

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO THE)	
FINANCIAL AND OPERATING CAPACITY OF)	
RATTLESNAKE RIDGE WATER DISTRICT)	
INCLUDING RATTLESNAKE RIDGE WATER)	
DISTRICT AND ITS INDIVIDUAL)	CASE NO.
COMMISSIONERS, AND MANAGER DAVID)	2021-00340
GIFFORD FOR ALLEGED FAILURE TO COMPLY)	
WITH KRS 278.300 AS WELL AS POSSIBLE)	
VACANCIES ON THE BOARD OF)	
COMMISSIONERS OF RATTLESNAKE RIDGE)	
WATER DISTRICT)	

ORDER

On December 13, 2022, Rattlesnake Ridge Water District (Rattlesnake Ridge District) filed a motion for enlargement of time. In the motion, Rattlesnake Ridge District requested 45 additional days to respond to the Orders from the Commission dated November 7, 2022, and November 14, 2022. In support of its motion, counsel for the utility stated that he has been out of town and has had difficulty meeting with the utility commissioners due to the upcoming holidays.¹ The motion stated the utility was gathering the information and 45 days would allow for a response.²

¹ Motion for Enlargement of Time (filed Dec. 13, 2022) at 1.

² Motion for Enlargement of Time (filed Dec. 13, 2022) at 1.

The Commission issued an Order on November 7, 2022, continuing and expanding its investigation to include a possible violation of KRS 278.300.³ Rattlesnake Ridge District had 20 days from the date of service to respond to the Order. The Commission Staff issued a data request⁴ on November 14, 2022, and the responses were due on December 9, 2022. Rattlesnake Ridge District did not file a response within 20 days of the service date of the Order or responses to the data request by Dec. 9, 2022.

BACKGROUND

On October 18, 2021,⁵ the Commission initiated this investigation into the financial and operational capacity of Rattlesnake Ridge District. Among other concerns discussed in the Commission's opening Order, Rattlesnake Ridge District hadn't fully complied with the Commission Orders in Case No. 2019-00041.⁶ Since the initiation of this investigation, Rattlesnake Ridge District has repeatedly requested to extend or reschedule procedural dates. The initial Order set a hearing for January 12, 2022. Rattlesnake Ridge District's first motion to reschedule the hearing date and extend the date to submit certain filings as ordered by the Commission was filed on November 15,

³ Order (Ky. PSC Nov. 7, 2022) at 1-3. KRS 278.300(3) "The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose."

⁴ Commission Staff's Third Request for Information (filed on Nov. 14, 2022), Responses due Dec. 9, 2022.

⁵ Opening Order (Ky. PSC Oct. 18, 2021).

⁶ Case No. 2019-00041 *Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC July 30, 2021). Case No. 2019-00041 was opened to examine the ongoing water loss issues and several problematic utilities in the Commonwealth. The report was attached to the opening Order in this case.

2021.⁷ The Commission denied the district's request.⁸ Rattlesnake Ridge District filed a motion for an enlargement of time⁹ to respond to post-hearing data requests after the hearing. The utility asked for an additional 45 days to respond to the post-hearing data requests, which were issued on January 14, 2022, and the response was due on February 8, 2022.¹⁰ The Commission issued an Order granting an extension of 30 days and noted Rattlesnake Ridge District's "substantial delays in implementing needed improvements."¹¹

Rattlesnake Ridge District's response to the Commission's November 7, 2022 Order was due November 28, 2022, yet Rattlesnake Ridge District failed to file any response until December 13, 2022. Two weeks after its response to the November 7, 2022 Order was due and after failing to respond to Commission Staff's request for information, Rattlesnake Ridge District filed a motion once again seeking 45 additional days in which to file its responses.

LEGAL STANDARD

The Commission may grant extensions to deadlines it establishes upon a utility's showing of good cause.

Under KRS 278.250 and KRS 278.260, the Commission is authorized to investigate and examine the condition of any utility subject to its jurisdiction, including any

⁷ On November 15, 2021, Rattlesnake Ridge filed a motion requesting an informal conference and to postpone the hearing date.

⁸ Order (Ky. PSC Dec. 9, 2021).

⁹ Rattlesnake Ridge's Motion for Enlargement of Time (filed Jan. 27, 2022).

¹⁰ Motion for Enlargement (filed Jan. 27, 2022) at 1.

¹¹ Order (Ky. PSC Feb. 2, 2022).

practice or act relating to the utility service. Under KRS 278.280, if the Commission finds that any practice or act is unjust, unreasonable, unsafe, improper, inadequate, or insufficient, then the Commission has the authority to determine the just, reasonable, safe, proper, adequate, or sufficient practice or method to be observed. Upon a finding that Rattlesnake Ridge District, its commissioners, or manager violated any provision of KRS Chapter 278, Commission regulations, or a Commission Order, KRS 278.990 authorizes the Commission to assess civil penalties not to exceed \$2,500 for each offense against a utility and against any officer, agent, or employee of a utility who willfully violates any provisions of KRS 278, Commission regulations, or Orders.

KRS 278.021(2) outlines when a utility shall be considered abandoned, KRS 278.021(2)(c) and (d) state a utility shall be considered abandoned if it:

(c) Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or

(d) Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.

Furthermore, abandonment must be approved by the Commission per KRS 278.020(6). Failure to do so could subject a utility, officer, agent, or employee thereof to civil penalties under KRS 278.990 as discussed above.

DISCUSSION AND FINDINGS

The Commission finds that Rattlesnake Ridge District has not established good cause and therefore the request for a 45-day extension of time to respond to the Commission's November 7, 2022 Order, and Commission Staff's November 14, 2022 data request should be denied. As noted above, Rattlesnake Ridge District did not timely file responses to either the Order or the data requests, nor did it timely file leave to file late responses. Instead, Rattlesnake Ridge District waited until significantly after the responses were due to request a lengthy delay in time to respond. Rattlesnake Ridge District provided a generalized excuse that its counsel was out of town and that there had been a difficulty in meeting with the board members due to the holiday schedules. Rattlesnake Ridge District provided no explanation for the significant delay in filing its motion or its responses.

The Commission reminds Rattlesnake Ridge District that, because it did not timely respond to the Order, Rattlesnake Ridge District allegedly failed to comply with a Commission Order and may be subject to penalties in accordance with KRS 278.990. The failure to timely respond to a Commission Order is not the only potential violation of statutes, regulations, or Commission Orders by Rattlesnake Ridge District.

Rattlesnake Ridge District has not provided the Commission with the information regarding utility commissioner vacancies or appointments required by KRS 74.020 generally and specifically KRS 74.020(10),

(a) Within thirty (30) days of the occurrence of a vacancy on its board of commissioners resulting from the expiration of a term or the death, resignation, or removal of the incumbent, a water district shall notify in writing the Public Service Commission of the existence of the vacancy. The notice shall

include the name of the commissioner who last held the position and the date on which the unexpired term will end.

(b) Within thirty (30) days of the appointment of a commissioner and the appropriate fiscal court's approval of that appointment, a water district shall notify the Public Service Commission of the appointment. The notice shall include the appointed person's name and the date of the expiration of his or her term.

Rattlesnake Ridge District did not timely file its 2021 Annual Report.¹² Rattlesnake Ridge District filed its 2020 Audit Report in this case and still hasn't filed any subsequent report for 2021. Both reports are required by 807 KAR 5:006 and are due by March 31 of the subsequent year. Based upon a review of Commission records, Rattlesnake Ridge District has not filed an accepted, timely annual report since 2011. Without this information, it is extremely difficult to evaluate the financial capacity of the utility and the Commission has the power to investigate and audit a utility.¹³ Coupled with the alleged violations of KRS 278.300, the Commission is extremely concerned with the utility's ability to "... furnish adequate, efficient and reasonable service ...".¹⁴

Because the Rattlesnake Ridge District failed to establish good cause to extend the deadline to respond, the Commission finds that the utility shall respond immediately to both the Order issued on November 7, 2022, and to the data request issued on November 14, 2022. Continued delays and untimely responses to these most recent requests contributes to the Commission's concern that Rattlesnake Ridge District's willful

¹² Accepted for publication on August 4, 2022. .

¹³ KRS 278.250, KRS 278.255.

¹⁴ KRS 278.030(2).

disregard for its statutory and regulatory obligations, and disregard for Commission Orders, renders the utility effectively abandoned.

IT IS HEREBY ORDERED:

1. Rattlesnake Ridge District's motion is denied.
2. Rattlesnake Ridge District shall immediately respond to the Order of the Commission dated November 7, 2022.
3. Rattlesnake Ridge District shall immediately respond to Commission Staff's Third Request for Information dated November 14, 2022.

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PUBLIC SERVICE COMMISSION

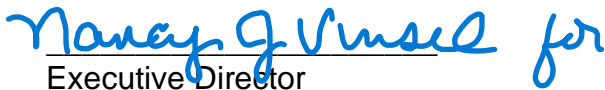

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Vice Chairman


Commissioner

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