

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JONATHAN CREEK WATER DISTRICT )  
 )  
 )  
 \_\_\_\_\_ ) CASE NO.  
 ) 94-383  
 ALLEGED VIOLATION OF KRS 278.020(1) )

O R D E R

On October 13, 1994, Jonathan Creek Water District ("Jonathan Creek") was ordered to show cause why it should not be penalized pursuant to KRS 278.020(1) for its alleged failure to obtain Commission approval prior to its construction of a line connecting Jonathan Creek with North Marshall Water District.

Following the commencement of this proceeding, Jonathan Creek and Commission Staff entered into negotiations to resolve all disputed issues. On November 21, 1994, a Settlement Agreement was executed and submitted to the Commission for approval.

The Commissioners of Jonathan Creek are responsible for ensuring compliance with all applicable statutes and regulations. However, after reviewing the Settlement Agreement and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement is in accordance with the law, does not violate any regulatory principle, results in a reasonable resolution of this case, and is in the public interest.

IT IS THEREFORE ORDERED that:

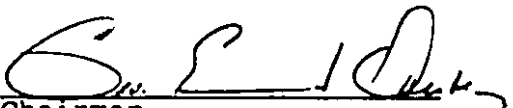
1. The Settlement Agreement, appended hereto, is incorporated into this Order as if fully set forth herein.

2. The terms and conditions set forth in the Settlement Agreement are adopted and approved.

3. A penalty of \$500 is assessed against Jonathan Creek. Such penalty shall be stayed for a period of one year as set forth in Section 7 of the Settlement Agreement. If, after one year, Jonathan Creek is in substantial compliance with KRS Chapter 278 and Commission regulations, the penalty will be vacated. Otherwise, the penalty will be due immediately and shall be paid in full to the Commonwealth of Kentucky.

Done at Frankfort, Kentucky, this 12th day of December, 1994.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 94-383 DATED DECEMBER 12, 1994

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JONATHAN CREEK WATER DISTRICT )  
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 ALLEGED VIOLATION OF KRS 278.020(1) )

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered this 21<sup>st</sup> day of November, 1994, by and between the Staff of the Public Service Commission of Kentucky ("Commission Staff") and Jonathan Creek Water District ("Jonathan Creek").

Jonathan Creek and Commission Staff have agreed to the following factual matters:

1. On August 8, 1994, the Commission entered its Order in Case No. 94-073<sup>1</sup> authorizing Jonathan Creek to perform certain construction projects on the condition that service levels be monitored and corrective action taken in accordance with Commission regulations. The Order also, inter alia, approved Jonathan Creek's proposed financing plan.

2. Jonathan Creek had also applied for authorization to build a line ("the NMWD Line") connecting Jonathan Creek with North Marshall Water District ("NMWD"). However, construction of this

<sup>1</sup> Case No. 94-073, Application of Jonathan Creek Water District for Certificate of Public Convenience and Necessity, Long Term Financing by KIA: A General Rate adjustment and Request for a Variance on Financial Data Submitted.

line had already occurred pursuant to an Agreed Order with the Natural Resources and Environmental Protection Cabinet, Division of Water ("Division of Water").<sup>2</sup>

3. Jonathan Creek is a utility subject to the Commission's jurisdiction pursuant to KRS 278.010 and is required to obtain Commission approval prior to construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010. KRS 278.020(1). The Commission will not grant a Certificate of Public Convenience and Necessity for a project that has been completed. Therefore, the Commission did not approve the NMWD Line when it issued the final Order in Case No. 94-073. The Commission's Order further noted that Jonathan Creek's unlawful construction of the NMWD line constituted a matter which should be investigated and resolved in a separate proceeding.

4. On October 13, 1994, the Commission ordered Jonathan Creek to show cause why it should not be subject to the penalties of KRS 278.990 for its alleged violation of KRS 278.020(1).

5. In its Response to the Commission's Order of November 2, 1994, Jonathan Creek admits that it failed to comply with KRS 278.020(1). However, Jonathan Creek says that such failure was not intentional, and requests, inter alia, that the Commission consider

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<sup>2</sup> T.R., p. 42, Case No. 94-003, Application of North Marshall Water District for (1) Certificate of Public Convenience and Necessity (2) Approval of Financing Through KIA (3) General Rate Increase and (4) Request for Approval of Variance on Financial Data, May 3, 1994 hearing.

that the NMWD Line was built pursuant to a directive from the Division of Water and that the Water Purchase Contract between NMWD and Jonathan Creek was submitted for Commission approval on October 11, 1993 and included in Case No. 94-003.

6. Jonathan Creek and Commission Staff wish to resolve the issues regarding Jonathan Creek's unauthorized construction of the NMWD Line in a prompt and complete manner. Accordingly, in consideration of the mutual promises contained herein and the release and discharge of all liabilities and obligations arising out of Jonathan Creek's unauthorized construction of the NMWD Line, the parties agree as follows:

7. A penalty in the amount of \$500 will be assessed against Jonathan Creek. Such penalty will be stayed for a period of one year. If, after one year, Jonathan Creek is in substantial compliance with KRS Chapter 278 and Commission regulations, the penalty will be vacated. Otherwise, the penalty will be due immediately and shall be paid in full to the Commonwealth of Kentucky.

8. Jonathan Creek's financing of its debt incurred in the construction of the NMWD Line is hereby expressly declared to be a lawful object within the corporate purpose of its utility operations. Accordingly, the financing approved in the Commission's August 8, 1994 Order may be used for this purpose.

9. Upon execution of this agreement, this case is hereby settled as to all outstanding issues resolved, with prejudice,

notwithstanding any other provision of this agreement to the contrary.

10. It is agreed that the proposed Settlement Agreement is submitted for purposes of this case only and is not deemed binding upon the signatories hereto in any other proceeding, nor is it to be offered or relied upon in any other proceeding involving Jonathan Creek Water District or any other utility.

11. It is agreed that Commission Staff will use its best efforts in recommending complete adoption of this agreement by the Commission. If the Commission issues an Order adopting this proposed settlement in its entirety, Jonathan Creek Water District shall not file an application for rehearing or appeal to Franklin Circuit Court from such Order.

12. It is agreed that if this agreement is not accepted in its entirety, Jonathan Creek reserves the right to withdraw from it and require that hearings go forth upon all or any matters involved herein, and in such event, this agreement shall not be deemed binding upon the signatories hereto nor shall same be admitted into evidence or referred to or relied upon in any manner by any signatory hereto.

13. The signatories hereto agree that the foregoing Settlement Agreement is reasonable, not contrary to regulatory

principles or the law, is in the best interest of all concerned,  
and urge that the Commission adopt this agreement in its entirety.

Jonathan Creek Water District

By Ray Turner  
Chairman of Water District

Nov 16 1994  
Date

By Martin Johnson  
Martin Johnson, Counsel to  
Jonathan Creek Water District

11/16/94  
Date

Public Service Commission Staff

By Richard J. Curran

11-21-94  
Date