

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF NORTH)	
MANCHESTER WATER ASSOCIATION, INC., ITS)	
OFFICERS, STEVE DAVIS, BILL HURD, CARL)	CASE NO.
GREGORY HOSKINS, BOBBY WOLFE, HENRY)	2021-00339
SMITH, TED WOODS, CARL DAVID CRAWFORD,)	
AND ITS MANAGER, JERRY RICE, TO COMPLY)	
WITH KRS 278.140, KRS 278.230, 807 KAR 5:006, SEC.)	
4, AND KRS 278.990)	

**NORTH MANCHESTER WATER ASSOCIATION BRIEF REGARDING TED WOODS’
DUAL ROLE AS ACCOUNTANT AND BOARD MEMBER**

On December 16, 2022, the Public Service Commission (the “Commission”) issued an Order that North Manchester Water Association (“NMWA”) would appear for a hearing on January 11, 2023, to take evidence on Ted Woods’ dual role as accountant and board member of the utility. Mr. Woods, Board President Steve Davis, Rose Lewis, Mike Maggard, and Bill Gray appeared as witnesses at the hearing. The following brief provides information in support of NMWA’s and Ted Woods’ position that Mr. Woods’ dual role as the accountant and board member is permissible and is not a conflict of interest.

**TED WOODS’ DUAL ROLE OF ACCOUNTANT AND BOARD MEMBER IS NOT A
CONFLICT-OF-INTEREST TRANSACTION**

Ted Woods’ service to NMWA as both a board member and the Association’s accountant does not constitute a conflict of interest. The Kentucky General Assembly defined a conflict-of-interest transaction for a nonprofit corporation as a transaction in which the director has a “direct or indirect interest.” Ky. Rev. Stat. Ann. § 273.219(1). However, if the board of directors knew the “material facts of the transaction and the director’s interest” and they “authorized, approved,

or ratified the transaction” and the transaction was “fair to the corporation,” no conflict of interest exists. Ky. Rev. Stat. Ann. § 273.219(1)(a) and (b). Both the submitted record and testimony from the evidentiary hearing on January 11, 2023, prove that Ted Woods’ dual role did not work a conflict against NMWA.

1. THE NMWA BOARD OF DIRECTORS (THE “BOARD”) KNEW THE MATERIAL TERMS OF TED WOODS’ SERVICE AS BOTH ACCOUNTANT AND BOARD MEMBER.

Mr. Woods joined the NMWA Board of Directors (the “Board”) in 2018. At the beginning of 2018, the Board underwent a complete turnover,¹ and the new Board began an overhaul of NMWA’s organizational practices. Prior to 2018, Charles Stivers served as both board president and as accountant.² Stivers received \$1,600 monthly as compensation for his accounting services.³ Stivers also performed the NMWA financial audits and paid himself \$5,000 annually for conducting the audits. Stivers “audited himself,” according to current NMWA board president Steve Davis.⁴ In 2015, Stivers was convicted in the Eastern District of Tennessee for a cigarette tax conspiracy, and his Kentucky accounting license was revoked.⁵ Despite having a revoked accounting license, Stivers performed accounting duties from 2016 to 2019. In December 2021, Stivers pled guilty to submitting false documents to the IRS in the Eastern District of Kentucky, and he was sentenced to ten months in federal prison on May 26, 2022.⁶ When Mr. Davis took over as Board President in 2018, he assisted federal investigators in the Stivers case by providing

¹ VR: 1/11/23 at 1:36:40.

² VR: 1/11/23 at 1:19:25.

³ VR: 1/11/23 at 1:19:37.

⁴ VR: 1/11/23 at 1:20:16.

⁵ United States Department of Justice: United States Attorney’s Office Eastern District of Kentucky, *Former CPA Sentenced for Submitting False Documents to the IRS*, May 26, 2022, <https://www.justice.gov/usao-edky/pr/former-cpa-sentenced-submitting-false-documents-irs>.

⁶ *Id.*

information about Stivers' conduct at the utility.⁷ NMWA terminated Stivers' services prior to 2018.⁸

Upon Stivers' termination, NMWA board member Josephine Gross served as bookkeeper for NMWA.⁹ Ms. Gross was not an CPA, however she had familiarity with filing taxes and wanted to assist NMWA after the chaos of Stivers' stint as its accountant.¹⁰ After Ms. Gross took over in the bookkeeping role, the new Board quickly learned that Stivers had not left NMWA with all of the necessary financial records and did not meet proper accounting.¹¹ Ms. Gross did not serve as bookkeeper for the association for long due to illness.¹² After Ms. Gross left her position as bookkeeper, the NMWA Board installed Mr. Woods as its accountant.

A. October 1, 2018, Board Meeting

The NMWA Board selected Mr. Woods to serve as both a board member and accountant of NMWA at its regular Board meeting on October 1, 2018.¹³ The Board chose Mr. Woods to serve as the utility's accountant because Mr. Woods is the only accountant in Manchester, Kentucky, which made him a logical chose to serve as NMWA's accountant.¹⁴ Additionally, and importantly as Mr. Davis testified, the Board trusted Mr. Woods to serve as its accountant honestly and with integrity.¹⁵ Given the history with Mr. Stivers, the Board needed an accountant with good character who could be trusted to handle the utility's finances. The Board initially determined that Mr. Woods would receive \$600 per month for his accounting services, which was the amount Ms.

⁷ VR: 1/11/23 at 1:21:39.

⁸ VR: 1/11/23 at 1:21:55.

⁹ VR: 1/11/23 at 1:22:10.

¹⁰ VR: 1/11/23 at 1:22:50.

¹¹ VR: 1/11/23 at 1:22:30.

¹² VR: 1/11/23 at 1:23:09.

¹³ Response to PSC DR 4-2.

¹⁴ VR: 1/11/23 at 27:30.

¹⁵ VR: 1/11/23 at 27:42.

Gross previously received for her bookkeeping services. The Board set the amount of compensation without Mr. Woods' knowledge.¹⁶

According to meeting minutes and validating testimony given at the Commission hearing, board member Greg Hoskins made a formal motion to hire Mr. Woods as NMWA's accountant at a rate of \$600 per month.¹⁷ Board member Wesley Hibbard seconded the motion.¹⁸ Mr. Woods did not vote on the motion for him to serve as accountant for NMWA.¹⁹ The meeting minutes reflect that the vote for Mr. Woods was unanimous among all Board members present. However, Mr. Davis testified at the Commission hearing that he kept the minutes for the October 1, 2018, Board meeting,²⁰ and he acknowledged that he did not note Mr. Woods' recusal.²¹ He also committed to recording future meeting minutes with more detail and accuracy.²²

Prior to the October 2018 board meeting, Mr. Woods was not aware that he would be nominated to serve as the accountant for the utility.²³ Mr. Woods did not campaign or lobby for himself to serve as NMWA's accountant.²⁴ Mr. Woods did not participate in the vote.²⁵ He did not remove himself from the room, but he did not participate in the vote or influence other Board members' voting decisions.²⁶ The other six Board members present at the October 2018 meeting voted in favor of Mr. Woods as the accountant.²⁷

¹⁶ VR: 1/11/23 at 1:24:42

¹⁷ Response to PSC DR 4-2.

¹⁸ *Id.*

¹⁹ VR: 1/11/23 at 54:56; VR: 1/11/23 at 1:24:21.

²⁰ VR: 1/11/23 at 26:28.

²¹ VR: 1/11/23 at 26:56.

²² *Id.*

²³ VR: 1/11/23 at 1:52:29; VR: 1/11/23 at 1:56:45.

²⁴ VR: 1/11/23 at 1:24:28.

²⁵ VR: 1/11/23 at 55:22.

²⁶ *Id.*

²⁷ VR: 1/11/23 at 55:45.

B. June 6, 2022, Board Meeting

At the June 2022 board meeting, the Board voted unanimously to increase Mr. Woods' compensation for the accounting services he provides the utility.²⁸ The Board increased Mr. Woods' compensation to \$1,200 per month.²⁹ Mr. Woods' duties as accountant for NMWA include paying bills, preparing payroll, generating quarterly filings, preparing the IRS Form 990, fulfilling other regulatory reporting, and managing bank accounts.³⁰ Prior to Mr. Woods' assumption of the accountant role for the utility, the entity's financial records were in disarray. No quarterly reports had been compiled,³¹ no regulatory reporting financial documentation had been compiled and submitted to the appropriate utilities regulating agencies,³² and the IRS Form 990 filing was insufficient and had to be redone by Mr. Woods.³³ Since Mr. Woods assumed the role of accountant in 2018, NMWA now has complete quarterly reports,³⁴ current regulatory reporting financial filings,³⁵ and proper IRS Form 990 filings.³⁶

The Board increased Mr. Woods' compensation because NMWA has become increasingly more financially sound since 2018. The Board felt that Mr. Woods deserved the increased rate based on the scope of his duties and job performance.³⁷ The Board never consulted Mr. Woods about increasing his compensation.³⁸ Both Mr. Woods and Mr. Davis testified that no Board member advised Mr. Woods in advance of the June 2022 meeting that the Board was considering

²⁸ Response to PSC DR 4-2.

²⁹ VR: 1/11/23 at 1:25:00; Response to PSC DR 4-2.

³⁰ VR: 1/11/23 at 2:02:55; VR: 1/11/23 at 24:10.

³¹ VR: 1/11/23 at 1:23:13.

³² VR: 1/11/23 at 1:23:26.

³³ VR: 1/11/23 at 1:23:50.

³⁴ VR: 1/11/23 at 1:23:58.

³⁵ VR: 1/11/23 at 1:24:03.

³⁶ VR: 1/11/23 at 1:24:06.

³⁷ VR: 1/11/23 at 1:25:13; VR: 1/11/23 at 1:29:45.

³⁸ VR: 1/11/23 at 1:30:30.

an increase of his compensation.³⁹ At no time did Mr. Woods provide any input on the rate that he would receive for his accounting services.⁴⁰ In fact, once the Board raised the subject of an increase of pay, Mr. Woods told the Board that they did not need to increase the rate he was paid.⁴¹ However, the Board insisted that the utility had the financial resources to compensate him at a higher rate, and that it was the right course of action.⁴²

Like the October 2018 meeting, Mr. Woods again abstained from voting for an increase of his compensation rate in June 2022.⁴³ Though Mr. Woods did not remove himself from the room during the vote, Mr. Davis testified that Mr. Woods neither participated in the vote nor influenced the vote for his financial benefit.⁴⁴ All other board members voted in favor of the compensation increase.⁴⁵

C. The Board Knew the Material Terms of this Agreement Pursuant to KRS 273.219(1)(a)

The Board, independent of any action or persuasion by Mr. Woods, selected Mr. Woods to serve as its accountant in 2018 and subsequently voted to increase his pay in 2022. The Board set the rate of compensation that it would provide Mr. Woods independent of any feedback from Mr. Woods. The Board was intimately aware of the material terms of this transaction. The Board selected Mr. Woods as a qualified candidate for accountant, as he is a CPA and the only CPA in the community, and subsequently adjusted his compensation based upon the quality of job performance and the utility's financial capacity to increase the compensation that he received. The testimony in the record reflects that Mr. Woods did not attempt to do any illicit self-dealing through

³⁹ VR: 1/11/23 at 1:34:20; VR: 1/11/23 at 1:57:12.

⁴⁰ VR: 1/11/23 at 1:24:39.

⁴¹ VR: 1/11/23 at 1:42:01; VR: 1/11/23 at 1:57:45.

⁴² VR: 1/11/23 at 1:34:58.

⁴³ VR: 1/11/23 at 1:41:57.

⁴⁴ VR: 1/11/23 at 1:02:16; VR: 1/11/23 at 1:02:55; *see also* VR: 1/11/23 at 55:22.

⁴⁵ VR: 1/11/23 at 1:02:30.

setting a rate of compensation for being the utility's accountant. The Board knew the material terms of Mr. Woods' compensation, in which he had a financial interest, in accordance with KRS 273.219(1)(a).

2. THE SELECTION OF MR. WOODS AS ACCOUNTANT WAS FAIR TO NMWA PURSUANT TO KRS 273.219(1)(B)

Mr. Woods' services as accountant for an initial rate of \$600 per month and an increased rate of \$1,200 per month constitute a fair transaction to NMWA.

A. Services Mr. Woods Provides as accountant compared to His Activities as a Board Member

Mr. Woods provides accounting services for the utility. This includes paying NMWA's bills, preparing payroll, generating quarterly filings, maintaining the necessary files with the IRS and Kentucky Department of Revenue, managing other regulatory reporting, and maintaining the NMWA bank accounts.⁴⁶ Mr. Woods does not conduct any audits for NMWA.⁴⁷ At each monthly Board meeting, Mr. Woods provides the Board with updates of NMWA's finances through a presentation on NMWA's financial activity for the preceding month.⁴⁸ Mr. Woods' activities as accountant are limited to the preparation of financial records and regulatory filing of those documents.⁴⁹

B. Mr. Woods' Role as Board Member

As a board member, Mr. Woods attends board meetings and makes decisions to promote the well-being of the utility and the community.⁵⁰ Mr. Woods testified his singular goal as a board

⁴⁶ VR: 1/11/23 at 2:02:55; VR: 1/11/23 at 24:10.

⁴⁷ VR: 1/11/23 at 1:26:28.

⁴⁸ VR: 1/11/23 at 1:59:54.

⁴⁹ VR: 1/11/23 at 2:03:49.

⁵⁰ VR: 1/11/23 at 2:03:25.

member is to help his community.⁵¹ The previous Board, in Mr. Woods' view, did many things that were not in the utility's best interest, and Mr. Woods wants to assist the utility in turning things around.⁵² Under the previous management, the utility had not been upkept, and the degradation of the system and the diminished state of the utility's finances now cost NMWA valuable resources to repair.⁵³ He, and the entire NMWA Board, aim to properly maintain the water system. Mr. Woods does not receive any compensation for his service as a board member,⁵⁴ as Board service is completely voluntary.⁵⁵

C. Separation of Mr. Woods' Functions as a Board Member and Accountant

The functions of board member and accountant are distinct and separate, and Mr. Woods testified that no overlap exists between the two.⁵⁶ Mr. Woods testified at the Commission hearing that as the accountant he exclusively does accounting work for the utility.⁵⁷ He does not cross a boundary as an accountant and express any opinions about financial matters to the Board that would not be appropriate to come from an accountant. Similarly, he does not use his seat on the Board to unduly influence the preparation or accuracy of the financial records.⁵⁸ Rather, Mr. Woods presents financial information to the Board at its meeting in his accounting capacity and does not involve himself in matters related to NMWA's accounting practices in his board member capacity.⁵⁹

⁵¹ VR: 1/11/23 at 1:37:10.

⁵² VR: 1/11/23 at 1:40:12.

⁵³ VR: 1/11/23 at 1:44:30.

⁵⁴ VR: 1/11/23 at 2:01:01; VR 1/11/23 at 21:30.

⁵⁵ VR: 1/11/23 at 2:01:20.

⁵⁶ VR: 1/11/23 at 2:03:55.

⁵⁷ VR: 1/11/23 at 1:40:55.

⁵⁸ *Id.*

⁵⁹ VR: 1/11/23 at 1:59:54; VR: 1/11/23 at 55:22.

For example, Mr. Woods has not been involved in NMWA's selection of an independent auditor to review the utility's financial records. Prior to 2017, the only financial audits of NMWA were those that Stivers conducted.⁶⁰ These audits were not independent and did not reveal the many missing financial documents or the failure to maintain financial records.⁶¹

NMWA is in the process of updating its audits. To date, NMWA has completed audits for 2017 and 2018 that independent auditor SK Lee CPAS, P.S.C. conducted.⁶² The missing records have caused the outside auditor's inability to provide complete audits for 2017 and 2018.⁶³ The same independent firm is in the process of completing audits for 2019 and 2020. Board member Carl Crawford suggested the use of SK Lee CPAS, P.S.C. to conduct the audits.⁶⁴ Mr. Woods did not recommend or have any role in the selection of Sammy Lee to conduct the NMWA audits.⁶⁵ As it has taken considerable time to complete the audits for 2019 and 2020, NMWA plans to request bids for a new contract for the completion of the 2021 and 2022 fiscal year audits.⁶⁶ Mr. Woods will not participate in that bidding process.⁶⁷ Mr. Woods does not conduct any internal audits for NMWA.⁶⁸

The only compensation that Mr. Woods receives from NMWA is for his services as the accountant. Board members do not receive any form of compensation for their service – monetary or otherwise.⁶⁹ Service on the Board is entirely voluntary.⁷⁰ The payment that Mr. Woods receives,

⁶⁰ VR: 1/11/23 at 1:25:41.

⁶¹ VR: 1/11/23 at 30:26.

⁶² Response to PSC DR 4-5.

⁶³ VR: 1/11/23 at 30:30.

⁶⁴ VR: 1/11/23 at 1:26:11.

⁶⁵ VR: 1/11/23 at 1:26:19.

⁶⁶ Response to PSC DR 4-6.

⁶⁷ VR: 1/11/23 at 1:28:40.

⁶⁸ VR: 1/11/23 at 1:26:28.

⁶⁹ VR: 1/11/23 at 2:01:01; VR: 1/11/23 at 21:30.

⁷⁰ VR: 1/11/23 at 2:01:20.

now of \$1,200 per month is exclusive to compensate him for his accounting services, and it is paid to Mr. Woods' private accounting business with its unique tax identification number.⁷¹

Additionally, as part of his obligation to pay the utility's bills, Mr. Woods writes all the utility's checks. He writes the check that he receives.⁷² However, he has never been a signatory on his check as two other members of the Board sign all checks.⁷³

D. Mr. Woods' Service as Accountant is Fair to NMWA Pursuant to KRS 273.219(1)(b)

The NMWA Board "authorized, approved, or ratified" Mr. Woods' role as its accountant. The transaction is fair to NWMA. *See* Ky. Rev. Stat. Ann. § 273.219(1)(b). The transaction is fair to the corporation because the Board set the rate of Mr. Woods' compensation, his compensation is limited to his services as accountant, and the Board has committed to safeguarding the separation of the dual roles that Mr. Woods serves.

NMWA has been in difficult financial condition because of ongoing deterioration of the water system and the outstanding debts generated under the previous board governance.⁷⁴ The Board, including Mr. Woods, is committed to improving the health and operations of NMWA.⁷⁵ One of the first steps that the Board took under President Steve Davis's leadership to meet its goal of improving the organization's financial well-being⁷⁶ was to place a qualified accounting professional in the role of NMWA accountant.⁷⁷ The Board selected Mr. Woods for this role. Additionally, the Board has committed to continue developing the necessary financial records to

⁷¹ VR: 1/11/23 at 1:54:00; VR: 1/11/23 at 1:54:24.

⁷² VR: 1/11/23 at 1:55:42.

⁷³ VR: 1/11/23 at 1:55:58.

⁷⁴ VR: 1/11/23 at 1:43:08.

⁷⁵ VR: 1/11/23 at 1:28:12.

⁷⁶ *Id.*

⁷⁷ VR: 1/11/23 at 27:30.

be in regulatory compliance with the Public Service Commission and any other regulatory body.⁷⁸ Mr. Woods as accountant is responsible for the generation of reliable financial data for an independent auditor to review. The Board will monitor and ensure that NMWA is meeting its financial targets and continuing to make improvements. Mr. Woods status as the NMWA accountant is critical to ensuring that NMWA becomes financially sound.

As discussed above, the function of an accountant is distinct to that of Board member. As accountant, Mr. Woods' goal is to ensure that the utility is able to maintain sufficient accounting records, remain in regulatory compliance, and properly file and maintain its taxes.⁷⁹ The Board, not Mr. Woods, sets the rate of compensation for his accounting services.⁸⁰ Using its discretion, the Board – not Mr. Woods – chose to increase his compensation to \$1,200 per month when the utility became better funded and fiscally managed.⁸¹

Additionally, the Board has made commitments to safeguard the wall of separation between Mr. Woods' roles of accountant and board member. NMWA has historically had Board members who serve as accountants or bookkeepers,⁸² most recently, Charles Stivers and Josephine Gross.⁸³ For a nonprofit corporation to effectively operate with a Board member as its accountant, the division of roles must preclude any overlap of responsibility. While previous administrations have not enforced a barrier between the functions, the current Board under Mr. Davis's leadership makes guarantees to protect the interests of NMWA. The Board commits to preclude Mr. Woods from participating in the selection and approval of an independent auditor to conduct the 2021 and

⁷⁸ VR: 1/11/23 at 1:28:22.

⁷⁹ VR: 1/11/23 at 1:23:58.

⁸⁰ VR: 1/11/23 at 1:24:39.

⁸¹ VR: 1/11/23 at 1:34:58.

⁸² VR: 1/11/23 at 2:01:38.

⁸³ VR: 1/11/23 at 2:01:44.

2022 audits of NMWA's finances.⁸⁴ The Board also commits to ensure that Mr. Woods recuses and does not participate in any future votes or discussions about his role as the accountant.⁸⁵ To guarantee that this is documented with less confusion than its previous minutes, Mr. Davis commits to improve the minutes taken at meetings to better document what occurs at NMWA Board meetings.⁸⁶

CONCLUSION

In conclusion, Ted Woods may serve as the accountant and Board member without a conflict of interest. NMWA has shown the Commission that the agreement to compensate Mr. Woods for his services was materially known to the NMWA Board, the Board approved the transaction, and the transaction was fair to NMWA. *See* Ky. Rev. Stat. Ann. § 273.219(1).

Respectfully submitted,

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⁸⁴ VR: 1/11/23 at 1:27:50; VR: 1/11/23 at 1:28:40.

⁸⁵ VR: 1/11/23 at 1:28:40.

⁸⁶ VR: 1/11/23 at 26:56.