motion for acceptance of settlement. This case was initiated to investigate whether Albany had impermissibly overcharged Cumberland District for wholesale water, whether and how much of a refund should be required, whether Albany’s actions constituted a willful violation of KRS 278.160(2) or other provisions of Chapter 278, and if so, whether civil penalties should be imposed.<sup>1</sup>

BACKGROUND

This case arises out of Cumberland District’s Alternative Rate Filing (ARF) in Case No. 2025-00226.<sup>2</sup> Cumberland District is a water district created pursuant to KRS Chapter 74 and is subject to Commission jurisdiction pursuant to and KRS 278.010(3), KRS 278.015 and KRS 278.040. Cumberland District purchases wholesale water from Albany pursuant to a contract executed on November 5, 2003, and filed with the

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<sup>1</sup> Opening Order (Dec. 23, 2025) at 3.

<sup>2</sup> Case No. 2025-00226, *Electronic Application of Cumberland County Water District for an Adjustment of Rates Pursuant to 807 KAR 5:076* (filed June 26, 2025), Application.

Commission on August 13, 2009.<sup>3</sup> The term of the contract indicated a rate of \$2.10 per 1,000 gallons for usage over 1.5 million gallons.

In 2018, Albany increased the wholesale rate it billed Cumberland District to \$2.92 per 1,000 gallons for usage over 1.5 million gallons.<sup>4</sup> Although not filed with the Commission, Cumberland District paid the new amounts without objection. After the initiation of the present case, Albany filed its increased rates with the Commission on January 9, 2026.<sup>5</sup>

Albany's response to the opening order alleged that (1) the contract is void because cities are not permitted to enter into contracts for terms of greater than 20 years (the Cumberland District contract is for 40 years) under Kentucky Constitution, Section § 164; and (2) a city is not required to sell water to a nonresident customer and can terminate a contract without liability.<sup>6</sup> However, Albany admitted that it unintentionally charged Cumberland District Utility Gross License Tax (UGLT)<sup>7</sup> in violation of KRS 160.613(1)(b), which states that the tax is inapplicable to resold utility services.

Upon its motion, Cumberland District was permitted to intervene in the present case.<sup>8</sup> After Albany responded to a round of data requests, one from Commission Staff and one from Cumberland District, an informal conference was conducted with the

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<sup>3</sup> Albany's Response to Commission Staff's First Request for Information (filed Feb. 12, 2026), Item 4, Attachment "Attachment\_Contract."

<sup>4</sup> Albany's Response to Opening Order (filed Jan. 12, 2026) at 1.

<sup>5</sup> TFS2026-00012, PSC KY Sheet 1, (filed Jan. 9, 2026), effective Feb. 12, 2026.

<sup>6</sup> Albany's Response to Opening Order at 2.

<sup>7</sup> Albany's Response to Cumberland District's First Request for Information (filed Mar. 11, 2026), Items 1-3.

<sup>8</sup> Order (Ky. PSC Feb. 4, 2026).

parties.<sup>9</sup> Thereafter, Albany and Cumberland District filed the joint stipulation, settlement agreement, and motion to accept settlement. The settlement included a stipulation that Cumberland District was overcharged an amount that equaled or exceeded \$154,588.66 and provided for a lump sum payment of \$130,461.58.<sup>10</sup>

### LEGAL STANDARD

KRS 278.990(1) states:

Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

Although this statutory provision is not completely clear as to whether “willfully” applies to each clause, the Kentucky Court of Appeals expressed that willfulness was a

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<sup>9</sup> See Notice of Filing of Informal Conference Memorandum and Attendance List (filed Apr. 16, 2026).

<sup>10</sup> Joint Stipulation and Settlement at 3, 5.

prerequisite to assessment of a civil penalty.<sup>11</sup> Regardless, “willfully” clearly applies to utilities and their officers, agents, or employees violating specific statutes or regulations. This interpretation was supported by a recent Commission decision, which stated that “the Commission must also determine whether these violations are willful before any penalties may be assessed under KRS 278.990” and defined willful behavior as follows:

A willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily. 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. 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>12</sup>

KRS 278.160(2) states

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

### DISCUSSION AND FINDINGS

Having reviewed the record and being advised, the Commission finds that the joint motion to accept the settlement agreement between Albany and Cumberland District should be granted. This Order should not be considered a finding regarding any disputed facts or legal interpretations. In light of the amount of the undisputed UGLT refund and

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<sup>11</sup> *Public Service Com'n v. Jackson County Rural Elec. Co-op., Inc.*, 50 S.W.3d 764, 769 (Ky. App. 2000).

<sup>12</sup> Case No. 2021-00339, *Electronic Alleged Failure of North Manchester Water Association, Inc., Its Officers, Steve Davis, Bill Hurd, Carl Gregory Hoskins, Bobby Wolfe, Henry Smith, Ted Woods, Carl David Crawford, and Its Manager, Jerry Rice, to Comply with KRS 278.140, KRS 278.230, 807 KAR 5:006, Sec. 4, and KRS 278.990* (Ky. PSC Mar. 7, 2023), Order at 6 (citations omitted).

the amount of the disputed claim related to the 2018 rate increase; the Commission finds that the settlement amount of \$130,461.58 is reasonable to resolve the claims.

Regarding violation of KRS 278.160(2), the Commission does not find a willful violation.

IT IS THEREFORE ORDERED that:

1. Albany and Cumberland District's June 3, 2026 joint motion to accept settlement is granted.
2. Albany is not found to have committed a willful violation for the actions or omissions described in the Commission's December 23, 2025 opening Order.
3. This case is closed and shall be removed from the Commission's docket.


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Entered on this 8th day of July, 2026.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Angie Hatton  
Chair

  
\_\_\_\_\_  
Mary Pat Regan  
Vice Chair

  
\_\_\_\_\_  
Andrew W. Wood  
Commissioner

  
\_\_\_\_\_  
Barry L. Mayfield  
Commissioner

ATTEST:

  
\_\_\_\_\_  
Linda C. Bridwell, PE  
Executive Director

Case No. 2025-00390

## Service List for 2025-00390

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- \* Ashley Tucker  
Clerk, City of Albany, Kentucky  
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- \* Cumberland County Water District  
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Burkesville, KY 42717-9622
  
- \* Jay Cary  
Cumberland County Water District  
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Burkesville, KY 42717-9622
  
- \* Michael Ballard  
General Manager  
Cumberland County Water District  
133 Lower River Street  
Burkesville, KY 42717-9622
  
- \* Mark Vibbert  
Cumberland County Water District  
133 Lower River Street  
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- \* Eric Carver  
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- \* JR Thacker  
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