

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PURCHASED WATER	)	CASE NO.
ADJUSTMENT FILING OF NICHOLAS	)	2020-00145
COUNTY WATER DISTRICT	)	

ORDER

On June 23, 2021, Nicholas County Water District (Nicholas District) filed a motion for an extension of time in which to file an application for a rate adjustment. On May 11, 2020, in the final Order in this proceeding, the Commission noted that its records indicated that Nicholas District had not sought a general base rate adjustment since at least 1985, and ordered Nicholas District to file an application for a traditional rate adjustment or an alternative rate adjustment before May 11, 2021.<sup>1</sup> In that Order the Commission also noted that Nicholas District's response to the Commission's Division of Inspections January 29, 2020 Periodic Compliance Inspection was more than 30 days past due.<sup>2</sup> The Commission found that lack of insight into Nicholas District's financial records, and the deficiencies cited in the January 29, 2020 Periodic Compliance Inspection caused the Commission to be concerned Nicholas District might lack sufficient revenue to support safe, adequate, and reliable service.<sup>3</sup> Following the filing of its motion for an extension of time, Nicholas District responded to one Request for Information issued by Commission

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<sup>1</sup> Order (Ky. PSC May 11, 2020) at 1 and 3.

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

<sup>3</sup> *Id.* at 1 and 2.

Staff. For the reason stated below Nicholas District's motion for an extension of time is denied.

Nicholas District filed its motion for an extension of time 43 days after the deadline established by the Commission to file the application for an adjustment in rates had lapsed. The Commission finds it cannot grant a motion for an extension of time that was untimely filed to this extent. However, the Commission finds the reasons cited by Nicholas District for its failure to file an application for an adjustment of its rates to be credible. Nicholas District states that it believed and relied upon the assurances made to it by its former long-standing consulting engineer.<sup>4</sup> This engineer led Nicholas District to believe that filing a United States Department of Agriculture (RD) project with the Commission would satisfy the May 11, 2020 Order and that the RD project would be filed before the May 11, 2021 deadline.<sup>5</sup>

It is extremely unfortunate that Nicholas District did not seek the advice of a knowledgeable attorney earlier, since an attorney would have understood that an RD project filing pursuant to KRS 278.023 (023 filing) is not an application for a traditional rate adjustment or an alternative rate adjustment, and does not satisfy the Commission's May 11, 2020 Order.<sup>6</sup> In fact, the Commission has expressed its concern that water districts rely upon 023 filings, which are subjected to far less review than an application

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<sup>4</sup> Response to Staff's First Request for Information (Response to Staff's First Request) Items 1a and 2a.

<sup>5</sup> *Id.*

<sup>6</sup> KRS 278.023 governs Commission approval of federally funded construction projects for water utilities. For a discussion of statutory limits placed upon the Commission's scope of review for projects filed under this provision see

for a traditional or alternative rate adjustment, to obtain rate increases and avoid coming to the Commission for a comprehensive rate case.<sup>7</sup>

The Commission has also discussed the potential for conflicts of interest when a water district and a single engineering firm have a long-standing relationship.<sup>8</sup> Here, although there is no allegation or evidence to suggest the engineering firm involved acted out of self-interest, advice offered in ignorance contributed to Nicholas District's failure to follow the Commission's May 11, 2020 Order. The engineer in question provided Nicholas District with exceedingly poor advice. Due to the long-standing relationship between the engineering firm and the utility, Nicholas District relied upon this advice and assurances made by an engineer who was not qualified to render them. As Nicholas District has realized, engineers who are not lawyers should not be relied upon for legal advice.

The Commission appreciates the candor with which Nicholas District responded to Staff's First Request for Information, and encourages other jurisdictional utilities to exercise such candor in all exchanges with the Commission. The Commission also notes that when Nicholas District learned that Kentucky Rural Water Association would be unable to assist in preparing an application for an alternative rate adjustment, Nicholas District sought competent assistance from the Rural Community Assistance Program (RCAP). Given that Nicholas District has secured assistance from RCAP, the

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<sup>7</sup> See Case No. 2019-00041, *Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC Nov. 22, 2019), Appendix L, *Confronting the Problems Plaguing Kentucky's Water Utilities: an Investigative Report by the Kentucky Public Service Commission November 2019* at 19 and 20.

<sup>8</sup> *Id.* at 19, footnote 61.

Commission anticipates Nicholas District will file its application for an alternative rate adjustment on or before December 15, 2021.

The Commission ordered Nicholas District to file an application for a rate adjustment because it is concerned that the revenue of Nicholas District may not be sufficient to support safe, adequate, and reliable service. Attached to this Order, as an Appendix, is an analysis of Nicholas District's finances prepared by Commission Staff, using the annual reports and audit reports submitted to the Commission by Nicholas District since 2016. Given that this analysis indicates that Nicholas District has reported a negative net income for four of the past five years, the Commission remains concerned that the revenue of Nicholas District may not be sufficient for it to continue to meet its statutory obligation to provide adequate and reliable service.

The Commission notes that the annual reports for 2019 and 2020 have been received by the Commission's Filings Branch but have not yet been accepted and posted to the Commission's website due to missing Nicholas County Fiscal Court documentation. The Commission's records indicate Nicholas District was contacted by Staff on October 30, 2020; December 3, 2020; February 22, 2021; and March 8, 2021, concerning the missing documentation. Nicholas District is encouraged to follow up with Staff concerning the missing documentation.

IT IS THEREFORE ORDERED that:

1. Nicholas District's motion for an extension of time in which to file an application for an adjustments in rates is denied.
2. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED  
AUG 19 2021 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2020-00145

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2020-00145 DATED AUG 19 2021

**Nicholas County Water District**

Analysis of Financial Statements

Year	2016	2017	2018	2019	2020
(Numbers Derived From Annual Report)					
Net Income	\$ (169,935)	\$ (223,368)	\$ 486,092	\$ (255,294)	\$ (219,730)
Add: Depreciation Expense	192,621	189,088	197,469	203,854	202,493
Cash Basis Income	\$ 22,686	\$ (34,280)	\$ 683,561	\$ (51,440)	\$ (17,237)

Year	2016	2017	2018	2019	2020
(Numbers Derived From Audit Report)					
Cash and Cash Equivalents	\$ 428,366	\$ 324,119	\$ 383,883	N/A	N/A
Depreciation Reserve	25,947	28,624	70,209	N/A	N/A
Net Increase (Decrease) in Cash	(190,593)	(104,248)	59,764	N/A	N/A

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