

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE)	
BUSINESS PRACTICES OF WESTERN)	
PULASKI COUNTY WATER DISTRICT, ALLEGED)	
FAILURE TO COMPLY WITH ADMINISTRATIVE)	CASE NO. 2002-00013
REGULATION 807 KAR 5:006, AND)	
ALLEGED VIOLATIONS OF KRS 278.160)	
AND KRS 278.170)	

O R D E R

Western Pulaski County Water District (Western Pulaski), a water district that is organized pursuant to KRS Chapter 74 and that owns and operates facilities used to distribute water in and around Pulaski County, Kentucky, is a utility subject to Commission jurisdiction. KRS 278.015. Its rates and service are subject to Commission regulation. KRS 278.040(2). On January 15, 2002, the Commission issued an Order to Western Pulaski to show cause why it should not be subject to the penalties of KRS 278.990 for alleged violations of KRS 278.160, KRS 278.170 and Administrative Regulation 807 KAR 5:006, Section 3(5). These alleged violations arise out of Case No. 2001-00070.¹ Western Pulaski was also ordered to respond to questions regarding its general business practices concerning compliance with applicable regulations and statutes. These questions were raised in an affidavit attached to the January 15, 2002 Order and include issues relating to Western Pulaski s

¹ James L. Floyd v. Western Pulaski County Water District, final Order entered January 7, 2002.

billing practices, customer relations, disconnection and reconnection policies, record retention, policy involving bidding of construction projects, and extension of service policy. At hearing it came to the Commission's attention that a problem may exist regarding the proper number of commissioners that should sit on Western Pulaski's Board.

In Case No. 2001-00070, James Floyd, a customer of Western Pulaski, filed a formal complaint with the Commission. The central issue in the case was whether Western Pulaski was entitled, pursuant to its contract with Mr. Floyd, to disconnect his service for nonpayment. Mr. Floyd and Western Pulaski entered into the contract in December 2000. Pursuant to Administrative Regulation 807 KAR 5:006, Section 3(5), Western Pulaski should have retained the contract through December 2005. Moreover, it came to the Commission's attention that, when reconnecting Mr. Floyd's service, Western Pulaski did not charge Mr. Floyd a reconnection fee. Western Pulaski's tariff provides that Western Pulaski shall charge its customers a fee for reconnection of service. Failure to charge the fee is a violation of KRS 278.160² and KRS 278.170.³

² KRS 278.160(2) states, in pertinent part, that:

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 .

³ KRS 278.170(1) states that:

No utility shall, as to rates or services, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like or contemporaneous service under the same or substantially the same conditions.

In response to a data request from the Commission, Mr. Floyd provided the Commission with a copy of his contract with Western Pulaski. Western Pulaski also provided the Commission with a copy of its contract with Mr. Floyd. At hearing, however, Western Pulaski admitted that it had not retained the original contract and that, when submitting its answer to the Commission, it provided a document that contained terms of payment different from the original contract,⁴ and also contained what appeared to be a forgery of Mr. Floyd's signature.

At the September 12, 2001 hearing in Case No. 2001-00070, Melissa Burton, Western Pulaski's Office Manager, testified regarding the circumstances surrounding this contract. Ms. Burton claims that when Western Pulaski received the Order to Satisfy or Answer, she was unable to locate the original service contract because she had thrown it away. Ms. Burton claims that she called Western Pulaski's office and requested that one of its employees prepare a service contract to send to the Commission. Ms. Burton also claims that the reason for the preparation of the service contract was to provide the Commission with an example of how Western Pulaski manages its extension contracts, but claims that she did not direct the employee to forge Complainant's signature on the contract.⁵

At the March 26, 2002 hearing, however, Ms. Burton testified that when Western Pulaski received the Commission's Order to Satisfy or Answer in Case No. 2001-00070, it immediately searched for a copy of Mr. Floyd's contract. Western Pulaski allegedly located a copy of the contract that it had made when Mr. Floyd signed the contract.

⁴ Case No. 2001-00070, Transcript at 43-46.

⁵ Id. at 43-46.

According to Ms. Burton, the payment terms on the original contract were written in red ink, while Mr. Floyd's signature was written in blue or black ink. Allegedly when Western Pulaski made a copy of the original, the parts written in red ink did not reproduce legibly, yet Mr. Floyd's signature, written in blue ink, did. Ms. Burton testified that a Western Pulaski employee then tried to fill in the original terms of the contract, but accidentally transposed \$53 to \$35 when filling in the terms of the contract.

Ms. Burton explained why her testimony at the March 26, 2002 hearing varied from her testimony at the September 12, 2001 hearing. Ms. Burton claimed that the first notice Western Pulaski received that the two contracts submitted to the Commission were different was when Western Pulaski appeared at the September 12, 2001 hearing. Thus, Ms. Burton claims, she could only hazard a guess as to why the terms of the contract differed; it was only later that she discovered the real reasons that the terms of the contract differed. Ms. Burton claims, furthermore, that there was never any intent to defraud or mislead the Commission.

Ms. Burton then stated that Western Pulaski had formally adopted the standards for record retention promulgated in Administrative Regulation 807 KAR 5:006, Section 3(5). To that end, Ms. Burton testified, Western Pulaski has gotten more in-depth on what to keep and how long we needed to keep it .⁶

At the September 12, 2001 hearing, Ms. Burton testified that she did not charge Mr. Floyd a reconnection fee because charging a reconnection fee is her call⁷ and that

⁶ Transcript at 21.

⁷ Case No. 2001-00070, Transcript at 53.

she and Mr. Floyd are cousins.⁸ At the March 26, 2002 hearing, Ms. Burton testified that she did not charge Mr. Floyd a reconnection fee because Mr. Floyd did not understand the terms of the contract. Ms. Burton also testified that this was the first time Western Pulaski had used payments in an extension of service contract and that she would have waived reconnection fees to any other customer under the same circumstances.⁹

Ms. Burton also presented testimony regarding the issues raised in the affidavit. Ms. Burton testified that Western Pulaski had implemented new procedures to deal with and document customer complaints. These new procedures include providing Western Pulaski's Board of Commissioners with a packet every month containing each customer complaint; informing the customer that if Western Pulaski's Board cannot resolve the complaint, the customer may contact the Commission; and conspicuously displaying the Commission's phone number and the time and place of each Board meeting.

Ms. Burton (and later David Kingsley, Field Manager) also testified that Western Pulaski publicly bids any of its projects which are over \$20,000. Western Pulaski subsequently has provided documentation dealing with approximately six construction projects.

DISCUSSION

KRS 278.280(2) directs the Commission to prescribe rules and regulations for the performance of services by utilities. Pursuant to this statutory directive, the Commission promulgated Administrative Regulation 807 KAR 5:006, Section 3(5).

⁸ Id. at 53.

⁹ Transcript at 21.

Administrative Regulation 807 KAR 5:006, Section 3(5), provides that: [a]ll records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified. The Uniform System of Accounts cites the guidelines governing the preservation of records of electric, gas, and water utilities, published by the National Association of Regulatory Utility Commissioners (NARUC) regarding the record retention period. The guidelines that NARUC adopted require that the original contracts for the extension of service be maintained for at least 5 years. Western Pulaski admits that it did not maintain the original contract of Mr. Floyd s extension of service. Thus, Western Pulaski has violated Administrative Regulation 807 KAR 5:006, Section 3(5), and is subject to the penalties contained in KRS 278.990.

Next, Ms. Burton s reasons for not charging Mr. Floyd a reconnection fee are immaterial. It is, however, material that Western Pulaski did not in fact charge its tariffed reconnection fee. The evidence of record shows that Mr. Floyd was, in fact, behind on his payments; thus, Western Pulaski acted reasonably in disconnecting his service and, therefore, was not only entitled to charge the reconnection fee, but was obligated to charge the fee.

KRS 278.160 codifies the filed rate doctrine. It requires a utility to file with the Commission schedules showing all rates and conditions for service established by it and collected or enforced. KRS 278.160(1). Interpreting similarly worded statutes from other jurisdictions, courts have held that utilities must strictly adhere to their published rate schedules and may not depart from them. Corporation De Gestion Ste-Foy v.

Florida Power and Light Co., 385 So.2d 124 (Fla. Dist. Ct. App. 1980).¹⁰ A similar rule applies to the published rate schedules of common carriers. See, e.g., Sallee Horse Vans, Inc. v. Pessin, Ky.App., 763 S.W.2d 149 (1988). See also GTE North Inc. v. Pub Serv. Comm'n 500 N.W.2d 284, 289 (Wis. 1993) (the receipt of compensation by a utility that is either greater or lesser than the filed rate is an unlawful act). The evidence of record shows that in failing to charge its duly tariffed charge, Western Pulaski violated KRS 278.160 and is thus subject to penalties under KRS 278.990.

Of concern to the Commission is Ms. Burton's statement at the September 12, 2001 hearing that she waived Mr. Floyd's reconnection fee because they were cousins. Giving preferential treatment to family members by waiving certain fees, which results in those people receiving discounted service, is a violation of KRS 278.170. Although Ms. Burton subsequently denied that she waived the fee because of their relationship, her original testimony on September 12, 2001 indicates that Western Pulaski has not applied its tariff in a manner consistent with KRS 278.170. Western Pulaski, therefore, is subject to the penalties contained in KRS 278.990.

Regarding the allegations contained in the affidavit, Western Pulaski did not respond with sufficient clarity to allay the Commission's concern regarding the same. This issue requires further Commission review as does the issue regarding the proper number of commissioners on Western Pulaski's Board.

¹⁰ See also Haverhill Gas Co. v. Findlen, 258 N.E. 2d 294 (Mass. 1970); Laclede Gas Co. v. Solon Gershman, Inc.; Laclede Gas Co. v. Solon Gershman, Inc., (539 S.W.2d 574 (Mo. App. 1976); Capital Properties Cp. V. Pub Serv. Comm'n, 457 N.Y.S.2d 635 (N.Y. App. Div. 1982); West Penn Power Co. v. Nationwide Mut. Ins. Co., 228 A.2d 218 (Pa. Super. Ct. 1967); Wisconsin Power & Light Co. v. Berlin Tanning & Mfg. Co., 83 N.W.2d 147 (Wis. 1957).

CONCLUSION

The Commission finds that Western Pulaski has violated Administrative Regulation 807 KAR 5:006, KRS 278.160, and KRS 278.170 and should be fined \$2500 per count, the maximum financial penalty allowed by law as contained in KRS 278.990. Furthermore, the Commission finds that the individual members of Western Pulaski's Board of Commissioners should attend Water District Commissioner training so that they may improve in their supervision of Western Pulaski's operations.

The Commission, however, still has concerns regarding the composition of Western Pulaski's Board of Commissioners as well as Western Pulaski's business practices. To that end, the Commission will suspend the three fines imposed herein pending the outcome of a Commission Staff review of Western Pulaski's business practices.

IT IS THEREFORE ORDERED that:


1. Western Pulaski is hereby fined \$2500 for one violation of Administrative Regulation 807 KAR 5:006.
2. Western Pulaski is hereby fined \$2500 for one violation of KRS 278.160.
3. Western Pulaski is hereby fined \$2500 for one violation of KRS 278.170.
4. The above-described fines are suspended pending the outcome of Commission Staff's review of Western Pulaski's operations and Western Pulaski's compliance with Commission Staff's findings and recommendations.
5. Within 2 years of the date of this Order, every member of Western Pulaski's Board of Commissioners shall attend at least one Commission Water District Commissioner Training seminar.

6. This case is hereby closed; however, nothing in this Order shall be construed to prohibit the Commission from issuing further Orders in this case.

Done at Frankfort, Kentucky, this 9th day of August, 2002.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Charles H. [unclear]", written over a horizontal line.

Executive Director