

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC APPLICATION OF ROWAN WATER,)	
INC. FOR AN ALTERNATIVE RATE ADJUSTMENT)	
AND AN INVESTIGATION INTO ROWAN WATER)	CASE NO.
INC. AND ITS INDIVIDUAL DIRECTORS, LARRY)	2022-00252
JOHNSON, DANNY STEVENS, RANDALL COX,)	
MIKE COLLINS, ENOCH BLAIR, AND ITS)	
MANAGER, JERRY PATRICK, FOR ALLEGEDLY)	
FAILING TO COMPLY WITH KRS 278.300 AND)	
A COMMISSION ORDER)	

ROWAN WATER, INC'S POST-HEARING BRIEF

Come now Rowan Water, Inc., its individual directors and its general manager (collectively, “Rowan Water”), pursuant to the Kentucky Public Service Commission’s (“Commission”) August 3, 2023 Order in this proceeding setting forth the post-hearing procedural schedule and the deadline for submitting a brief in this matter, and respectfully states as follows:

I. INTRODUCTION

The Commission initiated this investigation into Rowan Water and their alleged violation of a Commission Order and KRS 278.300 by Order entered February 16, 2023 in the original alternative rate filing proceeding. The Commission alleged that Rowan Water failed to file for a rate adjustment as was ordered by the Commission in Case No. 2021-00042 on April 19, 2021, nor did it file a motion for an extension of time to file a rate proceeding. The Commission stated “[t]hose actions present prima facie evidence of a *willful* failure of to comply with a Commission Order sufficient to make Rowan Water and Rowan Water’s officers and manager subject to the

penalties of KRS 278.990.”¹ (*emphasis added*) The Commission also pointed to responses to data requests provided by Rowan Water, Inc.’s general manager in the alternative rate filing portion of this proceeding regarding vehicle leases that were entered into without Commission approval. “Given the failure and the nature of the leases at issue, the Commission finds that prima facie evidence exists that Rowan Water, its individual directors, and its manger, acting in their respective individual capacities, *willfully* violated KRS 278.300 or *willfully* aided and abetted in one or more violations of KRS 278.300”²(*emphasis added*).

II. BACKGROUND

On August 8, 2023, Rowan Water, Inc., filed a notice of intent to file an application for an alternative rate adjustment (“ARF”) using electronic filing procedures. Rowan Water, Inc., filed its ARF application on September 2, 2022 and cured deficiencies on September 6, 2022. The Commission issued a procedural order which contained its first requests for information on September 30, 2023 and Rowan Water, Inc., filed responses to those requests on November 4, 2023. Commission Staff issued its second request for information on November 21, 2022. Rowan Water, Inc., filed a motion for an Informal Conference on November 30, 2023. An informal conference was held virtually on December 12, 2023 and a memorandum from this informal conference was entered into the record on December 13, 2023. Rowan Water, Inc., filed responses to Commission Staff’s second request for information on January 3, 2023. Commission Staff issued its third request for information on February 9, 2023 and Rowan Water filed its responses to those requests on February 24, 2023.

¹ Order, pp. 3-4.

² Order pp. 4-5.

However, on February 16, 2023 the Commission expanded the case to include an investigation into Rowan Water, Inc., its directors, Larry Johnson, Danny Stevens, Danny Cox, Mike Collins, Enoch Blair, and its manager, Jerry Patrick, individually and in their respective capacities to basically show cause as to why they should not be held to have willfully violated a Commission Order and KRS 278.300 and be subject to penalties under KRS 278.990 for willful violations. Rowan Water, Inc., its directors (except for Danny Stevens, who was deceased and Danny Cox (whose correct name is Randall Cox)) and its general manager all filed sworn statements admitting that they did not file a rate proceeding within the time frame prescribed by the Commission in its April 19, 2021 Order and that they had entered into vehicle leases without Commission approval. A hearing was held in this matter on August 1, 2023 where testimony was provided by Jerry Patrick, Larry Johnson, Enoch Blair, Randall Cox and Mike Collins. Each of the responses as well as the testimony given at the hearing provided information regarding the reason why the rate proceeding was not filed by the date contained in the Commission's Order as well as why the general manager and each of the directors did not believe that KRS 278.300 applied to vehicle leases and that these violations were not willful.

III. KRS 278.990

KRS 278.990(1) states:

Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who ***willfully*** violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility ***willfully*** violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or

does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

IV. ARGUMENT

Rowan Water, Inc., its directors and its general manager did not willfully violate a Commission Order nor did they willfully violate KRS 278.300. Rowan Water has repeatedly stated and provided evidence that the violations were not “willful”. The Commission’s April 19, 2021 Order pertained to an Application under KRS 278.300 filed by Rowan Water, Inc. The Order was reviewed by Rowan Water Inc.’s general manger and no copies were provided to the board of directors. Rowan Water Inc.’s general manager stated in his sworn response and during his testimony at trial, that he overlooked the requirement to file a rate proceeding in that case. He was thinking this was a routine order granting approval under KRS 278.300 and did not think it would contain such a clause, as no such clause had been included in other Rowan Water, Inc. orders issued by the Commission. Each of the board members stated in their sworn responses and in their testimony at the hearing that they did not receive a copy of that Order and were unaware of such provision until the general manger was contacted by Commission Staff to see when a rate proceeding would be filed. This was after the deadline established in the April 19, 2021 Order.

Black's Law Dictionary defines a “willful” act as:

Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary.

Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.

Kentucky's Court of Appeals has defined "willful" as "intentional".³ Rowan Water, Inc., its directors nor its general manager did anything willfully. Although KRS Chapter 278 does not contain a definition for "willful", KRS 383.545(17) defines "willful" as "with deliberate intention, not accidentally or inadvertently, and done according to a purpose." When dealing with an Open Records violation, Kentucky's highest court found that "a public agency's mere refusal to furnish records based on a good faith claim of a statutory exemption, which is later determined to be incorrect, is insufficient to establish a willful violation of Open Records Act, as would render records custodian liable for costs and attorney fees."⁴ The clause in the Order requiring a rate increase to be filed was simply overlooked. Once it was brought to the attention of the general manager by Commission Staff, he immediately brought it to the attention of the board and began to look for someone to assist in making the filing with the Commission. Once a law firm was hired, they had contact with Commission Staff regarding their involvement and the timing with which it would take to compile the information necessary to make the required filing. In addition, Rowan Water, Inc., its directors nor its general manager thought that vehicle leases were the same as a loan and therefore, they mistakenly did not believe that KRS 278.300 applied. Rowan Water, Inc., had previously filed KRS 278.300 applications in the past, and would have in the present instance if they believed that KRS 278.300 applied to vehicle leases. In fact, the Order that Rowan Water, Inc. is alleged to have violated was a KRS 278.300 application. An error or mistake on reading an Order nor a misinterpretation of a statute cannot be considered intentional and therefore

³ *Gatewood v. Com.*, 285 S.W. 193, 194 (Ky. App, 1926).

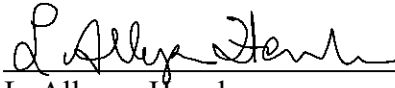
⁴ *Bowling v. Lexington-Fayette Urban County Government*, 172 S.W. 3d, 333, 343 (Ky. 2005).

cannot be considered as willful. Rowan Water, Inc., its directors nor its general manager willfully (intentionally) violated the Commission's Order or KRS 278.300. A good faith belief was held by Rowan Water, Inc., its directors and its general manager that KRS 278.300 did not apply to vehicle leases, the fact that this belief later turned out to be incorrect cannot be construed as willful.

CONCLUSION

Rowan Water, Inc., its directors and its general manager did not willfully violate the Commission's Order nor KRS 278.300. Upon finding out of its failure to file the rate case as ordered by the Commission and after realizing that KRS 278.300 did apply to vehicle leases, Rowan Water, Inc., its directors and its general manager began to put procedures in place to keep these types of things from happening in the future. They have provided the policies that have been enacted in the record of this proceeding and have determined that having someone perform training for them at their annual meetings each December would assist them in performing their duties to the best of their ability. Rowan Water, Inc., its directors and its general manager made the decision to enter into vehicle leases because they believed it would save the customers money and provide reliable transportation to the employees. There was no ill-will, self-dealing or any intention to skirt the Commission's authority on the part of Rowan Water, Inc., its directors or its general manager. We request the Commission to find that there were no willful violations on the part of Rowan Water, Inc., its directors or its general manager.

Respectfully submitted,



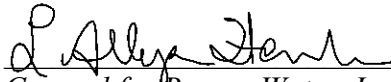
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CERTIFICATE OF SERVICE

This is to certify that foregoing was submitted electronically to the Commission on September 13, 2023 and that there are no parties that have been excused from electronic filing.

Pursuant to prior Commission orders, no paper copies of this filing will be submitted.



*Counsel for Rowan Water, Inc., its Directors
and General Manager*