

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BILLY GOLEY, INDIVIDUALLY AND)
BILLY GOLEY D/B/A TOWN AND COUNTRY)
WATER DISTRICT)
_____)
ALLEGED VIOLATIONS OF COMMISSION)
REGULATIONS 807 KAR 5:006 AND)
807 KAR 5:066)

CASE NO. 95-475

O R D E R

Billy Goley, d/b/a Town and Country Water District, is a person who owns and operates facilities used for the distribution and furnishing of water to the public for compensation in Logan County, Kentucky, and is, therefore, a utility subject to Commission jurisdiction. KRS 278.010(3)(d).

KRS 278.280 authorizes the Commission to prescribe rules for the performance of any service furnished or supplied by a utility. Pursuant to this authority, the Commission has promulgated Commission Regulation 807 KAR 5:006, which establishes general rules for all utility operations and Commission Regulation 807 KAR 5:066, which establishes general rules for the operation of water utilities.

On September 16, 1992, June 30, 1993, and November 14, 1994, Commission Staff ("Staff") inspected Town and Country Water District ("Town and Country"), which is a sole proprietorship rather than a water district as its name implies. The purpose of the inspections was to determine if Town and Country's operations

and office procedures comply with the Kentucky Revised Statutes and Commission regulations. Billy Goley, owner and sole operator of Town and Country, accompanied Staff during the inspections.

Following each inspection, a report on the inspection was mailed to Billy Goley. Each report notified Mr. Goley that Town and Country was violating Commission regulations. The 1992 report listed 25 violations, including a violation of 807 KAR 5:066, Sections 3(1) and 3(4)(a).

807 KAR 5:066, Section 3(1) states that "[a]ny utility furnishing water service for human consumption or domestic use shall conform to all legal requirements of the Natural Resources Cabinet for construction and operation of its water system as pertains to sanitation and potability of water." Section 3(4)(a) of the regulation states:

Each utility shall have representative samples of its water examined by the appropriate state or local agency or by a competent chemist and bacteriologist skilled in the sanitary examination of water, under methods approved by the Natural Resources Cabinet, to insure a safe water supply.

Consequently, in 1992, Staff notified Mr. Goley that noncompliance with the requirements of the Natural Resources Cabinet¹ constitutes a violation of Commission regulation 807 KAR 5:066, Section 3. At that time, he was also notified that Town and Country would be re-evaluated and that Michael Newton, the Commission's Water

¹ "Natural Resources Cabinet" means the state Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water. 807 KAR 5:066, Section 1(4).

Inspector/Utility Investigator, should be contacted if any clarification were needed regarding the cited violations.

Mr. Goley failed to correct the original violations. The 1993 and 1994 inspection reports listed 15 and 13 violations, respectively. Mr. Goley never provided a response to any of the reports.

After he failed to respond to the 1993 report, Staff notified Mr. Goley that failure to make all corrections necessary to bring the facility into compliance with KRS Chapter 278 and Commission regulations could result in the initiation of enforcement proceedings and the imposition of penalties pursuant to KRS 278.990.

Although Staff extended the time for Town and Country's response to the July 8, 1993 report, Mr. Goley never responded. Instead, he allowed Town and Country to remain in flagrant violation of the regulations of the Commission and the Natural Resources Cabinet.

Consequently, the Commission, on April 4, 1995, entered an Order in Case No. 95-130² ordering Town and Country to respond to certain alleged violations and present evidence concerning the alleged violations of Commission Regulations 807 KAR 5:006 and 807 KAR 5:066, and to show cause why it should not be penalized pursuant to KRS 278.990(1). Billy Goley, who received the Order

² Case No. 95-130, Town and Country Water District, Alleged Violations of Commission Regulations 807 KAR 5:006 and 807 KAR 5:066.

via certified mail, did not respond or appear at the hearing, which was held in his absence.

After the hearing, the Commission received information from the Natural Resources Cabinet regarding its ongoing enforcement case against Billy Goley d/b/a Town and Country Water District. The information included Notices of Violation for Town and Country's: 1) failure properly to operate and maintain a public water system, 2) failure to secure a certified operator responsible for operating the water system, 3) failure to monitor and report results of required lead and copper testing, and 4) failure to submit monthly bacteriological samples. Having received this information after the hearing and having issued its April Order to Town and Country rather than to Mr. Goley personally, the Commission dismissed Case No. 95-130, initiated this proceeding, and incorporated into the record of this proceeding the record of Case No. 95-130.

On November 1, 1995, the Commission ordered Billy Goley, individually and Billy Goley d/b/a Town and Country Water District to appear before the Commission for a hearing concerning the above-referenced violations. The Order also requested a response. Again, Mr. Goley received the Order via certified mail but did not respond or appear.

Town and Country consists of a 4" distribution system approximately five miles in length. It has 112 customers or an average of 22.4 customers per mile. This customer base should generate sufficient revenue to support the system's financial needs

for operation and maintenance. Nonetheless, Mr. Goley's failure properly to operate and maintain the system causes serious potential problems for Town and Country's customers and seriously endangers their supply of safe drinking water.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Billy Goley d/b/a Town and Country Water District is in willful violation of Commission regulations.

A willful violation is one which is intentional, knowing, voluntary, deliberate or obstinate.³ It occurs when one having responsibility over a facility knows that the facility's condition violates Commission regulations or, by the exercise of reasonable care, could have discovered the existence of the condition and fails promptly to correct it.⁴

For the willful violations of Commission regulations, the Commission further finds that Billy Goley d/b/a Town and Country Water District should be assessed a penalty pursuant to KRS 278.990(1) in the amount of Thirty Two Thousand Five Hundred Dollars (\$32,500).

IT IS THEREFORE ORDERED that:

1. Billy Goley d/b/a Town and Country Water District is hereby assessed a penalty in the amount of Thirty Two Thousand Five

³ Case No. 90-257, Kentucky Utilities Company and South Central Rural Telephone Cooperative Corporation, Alleged Failure to Comply with Commission Regulations, Order dated May 23, 1991, at page 6.

⁴ Id.

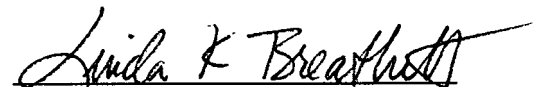
Hundred Dollars (\$32,500) for his willful violations of 807 KAR 5:006 and 807 KAR 5:066.

3. The penalty shall be paid by certified check or money order made payable to the Kentucky State Treasurer within 30 days from the date of this Order and mailed to the Office of General Counsel, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602.

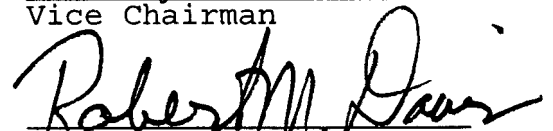
4. Billy Goley d/b/a Town and Country Water District shall file a correction schedule outlining what has been done or what will be done to correct the violations listed in the 1992, 1993, and 1994 Inspection Reports within 30 days from the date of this Order. The correction schedule shall include starting dates and completion dates.

Done at Frankfort, Kentucky, this 1st day of February, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director