

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 OF THE) CASE NO. 9673
COMMISSION'S ORDER ENTERED)
MARCH 30, 1987)

O R D E R

On March 30, 1987, the Public Service Commission ("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 ("Buffalo Trail") and its service connection and reconnection charges without Commission approval. 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 and a report was filed with the Commission. The Staff Report indicated that, in spite of the Commission's March 30, 1987 Order, the violations had not been corrected and that Clyde Thomas, Chairman of Western Fleming, openly acknowledged continuing violations. On May 24, 1988, the Commission entered an Order reopening Case No. 9673 and requiring Western Fleming and Mr. Thomas, as an officer and agent of the utility, to appear before it to show cause why the utility and Mr. Thomas should not be subject to the penalties prescribed in KRS 278.990 for willful

violation of the Commission's regulations and Order. By letter dated May 25, 1988, a copy of the Staff Report was provided to Western Fleming through Mr. Thomas, along with the Order.

A hearing was held in the Commission's offices in Frankfort, Kentucky, on June 21, 1988. Mr. Thomas appeared and offered testimony on behalf of Western Fleming and was questioned at length to determine Western Fleming's degree of compliance with the March 30, 1987 Order. Western Fleming's other Commissioners, Billy Cowan and J. T. Hammond, were present at the hearing, but did not testify. Commission Staff member, Barbara Jones, also testified and was made available for cross-examination by Western Fleming. At the conclusion of testimony, the hearing was continued generally for the purpose of receiving additional testimony and evidence from Western Fleming. On August 5, 1988, a letter was sent by the Commission's Executive Director stating that information requested at the hearing had not been filed and directing that the required information be filed within 10 days. On August 25, 1988, a letter was sent to Western Fleming's attorney requesting written confirmation of a telephone conversation between Western Fleming's attorney and the Commission's attorney on August 24, 1988, which indicated Western Fleming had no further testimony or evidence and that no further hearing would be needed. The requested letter of confirmation has not been received; however, Western Fleming has made no effort to present additional evidence. Therefore, the record is closed and the case stands submitted.

The Commission, having reviewed the evidence of record and being advised, is of the opinion and finds that:

1. The March 30, 1987 Order specifically directed Western Fleming to immediately correct the following violations:

(a) Western Fleming was not maintaining history cards and meter test cards as required by 807 KAR 5:006, Section 15;

(b) Western Fleming did not have a pressure recording device for recording a continuous 24-hour test as required by 807 KAR 5:066, Section 6(2); and

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

2. Mr. Thomas testified that Western Fleming has begun a meter testing program and is now maintaining meter test and history cards. He was asked to provide information concerning the meter testing program and agreed to submit it after the hearing.¹ The required information has not been filed. Western Fleming should be required to file periodic reports concerning its meter testing program for a sufficient length of time to assure the adequacy of the program and its implementation.

4. Mr. Thomas testified that although a pressure recorder was acquired shortly after the 1986 hearing, it became inoperable after approximately 1-month's use. The evidence shows no attempt

¹ Transcript of Evidence, p. 22, June 21, 1988.

was made to replace the pressure recorder until 2 or 3 weeks prior to the 1988 hearing when a 24-hour and a 7-day pressure recorder were ordered. These had not been received as of the hearing date.² The Commission is of the opinion Western Fleming's failure to replace the pressure recorder until after it was required to appear before the Commission again for the same violation nearly a year and a half later constitutes a willful violation of the Commission's regulations and Order.

5. Western Fleming's wholesale rate to Buffalo Trail Water Association and its connection fee are in excess of those authorized by the Commission. Further, Western Fleming is charging a reconnection fee which has not been authorized. These charges were addressed in the Commission's March 30, 1987 Order, and were to be corrected immediately. Yet, Mr. Thomas testified that the unauthorized rates are still being charged.³

6. Western Fleming has been advised on numerous occasions of the appropriate procedure for requesting an adjustment of rates. Forms and information packets have been provided on 5 occasions and personal assistance has been provided by Staff on 3 occasions, the last being directly after the June 21, 1988 hearing.⁴ Such assistance has been provided to Western Fleming through its Chairman, Mr. Thomas.

² Id. at 22-23.

³ Id. at 13, 18-19.

⁴ Id. at 38.

7. Western Fleming filed revised tariff sheets and cost data on September 19, 1988, which proposed adjustments to its wholesale rates and connection fee and establishment of a reconnection fee. No effective date was indicated. The Commission is of the opinion that a show cause hearing is not the proper forum for consideration of a rate adjustment. The tariff filing should be considered separately from this proceeding and should be processed through normal tariff procedures.

8. The tariff filing described in Finding 7 above is a step in the direction of compliance with regard to rates; however, Mr. Thomas' admissions disclose a flagrant disregard for this Commission and its regulatory authority. Since entry of the Commission's March 30, 1987 Order, Western Fleming has had 19 months to institute compliance measures. However, the record clearly reflects that Mr. Thomas, as an officer and agent of Western Fleming, has failed to cause compliance with a lawful Order of the Commission.

9. Mr. Thomas acknowledged that Western Fleming's Commissioners have a statutory duty to manage and control the affairs of the district and assure compliance with the lawful Orders and regulations of the Commission. Mr. Thomas opens all Western Fleming's mail⁵ and has taken primary responsibility for the day-to-day affairs. The Commission is of the opinion that Western Fleming, through its board of commissioners, has willfully

⁵ Id. at 11-12, 15, 20.

violated the Commission's regulations and Orders. Further, Mr. Thomas, as the officer and agent of the utility, having direct contact and assuming primary responsibility for the affairs of the district, has willfully violated the Commission's Orders and regulations and should be penalized pursuant to KRS 278.990.

IT IS THEREFORE ORDERED that:

1. Beginning within 30 days of the date of this Order, Western Fleming shall file quarterly reports with the Commission regarding its meter testing and pressure testing programs in sufficient detail to assure implementation and adequacy of these programs. Western Fleming shall continue to file such reports until specifically relieved from the filing requirement.

2. Western Fleming shall immediately install and utilize appropriate pressure recorders in the manner required by 807 KAR 5:066.

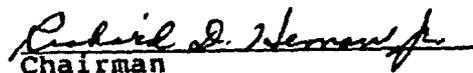
3. Western Fleming shall immediately cease and desist from charging any and all rates and charges that have not been specifically approved by this Commission or that are in excess of tariffed charges.

4. A fine of \$500 is hereby levied against Western Fleming's Chairman, Clyde Thomas, as an officer and agent of the utility, for his willful violation of a Commission Order and administrative regulations. The fine ordered herein shall not be paid from Western Fleming Water District funds or assets. A certified check or money order should be made payable to the Kentucky State Treasurer and delivered or mailed to the Office of

General Counsel, Public Service Commission, 730 Schenkel Lane,
Frankfort, Kentucky 40601, within 30 days of the date of this
Order.

Done at Frankfort, Kentucky, this 14th day of November, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director