

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF UNION)
COUNTY WATER DISTRICT AND ITS)
INDIVIDUAL COMMISSIONERS, RAYMOND) Case No. 2023-00120
ARNOLD AND JOYCE GREENWELL, AND)
MANAGER GARY SHEFFER ALLEGED FAILURE)
TO COMPLY WITH KRS 278.300 AND KRS)
278.020)

STATEMENT REGARDING THE NEED FOR A HEARING

Union County Water District (“UCWD”) and commissioners Raymond Arnold, Chairman; and Joyce Greenwell, Secretary; and Gary Sheffer, Manager, individually and in their respective capacities (collectively, the “Parties”), by counsel, files this Statement Regarding the Need for a Hearing. As discussed below, the Parties believe that (1) this matter can be submitted on the written record of this case, and (2) the Commission should find that the underlying actions do not constitute a willful violation of KRS 278.300, or in the alternative, that any potential penalties be waived because the individuals have attended water training seminar following the establishment of this case.

Background

From 2008 to 2021, Union County Water District rented from the Union County Fiscal Court an office building located at 409 North Court Street in Morganfield.¹ Over time, the building

¹ Statement attached to the Notice of Filing (filed June 19, 2023).; *see also* Response to Commission Staff’s Second Request for Information, Item 4 (filed Aug. 4, 2023).

began to need repair and updating.² Gary Sheffer, manager of the UCWD, approached Union County Judge Executive Adam O’Nan about making the much-needed repairs.³ After discussing it with Mr. Onan, an economical and mutually beneficial proposal was made to have UCWD purchase the property at a price of \$50,000.00.⁴ The purchase price was based on an appraisal by Duncan & Associates.⁵ At this price, it made more sense from a fiscally responsible perspective to purchase the property instead of continuing to rent it.⁶ This resulted in the UCWD obtaining a loan from United Community Bank of West Kentucky Inc. for \$75,000.⁷ The additional \$25,000 over the purchase price was for needed upgrades and repairs of the building.⁸ The individuals named in this action were simply unaware of the requirement for utilities to obtain Commission approval prior to taking on long-term debt.⁹ As such, UCWD did not request approval by the Public Service Commission (“Commission”) as required by KRS 278.300.

Following the establishment of this case, the individuals named in this case—Andrew Arnold, Joyce Greenwell, and Gary Sheffer—as well as Steven Loxley, who is a new board member, enrolled in the Commission training, which took place on July 11-12, 2023 at Kentucky Dam Village.¹⁰ These individuals attended that training.¹¹

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Response to Commission Staff’s First Request for Information, Item 2 (filed July 6, 2023).

⁶ Statement attached to the Notice of Filing (filed June 19, 2023).; *see also* Response to Commission Staff’s Second Request for Information, Item 4 (filed Aug. 4, 2023).

⁷ Response to Commission Staff’s First Request for Information, Item 1 (filed July 6, 2023).

⁸ *Id.*

⁹ Statement attached to the Notice of Filing (filed June 19, 2023).

¹⁰ Response to Commission Staff’s First Request for Information, Item 5 (filed July 6, 2023).

¹¹ Supplemental Response to Commission Staff’s First Request for Information, Item 2 (filed August 4, 2023).

Analysis

Regarding a potential hearing in this matter, the underlying facts are not disputed in this case. The Parties have been fully transparent in their responses to the Commission's order and Commission Staff's request for information. Accordingly, the Parties believe the Commission can render a decision on the written record of this case.

Regarding potential civil penalties, KRS 278.990 authorizes the Commission to assess monetary penalties for a willful violation of the provisions in KRS Chapter 278. The Parties respectfully submit that their actions were not willful. In Kentucky, "[t]he word 'willful' in its general acceptance means intentionally, not accidentally nor involuntarily."¹² "'Willful violations' of the Act or 'willful failure to comply with any of its provisions' means 'knowing' violation or 'knowing failure to comply'; to constitute a willful violation it is not necessary that there should have been a reckless disregard of its provisions."¹³

While the Parties do not contest that UCWD failed to comply with the requirements in KRS 278.300, they respectfully submit that their actions were not a willful violation of the statute. Simply put, UCWD's violation of KRS 278.300 was accidental. The Parties were not aware that they needed approval for this loan arrangement. The Parties thought they were making a smart and economically sound business decision for UCWD and its customers.

If the Commission disagrees with the Parties and finds that their actions constitute willful violations of KRS 278.300, the Parties respectfully recommend that the Commission decline to assess a civil penalty against any of the Parties based on the individuals' attendance at the Water

¹² *Kentucky Utilities Co.*, Case No. 93-035, 1996 WL 34589789 (Ky. PSC Apr. 2, 1996)(quoting *Muncy v. Commonwealth*, 736, 97 S.W.2d 606, 609, (Ky. 1936)).

¹³ *Id.* (quoting *Oldham v. Kubinski*, 185 N.E.2d 270 (Ill. App. 1962)).

Training Seminar in July, which is consistent with prior Commission precedent. For example, in Case Nos. 2022-00228 and 2022-00244, the Commission assessed a civil penalty to water district board members and manager for willfully violating a Commission order, but that civil penalty would be waived if the individuals attended 12 hours of a water training seminar.¹⁴ A similar determination was made in Case No. 2021-00339 for a willful violation of statutory or regulatory provisions.¹⁵ As mentioned above, UCWD's board members Andrew Arnold, Joyce Greenwell, and Steven Loxley, as well as manager Gary Sheffer, attended the Commission water training seminar training July 11-12, 2023 at Kentucky Dam Village. UCWD and its affiliated individuals sought to be proactive to receive training to show that this oversight was not done in bad-faith, and that the Parties take their responsibilities seriously. Ultimately, the purpose of the training to keep the board members and manager informed through training to avoid any future failures to comply with regulatory requirements.

In light of the Parties receiving this training and if the Commission determines that there was a willful violation from the underlying events of this case, the Parties ask that any fine imposed by Commission be waived, which would be accordance with the aforementioned Commission decisions.

In conclusion, the Parties respectfully request that (1) this matter can be submitted on the written record of this case, and (2) the Commission find that the underlying actions do not constitute a willful violation of KRS 278.300, or in the alternative, that any potential penalties be waived, which is consistent with prior Commission decisions.

¹⁴ *East Casey Water Dist.*, Case No. 2022-00228 (Ky. PSC Dec. 8, 2022); *Cumberland Cnty. Water Dist.*, Case No. 2022-00244 (Ky. PSC July 5, 2023).

¹⁵ *N. Manchester Water Ass'n*, Case No. 2021-00339 (Ky. PSC Mar. 7, 2023).

Respectfully submitted,



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