

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE INVESTIGATION INTO WESTERN FLEMING)
COUNTY WATER DISTRICT'S AND CHAIRMAN)
CLYDE THOMAS' ALLEGED WILLFUL VIOLATION) CASE NO. 9673
OF THE COMMISSION ORDER ENTERED MARCH 30,)
1987)

O R D E R

On March 30, 1987, the Commission entered an Order in this case finding that, among other violations of Commission regulations, Western Fleming County Water District ("Western Fleming") had increased its wholesale rate to Buffalo Trail Water Association and its service connection and service reconnection charges without the approval of the Commission as required by 807 KAR 5:001, Section 10, and 807 KAR 5:006, Section 10. A fine of \$500 was levied against Western Fleming and was paid in full on or about May 1, 1987.

On October 14, 1987, a follow-up review was performed by Commission Staff. The Staff Report, a copy of which is attached, alleges that Western Fleming continues to charge the unauthorized rates in spite of the Commission's Order. The report further alleges that the Chairman of Western Fleming, Mr. Clyde Thomas, has openly acknowledged to Commission Staff that those rates and connection changes which were the subject of the show cause hearing in Case No. 9673 and which were addressed by the Order entered March 30, 1987 are still being charged.

After considering the matter and being advised, the Commission, on its own motion, finds that this case should be reopened and a hearing should be held. The Commission further finds the style of this case should be amended to include Mr. Clyde Thomas who as Chairman of Western Fleming is charged with the duty to control and manage the affairs of Western Fleming.

IT IS THEREFORE ORDERED that:

1. Case No. 9673, formerly styled Kentucky Public Service Commission v. Western Fleming County Water District, be and it hereby is reopened.

2. Western Fleming shall appear before the Commission on June 21, 1988, at 10:00 a.m., Eastern Daylight Time, at the Commission's Offices in Frankfort, Kentucky, and show cause, if any it can, why it should not be subject to the penalties prescribed in KRS 278.990 for failure to comply with the Commission's regulations and its Order of March 30, 1987.

3. Mr. Clyde Thomas, Chairman of Western Fleming, shall appear as an officer and agent of the utility before the Commission and show cause, if any he can, why he should not be subject to the penalties prescribed in KRS 278.990 for willfully violating and procuring, aiding and abetting a willful violation of the Commission's regulations and Order of March 30, 1987.

Done at Frankfort, Kentucky, this 24th day of May, 1988.

PUBLIC SERVICE COMMISSION

Richard D. Thomas, Jr.
Chairman

Robert M. Davis
Vice Chairman

James N. Williams, Jr.
Commissioner

ATTEST:

Executive Director

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

**STAFF REPORT
ON
UNAUTHORIZED RATES AND CHARGES
OF
WESTERN FLEMING COUNTY WATER DISTRICT**

**Prepared By: Barbara Jones
Public Utilities Rate
Analyst, Chief
Water, Sewer and Communication
Rate Design Branch
Rates and Tariffs Division**

STAFF REPORT
ON
UNAUTHORIZED RATES AND CHARGES
WESTERN FLEMING COUNTY WATER DISTRICT

BACKGROUND

On September 16, 1986, a hearing was held in Case No. 9673, Kentucky Public Service Commission vs. Western Fleming County Water District. Subsequently, on March 30, 1987, the Public Service Commission ("Commission") entered an Order finding that Western Fleming County Water District ("Western Fleming") had increased its connection fees, reconnection charges and its rate for water sold to Buffalo Trail Water Association ("Buffalo Trail") without Commission approval. A fine of \$500 was levied for these and other violations. (Attachment 1) The fine was paid on or about May 1, 1987.

Western Fleming also sells water to Southern Mason Water District ("Southern Mason"), Fleming County Water Association ("Fleming"), and the City of Flemingsburg ("City"). Subsequent to the hearing on September 16, 1986, but prior to entry of the Order in Case No. 9673, Mr. Clyde Thomas, Chairman of the District, submitted letters requesting increases in the Southern Mason rate from \$.70 to \$1.00 per 1,000 gallons, in the Buffalo Trail rate from \$.55 to \$.66 per 1,000 gallons, and in the Fleming County rate to \$1.00 per 1,000 gallons. An increase in the connection fee from \$250 to \$300 and establishment of a \$20.00 reconnection fee were also requested. Mr. Thomas was informed by letter dated

September 30, 1986, that the request was not in compliance with Commission regulations regarding the proper form for rate increase filings, and copies of the pertinent regulations were sent. A follow-up letter was written on October 24, 1986, explaining in detail the necessary steps in filing for a rate increase and again furnishing copies of pertinent regulations. (Attachments 2, 2a, 2b and 2c) No further filings were made by Western Fleming.

On September 9, 1987, George Allison, Utility Inspector in the Commission's Division of Engineering performed an inspection at Buffalo Trail. During the inspection, he was informed that the rate being charged by Western Fleming for purchased water was \$.55 per 1,000 gallons. The approved rate is \$.50 per 1,000 gallons. The 1986 Annual Report filed by Western Fleming also showed the rate for Buffalo Trail as \$.55 per 1,000 gallons, the same as the unauthorized rate found in Case No. 9673.

A follow-up investigation was performed by Barbara Jones of the Commission's Division of Rates and Tariffs on October 14, 1987, at Western Fleming's offices in Ewing, Kentucky. Western Fleming's chairman, Mr. Thomas, was interviewed.

FINDINGS

During the interview with Mr. Thomas, he stated that the \$300 connection fee, the \$20 reconnection fee, and the rate of \$.55 per 1,000 gallons of water, which were the subject of the show cause hearing in Case No. 9673, were still being charged.

With regard to the \$300 unapproved connection charge, Mr. Thomas stated Western Fleming realizes no excess revenue from this amount and, in fact, does not recover its costs in many instances.

This is also true with respect to the \$20 reconnection charge according to Mr. Thomas.

Buffalo Trail receives water from Western Fleming in close proximity to the plant and does not utilize other Western Fleming facilities. Western Fleming and Buffalo Trail have an agreement whereby the water charge is to be the cost of water at the plant. According to Mr. Thomas, that cost is now at least \$.65 per 1,000 gallon; thus, even though the \$.55 per 1,000 gallon rate is higher than the authorized rate, it is still below actual cost.

Staff again explained in detail the procedure and filing requirements in obtaining approval of such rates and charges and provided copies of forms for use in submitting cost justification. Mr. Thomas indicated this would be done. He also indicated he thought such cost data had been submitted in an audit report; however, other than annual reports, such audit has not been located in the Commission's files.

The 1986 Annual Report shows sales to Buffalo Trail of 71,930,500 gallons of water and revenues of \$37,094.58. The rate was increased in February or March of 1986. Based on average monthly usage, if the increase became effective in February, the overcharge for 1986 was approximately \$3,297.

CONCLUSIONS AND RECOMMENDATIONS

Western Fleming continues to charge unauthorized rates in spite of the previous show cause hearing and Order. Western Fleming's chairman indicates these charges are still below cost; however, Western Fleming has failed to follow through with appropriate filings with the Commission for determination of the

reasonableness of and/or approval of such rates and charges. The Commission's Order in Case No. 9673 is clear that only those rates and charges approved by the Commission may be made. It is therefore recommended that Case No. 9673 be reopened to address the issue of noncompliance with the Commission's Order.

Barbara H. Jones

Prepared By: Barbara Jones
Public Utilities Rate
Analyst, Chief
Water, Sewer and Communication
Rate Design Branch
Rates and Tariffs Division

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE KENTUCKY PUBLIC SERVICE)	
COMMISSION)	
VS.)	CASE NO. 9673
WESTERN FLEMING COUNTY WATER)	
DISTRICT)	

O R D E R

On August 29, 1986, Western Fleming Water District ("Western") was ordered to appear and show cause why it should not be penalized under KRS 278.990 for failure to comply with the Commission's regulations, with deficiencies noted for the years 1984, 1985 and 1986.

A hearing was held on September 16, 1986. Clyde Thomas, Chairman of Western, and J. T. Hammonds, Treasurer, appeared as officers of Western and to offer testimony.

The evidence showed that Western had received copies of staff inspection reports in 1984 and 1985 (and a report for 1986 was handed them at the hearing), detailing multiple violations of Commission laws and regulations recurring yearly. The violations specified in the Show Cause Order of August 29, 1986, included contract rate and customer charge increases without Commission approval, and inadequate maintenance and safety practices, all compounded by inadequate record-keeping. Western's officers admitted that they promised to correct the violations but had done

nothing until June, 1986, when a pressure testing device was purchased, and a "testing program" commenced. A post-hearing document filed by Western's Treasurer discloses that 16 meters were checked in 1984 and 19 meters in 1985, although the Chairman agreed to check "ten a month which will make it average out to about every five years."¹

When interrogated about charging Buffalo Trail Water District \$0.55 per thousand gallons instead of \$0.50, per Western's tariff, Mr. Thomas responded that Western had requested by letter (undated) that the Commission approve the higher rate, but had received no acknowledgement of or response to the letter. Then "someone" (not the witness) had put the requested rates into effect.² Mr. Thomas acknowledged that the letter was undated, but stated that it had been mailed to the Commission in November, 1985. There is no evidence in Commission files that the letter was received.

This proceeding discloses an intolerable situation. Here there is admission of Western's failure to observe Commission regulations in a number of instances over a period of more than 3 years. Though given ample opportunity, the district did not respond adequately to correct the violations. This pattern of conduct cannot be allowed to continue.

¹ Transcript of Evidence, ("T.E."), p. 11.

² T.E., pp. 7, 15.

Western's Chairman stated at the hearing that he had not asked the District's attorney to accompany him to the hearing because he "didn't feel it was that serious." The officers of the district should be aware that KRS 278.990 provides for penalties which may be imposed against the officers or employees of a utility who are in willful violation of KRS 278 or the regulations promulgated thereunder.

FINDINGS AND CONCLUSIONS

1. Violations of Commission regulations have existed for an extended time, even though Commission inspections have placed Western on notice as to those violations and representations were made that prompt action would be forthcoming.

2. The following allegations of violation have been un rebutted or admitted:

a. Western raised its service connection and service reconnection charges without the approval of the Commission as required by 807 KAR 5:001, Section 10, and 807 KAR 5:006, Section 10.

b. Western did not maintain history cards and test cards on its meters as required by 807 KAR 5:006, Section 15.

c. Western did not have a pressure recording device that could record a continuous 24-hour test as required by 807 KAR 5:066, Section 6 (2).

d. Western did not perform annual pressure surveys or keep records as required by 807 KAR 5:066, Section 6 (3).

3. These violations, as stated in the preceding paragraph (2) have been of an extended duration.

4. Western had not received Commission approval (907 KAR 5:067) for the \$0.05 rate increase to Buffalo Trail Water Association.

5. The Commission is aware of the severe impact fines and penalties may have on small water utilities and their ratepayers. However, in this case a fine should be assessed.

IT IS THEREFORE ORDERED that the Findings and Conclusions as stated in numbered paragraphs 1, 2a through 2d, 3, 4, and 5 are specifically adopted and incorporated herein as if fully stated. Furthermore, Western shall immediately correct all such violations enumerated therein.

IT IS FURTHER ORDERED that a fine of \$500 is levied against Western, one-half of which is due and payable within 30 days after receipt of this Order; and the remaining one-half due and payable 90 days from the date of this Order, unless Western demonstrates to the satisfaction of the Commission that it has remedied all violations heretofore communicated to Western. Please send your certified check or money order, made payable to the Kentucky State Treasurer, within the time directed herein to Leigh Hutchens, Accountant Supervisor, Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601.

Done at Frankfort, Kentucky, this 30th day of March, 1987

By the Commission

ATTEST:

Forest M. Elger
Executive Director

Western Fleming Water District
C/O Clyde Thomas
Ewing, KY 41039

September 19, 1986

Barbara Jones, Rate Analyst
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, KY 40601

Dear Ms. Jones,

Western Fleming Water District would like to request approval of a rate increase to Southern Mason Water District from the current rate of \$.70 per thousand to a new rate of at least \$1.00 per thousand. We feel this would be appropriate considering line use, water tower storage, and the cost of pumping water. We would like for this rate to go into effect immediately upon your approval.

Sincerely,

Clyde Thomas
Clyde Thomas
Chairman

RECEIVED

OCT 3 1986

RATES AND TARIFFS

ATTACHMENT 2



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

September 30, 1986

Mr. Clyde Thomas
Chairman
Western Fleming Water District
Ewing, Kentucky 41039

Dear Mr. Thomas:

This is in response to your September 19 letter to Barbara Jones of our staff requesting certain rate adjustments. Your request is not in compliance with our rules and regulations, nor supported by any financial documentation. Accordingly, the Commission is unable to consider your request in this manner.

I am attaching copies of pertinent regulations for your review which outlines the manner to file for rate increases. I suggest you use 807 KAR 5:076 because it is intended for smaller utilities like Western Fleming Water District.

Sincerely,

Forest M. Skaggs

Forest M. Skaggs
Executive Director

FMS:lb

Enclosure

ATTACHMENT 2 a

Western Fleming Water District
C/O Clyde Thomas
Swing, KY 41039

September 19, 1986

Barbara Jones, Rate Analyst
Public Service Commission
730 Schenkel Lane
P.O. Box 616
Frankfort, KY 40601

FILED

SEP 22 1986

**PUBLIC SERVICE
COMMISSION**

Dear Ms. Jones,

Western Fleming Water District would like to request the following rate adjustments:

Increase charge to Buffalo Trail Water Association from \$.55 per thousand to at least \$.68 per thousand.

Increase charge to Fleming County Water Association to \$1.00 per thousand.

Meter Connection from \$250.00 to \$300.00.

Reconnection after removal for failure to pay bill to \$20.00.

In regards to the charge to Buffalo Trail you have a copy of our last audit report which shows what what pumping charges for the plant were last year.

Sincerely,

Clyde Thomas
Clyde Thomas
Chairman



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

October 24, 1986

Mr. Clyde Thomas, Chairman
Western Fleming County Water District
Ewing, Kentucky 41039

Dear Mr. Thomas:

This is in response to your September 19 letter to Barbara Jones requesting rate adjustments for water sales to the Buffalo Trail and Fleming County Water Associations and certain non-recurring charges. I have previously responded to a similar letter regarding other rate requests. The Commission also cannot act on this request because it has not been made in accordance with our regulations. Our primary concern in reviewing such requests is the financial need for such increases, and you have made no such showing. Your reference to the last audit report as financial support is insufficient.

There are three options available to you to make such rate requests:

1. Apply for a general rate increase pursuant to 807 KAR 5:001, Section 10, or 807 KAR 5:076 (copies of both are enclosed). The latter regulation is designed for smaller utilities such as Western Fleming and is the easier one to prepare.

2. Enter into a special contract for water sales to the Associations. Such contracts must be approved by the Commission pursuant to 807 KAR 5:011, Section 13 (copy enclosed). This should be done only if you do not now sell water to them under a general tariff.

3. Apply for the non-recurring revision pursuant to 807 KAR 5:011, Section 10 (copy enclosed). This is a limited procedure

Mr. Clyde Thomas
October 24, 1986

ATTACHMENT 2C

Page Two

to address rate revisions dealing only with charges incurred for specific services rendered, such as meter connections and reconnection fees.

If I can be of further assistance, please feel free to contact me at (502) 564-2473.

Sincerely,

PUBLIC SERVICE COMMISSION

Forest M. Skaggs

Forest M. Skaggs
Executive Director

FMS/hv

Enclosures