

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

KIRKSVILLE WATER ASSOCIATION, INC.	)	
AND ITS INDIVIDUAL DIRECTORS	)	
ARMON SANDERS, WAYNE LONG,	)	
ALFRED WINKLER, RANDAL WEBB, AND	)	2022-00197
BOBBY POWELL, AND MANAGER MIKE AGEE	)	
ALLEGED FAILURE TO COMPLY	)	
WITH KRS 278.300 AND KRS 278.020	)	

**KIRKSVILLE WATER ASSOCIATION’S RESPONSE**

**COMES NOW THE PETITIONER**, by counsel, and for its Response and states as follows:

1. The Commission’s order in Case 2022-00076 states Kirksville Water Association has never sought a general rate increase or an alternative rate adjustment. The order requires a rate increase be filed by December 20, 2022. The order concludes that Kirksville Water Association has never had its finances reviewed and states Kirksville Water Association has “managed to avoid Commission review of its financial records since the water association was initially established.” (Emphasis added) The implication is that KWA has intentionally avoided PSC review and is operating in some rogue status. Kirksville Water Association sought and received an alternative rate adjustment in case 2015-00097. The finances of KWA were thoroughly vetted at that time and a proper rate adjustment was granted. The KWA Board of Directors strenuously denies any intentional act to avoid PSC oversight. The Commission should review 2015-00097 and inform Kirksville Water Association if it

is still required to present a rate adjustment case given the mistaken conclusion that one had never been submitted.

2. The Commission's order in 2022-00197 states that KWA failed to secure a CPCN or "have the Commission declare a CPCN is not required." The order states: "Under KRS 278.020(1), no utility may construct any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission." This is an incomplete statement of the law and ignores the exceptions that apply to KWA.

The full text of KRS 278.020(1) is: "No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except:

1. Retail electric suppliers for service connections to electric-consuming facilities located within its certified territory;
2. **Ordinary extensions of existing systems in the usual course of business;** or
3. **A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project if the water district or water association is a Class A or B utility as defined in the uniform system of accounts established by the commission according to KRS 278.220 and:**
  - a. **The water line extension or improvement project will not cost more than five hundred thousand dollars (\$500,000); or**
  - b. **The water district or water association will not, as a result of the water line extension or improvement project, incur obligations**

**requiring commission approval as required by KRS 278.300.**

(emphasis added)

In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers; until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.” *KRS 278.020(1)(a) 1-3.*

The PSC order in this case further concludes, without any legal foundation or support, that the additional exception in 807 KAR 5:001, Section 15(3) does not apply. 807 KAR 5:001, Section 15(3) states: **(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.** (emphasis added)

Kirksville Water Association (KWA) informed the PSC in case 2022-00076 that it had no office of its own and was forced to find space to operate and there was no duplication of plant, equipment, property, or facilities. The PSC was informed the purchase of the building and fit-up came from reserve funds that did not materially affect the existing financial condition of the utility **and** will not result in increased

charges to the customers. Lastly, the PSC was aware from filings prior to this case that the building cost well less than \$500,000.00.

No legal precedent is provided to support the Commission's conclusion that these exceptions are not applicable to Kirksville Water Association and that a CPCN is required. Case No. 2016-00392 is presented as authority for the requirement of a CPCN for the purchase of an office building. In 2016-00392, North Mercer Water District sought to purchase a new building because they had outgrown their current building. Buying an additional building while currently occupying another would be duplication of facilities and require a CPCN. This is clearly distinguishable from the present case as KWA had no office space of their own and was forced to find somewhere to house its operations. There is no duplication of facilities. KWA formerly requests a declaration from the PSC that no CPCN is needed in this matter as the exceptions in KRS 278.020(1)(a) 2-3 as further explained and supported in 807 KAR 5:001, Section 15(3) apply to the purchase made by KWA.

3. The Board of the Kirksville Water Association is made up of people who are also customers of Kirksville Water Association. They give freely of their time and resources to provide a water company that delivers the highest quality of service to their friends, family, and neighbors. Any suggestion that this Board is incompetent, neglectful of their duties, or guilty of gross immorality is as irresponsible as it is untrue. KWA has always enjoyed a healthy and collaborative relationship with the PSC and there have never been any disciplinary or other issues with the PSC that would support such egregious allegations and public defamation. Yearly audits provided to the PSC make clear the company is responsibly run and that depreciation

is being adequately funded. Capital improvement projects are routinely undertaken and the Board is active in finding ways to reduce water loss and improve services. The alleged violation of KRS 278.300 was the product of extraordinary circumstances outside of their control that required immediate action.

The Board of Kirksville Water Association and Supervisor, Mike Agee, relied upon the advice of counsel in proceeding to purchase the office building and believed they were complying with the spirit of the law contained in KRS 278.300 and that they were not required to secure a CPCN. Before purchasing the building, they verified they had sufficient assets to purchase the building outright and that there would be no additional cost to customers or adverse impact on the financial stability of the water company. The emergent circumstances of having to leave their office space, find new office space, get it fitted for use, find office staff and be prepared to operate an already fully functioning utility required instant action. Any substantive delay would have resulted in untenable service interruptions to the customers of KWA and complete chaos in the operation. There is no doubt that the purchase of the office building was for a (1) lawful purpose (2) was necessary for the proper performance of the utility (3) would not impact KWA's ability to perform its duties and (4) was reasonably necessary and appropriate. KWA had no intention of willfully violating any statute or regulation. Circumstances forced action and each decision made by the Board of KWA was in the best interests of the customers of the Association and they believed consistent with PSC requirements.

KWA withdrew its petition to secure indebtedness not to hide information or avoid information requests but to validate that it had sufficient assets to proceed

without indebtedness and to “clean the slate” should it decide to submit a subsequent application to secure indebtedness in the future. There was never an intent to willfully violate any statute, only the knowledge that failing to act would be catastrophic.

4. KWA has always operated within the law. KWA sold territory rights to the Ramsey Development Group, LLC to assign to the City of Richmond. At the time of the sale to Ramsey, the territory included one residence and a cattle water tank. The property sold will house a major development with mixed commercial and residential use. The development will require access to sewer which can only be provided by the City of Richmond. The City requires the developer to purchase the water rights from the provider to be annexed into the City. KWA negotiated a fair price for the transfer of territory to the City. The price was determined using a formula developed in conjunction with the engineer for KWA and the projected usage amounts provided by the developer. The transfer involved assets that book for less than \$1,000,000 by any reasonable estimation and don't require PSC approval. The project is good for citizens of Richmond, Madison County, and the customers of KWA. It was the right thing to do.
5. KWA is operated by a staff and Board of Directors that are good, honest and decent people that are giving back to their community through their service to Kirksville Water Association. The language of the Commission's order creates the impression KWA is being intentionally operated contrary to law. Nothing could be further from the truth which is supported by KWA's history with the PSC and the financial health and strength of the company. KWA welcomes any investigation brought by the PSC

and is confident such an investigation will vindicate the actions taken to serve the customers of KWA.

WHEREFORE, Petitioner requests the following:

1. A finding that KWA filed an alternative rate adjustment case in case #: 2015-00097 and that its finances have been recently reviewed and vetted by the PSC and clarifying whether a rate case is still required.
2. A declaration that a CPCN is not required to purchase the office building used by KWA and any inadvertent violation of KRS 278.300 is now moot since KWA's petition to assume indebtedness is withdrawn.
3. A finding that sale of territory rights that booked for less than \$1,000,000 does not require prior PSC approval.

Respectfully submitted,

*Jud Patterson*

Jud Patterson  
228A West Main Street  
Richmond, KY 40475  
Counsel for KWA

**ADOPTION OF RESPONSE**

I, **WAYNE LONG**, President of the Board of Kirksville Water Association, affirmatively state that I have read the above response and agree with the facts and conclusions stated therein. I sign my name below in acknowledgement of my adoption of this response as my formal response.

Wayne Long  
Wayne Long

I, **ALFRED WINKLER**, Member of the Board of Kirksville Water Association, affirmatively state that I have read the above response and agree with the facts and conclusions stated therein. I sign my name below in acknowledgement of my adoption of this response as my formal response.

Alfred Winkler  
Alfred Winkler

I, **ARMON SANDERS**, Member of the Board of Kirksville Water Association, affirmatively state that I have read the above response and agree with the facts and conclusions stated therein. I sign my name below in acknowledgement of my adoption of this response as my formal response.

Armon Sanders  
Armon Sanders

I, **BOBBY POWELL**, Member of the Board of Kirksville Water Association, affirmatively state that I have read the above response and agree with the facts and conclusions stated therein. I sign my name below in acknowledgement of my adoption of this response as my formal response.

Bobby Powell  
Bobby Powell

I, **RANDALL WEBB**, Member of the Board of Kirksville Water Association, affirmatively state that I have read the above response and agree with the facts and conclusions stated therein. I sign my name below in acknowledgement of my adoption of this response as my formal response.

Randall Webb  
Randall Webb