

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

IN THE MATTER OF:

ELECTRONIC ALLEGED FAILURE OF)	
SHARPSBURG WATER DISTRICT AND ITS)	
OFFICERS, ALFRED BAILEY, CECIL DUNCAN,)	CASE NO. 2023-00125
JUDY HARMON, RANDY WARNER, BILLY)	
MARTIN AND ITS MANAGER, GAYLE HANEY, TO)	
COMPLY WITH A COMMISSION ORDER)	

**POST HEARING MEMORANDUM OF SHARPSBURG WATER DISTRICT
OFFICERS AND GENERAL MANAGER**

Comes now Sharpsburg Water District and its Directors and General Manager and for its Memorandum to the Commission pursuant to Order of the Commission entered January 22nd, 2024 submits the following:

FACTS

Sharpsburg Water District (Sharpsburg Water) is a Kentucky Water District organized and created under KRS Chapter 74.

On April 30th, 2021, Sharpsburg Water applied for approval to adjust its rates pursuant to the purchased water adjustment procedure pursuant to KRS 278.015 and 807 KAR 5:068 styled In Re: Electronic Purchased Water Adjustment Filing of Sharpsburg Water District, PSC 2021- 00189. Pursuant to Order of the Commission entered May 27th, 2021 therein wherein the purchased water adjustment was granted, the Commission ordered “Sharpsburg District shall file an application for a traditional adjustment in rates or an alternative rate adjustment within one year of the date of this Order.”

On April 20th, 2022, and May 5th, 2022, Sharpsburg Water filed motions in 2021-00189 for an extension of time in which to file for a traditional adjustment in its base rates or an alternative rate adjustment. In both Motions Sharpsburg Water sought an additional six months to file the required rate adjustment. The Commission denied the Motions by Order entered June 3rd, 2022 and stated “Sharpsburg District shall file an application for a traditional adjustment in rates or an ARF as soon as possible. Failure to do so may result in the Commission assessing sanctions to Sharpsburg District.”

On August 16th, 2022 Sharpsburg Water filed another Application for Purchased Water Adjustment, styled In Re: Purchased Water Adjustment of Sharpsburg Water District, PSC 2022-00273. The application was granted by Order on September 13th, 2022 and the Commission stated:

Sharpsburg District shall file an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, or an application for an alternative rate adjustment pursuant to 807 KAR 5:076, or in the alternative, file a formal motion with a detailed analysis of its rates and revenues explaining the reasons why no modifications are necessary. Any filing for a rate adjustment filed under KRS 278.023 does not relieve Sharpsburg District from this requirement.

Sharpsburg Water filed its Application requesting an adjustment to its rates pursuant to 807 KAR 5:076 on October 28th, 2022 in the matter of In Re: Application of Sharpsburg Water District for a Rate Adjustment Pursuant to 807 KAR 5:076, PSC 2023-00348, five months beyond the deadline ordered in 2021-00189. The requested rate adjustment was granted on May 15th, 2023.

This matter is before the Commission to determine if the Directors and General Manager of Sharpsburg Water willfully disobeyed the Commission Order to file an Application

for a General Rate Adjustment within six months of May 27th, 2022, and if so, what if any penalty is appropriate.

ARGUMENT

Sharpsburg Water, the Directors and General Manager acknowledge that it failed to meet the one year deadline for filing an Application for Adjustment of Rates within one year as required by the Commission's Order of May 27th, 2021 of PSC 2021-00189.

I. SHARPSBURG WATER SUBSTANTIALLY COMPLIED WITH THE COMMISSIONS ORDER.

Kentucky Courts recognize the doctrine of substantial compliance. “Substantial compliance, of course, presupposes a failure of technical compliance but is applied to avoid a harsh and unjust result when a particular defect is trivial.” Cabinet for Health and Family Services v Loving Care, Inc., 590 SW3d 824, 829 (Ky. App. 2019) citing Com. ex rel. Stidham v. Henson, 887 S.W.2d 353, 354 (Ky. 1994) (Lambert, J., dissenting). Justice Lambert in his dissent elaborated that substantial compliance was deeply embedded in Kentucky law and cited Webster County v Vaughn, 356 SW2d 109 (Ky. 1963) to explain the principals.

There is no universal or inflexible rule by which directory provisions in statutes may in all circumstances be distinguished from those which are mandatory. Generally, the provision as to time is directory and not a limitation of authority. If there is a substantial compliance with the terms of the statute relating to time and mode so as to effectuate its purpose or accomplish the end and no harm results, the provision must be deemed directory and a slight variation, such as here existed, ought not to and does not invalidate the proceeding. Com. ex rel. Stidham v. Henson, 887 S.W.2d 353, 354 (Ky. 1994) (Lambert, J., dissenting).

It is undisputed that Sharpsburg Water did not intend to miss the twelve month deadline. The deadline was missed due to oversight. When the oversight was discovered Sharpsburg Water immediately sought assistance to file the Application and sought an extension

of the deadline before it had expired. After the mistake was discovered the Application was filed by Sharpsburg Water as soon as possible.

The directive of the Commission to file the Application was for the benefit of Sharpsburg Water to insure the financial sustainability of the District. The Application was filed and granted. Sharpsburg Water has benefited from the rate adjustment. The belatedness of the filing, five months, did not harm the District.

**II. THE DIRECTORS AND MANAGER OF SHARPSBURG WATER
DID NOT WILLFULLY DISOBEY THE ORDERS OF THE COMMISSION.**

KRS 278.990(1) provides that for Sharpsburg Water, its Directors or General Manager to be subject to penalty that their conduct be “willful.”

It is not disputed that the Commission’s Order of May 27th, 2022 in PSC 2021-00189 was received, read and understood by the General Manager, Gayle Haney. However, Gayle did not forward a copy of the Order to the Directors, but rather verbally informed the Directors of the Order without telling them of the directive to file a rate case within one year. The Directors failed to request a copy of the Order to review themselves.

Gayle Haney fully intended to comply with the Order. However, during that year she dealt with many issues both personal and as General Manager, and as a result she forgot to begin the process necessary for the Application so that it could be timely filed. She did not remember until April 8th, 2023. At that time she immediately contacted a representative of Kentucky Rural Water Association for assistance preparing the Application and was advised that it would take six months to prepare the required analysis for the Application. Thereafter she contacted legal counsel to request an extension of time to file the Application of six months consistent with the advice of Kentucky Rural Water.

Sharpsburg Water acknowledges the Commission's recognized definition of the term "willful:"

While a willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily, it has been stated that a willful violation does not necessarily and solely entail an intention to do wrong and inflict injury but may include conduct which reflects an indifference to its natural consequences. For civil and administrative proceedings, a willful violation has been explained as on which intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purposes to violate the law. *In Re: Alleged Failure of Green River Valley Water District and its Officers, PSC 2022-00215 (August 24th, 2023)*.

The conduct of the Directors and General Manager of Sharpsburg Water was not intentional, knowing, voluntary, deliberate or obstinate. The fact that once the mistake of not beginning filing the application earlier was discovered that Sharpsburg Water sought an extension of time of 6 months to file the Application demonstrates the absence of these factors.

The fact that willfulness may include conduct which reflects indifference, indicates that the opposite may be true as well, that willfulness may not include conduct that is indifferent. If the conduct of Sharpsburg Water's Directors and General Manager is considered on some level as indifferent, it does not rise to the level of willfulness.

III. IN THE EVENT THE COMMISSION FINDS THAT SHARPSBURG WATER WILLFULLY DISOBEYED ITS ORDER SHARPSBURG WATER DILIGENTLY ACTED TO REMEDY AND MITIGATE IT CONDUCT.

As noted previously Sharpsburg Water began the process of preparing the Application before the ordered deadline. Granted that process should have begun earlier i.e. as soon as the Order of May 27th, 2022 was received. However, the General Manager did not realize the extent of time required to prepare the Application, and then forgot to begin sooner.

Sharpsburg Water did seek an extension of time to file the Application. Most importantly the Application was filed as soon as possible after the oversight was discovered on

April 9th, 2022. The Application for Rate Adjustment was filed and the rate adjustment was approved.

Since this action has commenced Sharpsburg Water has implemented a practice and policy to provide all Commission Orders to the Board of Directors.

This investigation by the Commission has impressed upon the Board of Directors the importance of being informed in all aspects of the District and not overly relying on the General Manager. The Directors understand that by requiring information from the General Manager they are better able to guide and direct the General Manager. The General Manager welcomes the additional attention to better assist her in doing her job. The Directors and General Manager are committed to attending training to better perform their jobs going forward.

CONCLUSION

Based upon the forgoing Sharpsburg Water requests the Commission to find that no violation of KRS 278.990 occurred. Alternatively, in the event the Commission finds that the Directors and General Manager violated KRS 278.990, Sharpsburg Water requests the Commission take into consideration the mitigation efforts and order a minimum fine with the opportunity to vacate the fine by attending training.

Dated this 15th day of February, 2024.

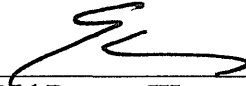
Respectfully submitted,



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CERTIFICATE OF SERVICE AND FILING

The undersigned certifies that the electronic filing has been transmitted to the Commission on February 15th, 2024; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.



Earl Rogers III
Counsel for Respondents