

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

**In the Matter of:**

**ELECTRONIC ALLEGED FAILURE OF )  
GREEN RIVER VALLEY WATER )  
DISTRICT AND ITS OFFICERS, JOHN )  
BUNNELL, PAT TUCKER, PHILLIP )  
DOYLE, ADRIAN GOSSETT, DEBBIE ) CASE NO. 2022-00215  
FOWLER, LELAND GLASS, KERRY )  
MCDANIEL, AND ITS MANAGER, )  
DAVID PAIGE, TO COMPLY WITH A )  
COMMISSION ORDER, KRS 278.990 )**

**RESPONSE TO ORDER OF JULY 18, 2022**

For their response to the allegations contained in the Public Service Commission’s (“Commission”) Order of July 18, 2022, John F. Bunnell, Debbie Fowler, Leland Glass, Adrian Gossett, and Pat Tucker (collectively “Respondent Commissioners”) in their individual capacity and in their capacity as members of Green River Valley Water District’s Board of Commissioners and Green River Valley Water District (“Green River District”)<sup>1</sup> state as follows:

**Background**

1. Green River District is a water district organized pursuant to KRS Chapter 74. It was established by Order of the County Court of Hart County, Kentucky on November 16, 1959. Originally established to provide water service

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<sup>1</sup> Respondent Commissioners and Green River District have executed a joint representation agreement in which they agreed to joint representation of their interests in this matter by Stoll Keenon Ogden PLLC.

to persons residing in Hart County, Kentucky, Green River District's territory subsequently expanded to serve portions of Barren, Green, Larue and Metcalfe Counties. As of December 31, 2021, Green River District provided water service to approximately 7,759 customers. Green River District also provides water for resale to Larue County Water District; Green-Taylor Water District; the cities of Horse Cave and Munfordville; and the Caveland Environmental Authority.

2. Green River District's business and affairs are managed and directed under the oversight of a five-member board of commissioners. Respondent Commissioners currently serve on Green River District's Board of Commissioners ("the Board") and have since on or before April 26, 2021.<sup>2</sup>

3. Green River District employs a General Manager who serves as its chief executive officer. Subject to the Board's supervision, the General Manager is responsible for directing, administering, and coordinating Green River District's operational, engineering, maintenance, construction, and financial activities. He develops and manages Green River District's annual budgets; responds to emergency situations at all hours; hires, trains, and manages personnel; deals with local, state and federal regulatory agencies, including the Commission; and provides regular reports to the Board.

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<sup>2</sup> Phillip Doyle and Kerry McDaniel previously served on Green River District's Board of Commissioners but are now deceased.

4. David Paige served as Green River District’s General Manager from September 1996 to July 26, 2022. He began his employment with Green River District on July 27, 1990 when hired as Assistant General Manager. He was employed by Green River District for 32 years.

### **Application for Rate Adjustment**

5. On March 10, 2020 in Case No. 2019-00458,<sup>3</sup> the Public Service Commission (“Commission”) directed Green River District to apply for a general rate adjustment pursuant to KRS 278.180 within one year. In directing this action, the Commission stated that Green River District had not applied for a rate adjustment under this statute for almost ten years and asserted that the lack of such application had deprived the Commission of the opportunity to perform a comprehensive review of Green River District’s total financial stability and operational viability and that such action was necessary “to ensure . . . [Green River District’s] financial situation is sufficient.”<sup>4</sup>

6. On April 16, 2021, Green River District moved the Commission for an extension of time until May 31, 2022 to apply for a general rate adjustment for the reasons set forth below:

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<sup>3</sup> *Electronic Application of Green River Valley Water District to Issue Securities in the Approximate Principal Amount of \$5,325,000 for the Purpose of Refunding Certain Outstanding Obligations of the District Pursuant to the Provisions of KRS 278.300 and 807 KAR 5:001, Case No. 2019-00458 (Ky. PSC Mar. 10, 2020).*

<sup>4</sup> *Id.* at 2.

a. Green River District cited its ongoing Water Treatment Plant Expansion Project (“the Project”) in support of its motion.<sup>5</sup> The Project, which had an estimated cost of \$11,626,000, consists of a 25 percent expansion of the capacity of Green River District’s water treatment plant. Based upon Green River District’s net utility plant as of December 31, 2019, the improvements represented an increase of 54 percent in Green River District’s net utility plant. Completion of these improvements was not expected to occur until September 2020. These improvements were to be financed in part through the issuance of \$8,062,000 of revenue bonds.

b. Green River District argued that filing an application for rate adjustment prior to the substantial completion of the Project was neither practical nor likely to achieve the Commission’s purpose of examining Green River District’s financial condition and operations. It noted that the Commission’s ratemaking practices would not permit recovery of the operating costs associated with the expanded water treatment plant, as well as depreciation expense related to the expanded water treatment plant, in any rates arising from an application decided prior to the expanded water treatment plant’s completion and placement into service. Those practices would also preclude the recovery through rates of debt service on

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<sup>5</sup> *Electronic Application of Green River Valley Water District Pursuant to KRS 278.023 and 807 KAR 5:069 for A Certificate of Public Convenience to Expand Its Water Treatment Plant and Related Waterworks Improvements, An Adjustment of Its Rates for Water Service; and Authorization to Issue Certain Securities*, Case No. 2019-00287 (Ky. PSC Sep. 27, 2019).

the revenue bonds that would finance the cost of the Water Treatment Plant Expansion Project and that were not expected to be issued prior to the plant's completion. Furthermore, without the expanded treatment plant in operation for several months, neither Green River District nor the Commission would have sufficient information to accurately set rates to recover the expenses associated with the operation and maintenance of the expanded water treatment plant.

c. Submission of an application for rate adjustment prior to the Project's completion, therefore, was likely to result in rates for service that would not accurately reflect Green River District's actual cost of service, would not provide a clear picture of Green River District's total financial stability and operational viability, or ensure financial sufficiency. In fact, an early application would likely require an additional application for rate adjustment several months after the Project's completion.

7. On April 26, 2021, the Commission granted Green River District's motion and extended the time for submission of a general rate application to May 31, 2022. In its Order, the Commission agreed that "[g]iven the cost and size of the infrastructure improvement projects . . . Green River Valley District would have to file a general rate adjustment once the infrastructure projects were completed and the revenue bonds issued" and concluded that the filing of an application for general

rate adjustment should be deferred.<sup>6</sup> The Commission found that deferral “would be consistent with the Commission’s rationale for requiring that a rate case be filed and would provide the Commission with the most accurate portrayal of Green River Valley District’s financial records and condition.”<sup>7</sup>

8. As of this date, the Project referenced in Green River District’s motion remains uncompleted and is not in service. Supply chain issues have severely limited Green River District’s ability to obtain critical parts. Currently, tubing for the water treatment plant’s two new settling basins is on back order and is not expected to arrive until October 2022. Green River District, however, has no assurances from its suppliers that the required tubing will be supplied by that date. The contractor for the water improvement project recently redeployed a significant portion of its work crew from the construction site to other construction work, creating the possibility of additional delays once the required tubing is received. At this time, it does not appear that the enlarged water treatment plant will commence operations until the end of this year.

### **Commissioner Knowledge and Responsibility**

9. Each Respondent Commissioner was aware of the Commission’s Order of March 10, 2020 and the requirement to file an application for rate adjustment.

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<sup>6</sup> Case No. 2019-00458, Order of April 26, 2021 at 2.

<sup>7</sup> *Id.*

10. The Board expressly authorized Green River District's Motion for Extension of Time to File Application for Rate Adjustment. At the time the Board authorized this motion, all Respondent Commissioners were serving as Board members.

11. All Respondent Commissioners were serving as Board members when the Commission issued its Order of April 26, 2021. However, none received nor requested a copy of that Order. Mr. Paige advised them of the Order's issuance and its general contents. None recall being advised that an application for rate adjustment was required to be filed by May 31, 2022. Respondent Commissioners were under the impression that an application for rate adjustment was not required to be filed until the enlarged water treatment plant was substantially completed and in service.

12. To the best of their knowledge and recollection, Respondent Commissioners recall the status of the water improvement project being discussed at each Board meeting and recall periodic discussions regarding the filing of an application for rate adjustment. Respondent Commissioners relied upon Mr. Paige to monitor the matter and to advise the Board if any action was needed. Mr. Paige assured Respondent Commissioners on several occasions that he was monitoring the matter and was communicating with the Commission Staff on a regular basis. He never indicated that Green River District was in violation of, or about to violate, the Orders of March 10, 2020 and April 26, 2021. Given Mr. Paige's long service with

Green River District, Respondent Commissioners believed that their reliance upon Mr. Paige's statements was reasonable.

13. On June 16, 2022, a Board meeting was held at which all Respondent Commissioners, except Ms. Fowler, attended. During this meeting, Mr. Paige assured the Board that he had spoken to Commission Staff and had obtained for Green River District an extension of time until September 21, 2022 to apply for the rate adjustment. Mr. Paige did not identify the person with whom he had spoken or the person's position with the Commission.

14. Had Respondent Commissioners been informed of the filing deadline, they would have directed Green River District's counsel to immediately request an additional extension of time based upon the Project's incomplete status.

15. Respondent Commissioners acknowledge that Mr. Paige's actions do not excuse or relieve them from responsibility for Green River District's failure to comply with the Orders of March 10, 2020 and April 26, 2021. They recognize that they are ultimately responsible for ensuring that Green River District's compliance with those Orders and should have more aggressively monitored and independently confirmed Green River District's compliance status.

16. Respondent Commissioners acknowledge that their conduct represents a departure from acceptable standards and a failure on their part to meet their legal responsibilities as water district commissioners.



17. Respondent Commissioners further acknowledge that they aided and abetted Green River District's failure to comply with the Orders of March 10, 2020 and April 26, 2021 by failing to personally review those Orders and to exercise greater supervision and monitoring of Green River District's compliance efforts

18. Respondent Commissioners, however, deny that they or Green River District **willfully** violated the Commission's Orders of March 10, 2020 and April 26, 2021 or **willfully** aided and abetted the failure to comply with those Orders.

### **Compliance Efforts**

19. Green River District and Respondent Commissioners commit to the prompt preparation and submission of an application for rate adjustment following the substantial completion of the Project. To that end on July 21, 2022, Green River District engaged the services of Kentucky Rural Water Association ("KRWA") for the preparation of a cost-of-service study and rate report that will serve as the basis for an application for rate adjustment.

20. In determining the time period in which Green River District has to submit its application for rate adjustment, the Commission should consider several extenuating circumstances. First, the preparation of an application for rate adjustment will be difficult and time consuming for Green River District. As it has revenues in excess of \$5,000,000, Green River District must apply for a rate adjustment pursuant to 807 KAR 5:001, Section 16. It has not previously applied

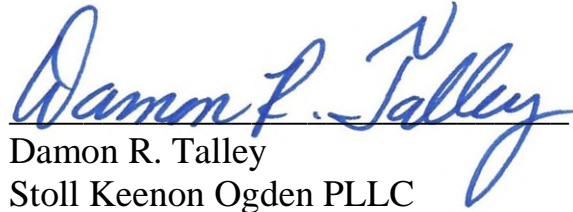
for rate adjustment under those procedures. Those procedures are more document and data intensive than those generally used for water districts. Second, KRWA's rate consultants have a significant workload and will be unable to commence the necessary cost-of-service study and rate review work for at least three months. Finally, the Project's completion date should be considered. As the Commission has previously noted, an accurate and complete picture of Green River District's finances require a review **after** the Project has been completed and placed in service. Performing a rate review prior to the Project's completion will likely result in the need for another costly rate review within a relatively short period of time after the completion of the first rate proceeding.

21. Green River District has taken several actions to ensure that the Board's members are fully informed and to prevent a recurrence of the events that are the subject of this proceeding. For example, the Board's Chairman is now immediately provided copies of any order or notification received from the Commission.

WHEREFORE, Green River District and Respondent Commissioners request that the Commission (1) accept this Response; (2) establish a new time period for Green River District's submission of an application for rate adjustment that will afford adequate time for the preparation of the application, and that will allow for a meaningful, efficient and economical review of Green River District's financial operations; and (3) close this proceeding.

Dated: August 7, 2022

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

In accordance with 807 KAR 5:001, Section 8, and the Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was submitted electronically to the Public Service Commission on August 7, 2022 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.



*Counsel for Green River Valley Water  
District and Respondent Commissioners*