

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KIRKSVILLE WATER ASSOCIATION, INC. AND	)	
ITS INDIVIDUAL DIRECTORS, ARMON	)	
SANDERS, WAYNE LONG, ALFRED WINKLER,	)	CASE NO.
RANDAL WEBB, AND BOBBY POWELL, AND	)	2022-00197
MANAGER MIKE AGEE ALLEGED FAILURE TO	)	
COMPLY WITH KRS 278.300 AND KRS 278.020	)	

ORDER

On August 11, 2022, the Commission initiated an investigation into Kirksville Water Association, Inc. (Kirksville Water) and its individual directors, Armon Sanders, Wayne Long, Alfred Winkler, Randal Webb, and Bobby Powell, and its Manager, Mike Agee, for allegedly failing to comply with KRS 278.020 and KRS 278.300, and to investigate Kirksville Water's alleged territorial sales and other income sources. On August 31, 2022, Kirksville Water and its directors filed an answer.<sup>1</sup> Kirksville Water responded to three requests for information.<sup>2</sup>

On November 7, 2022, in response to a request posed by Kirksville Water in its answer to the allegations set forth in the opening Order in this proceeding, the Commission issued an Order requiring Kirksville Water to file an application for a rate

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<sup>1</sup> The answer was signed by the attorney of record, electronically signed, but not attested by all named directors, and was subsequently adopted in the hearing by Wayne Long, Bobby Powell, Alfred Winkler, and Aaron Owens.

<sup>2</sup> Kirksville Water's Response to Commission Staff's First Request for Information (Staff's First Request) (filed on Sept. 26, 2022); Kirksville Water's Response to Commission Staff's Second Request (Staff's Second Request) (filed Nov. 8, 2023); Kirksville Water's Response to Commission Staff's Post-Hearing Request (Staff's Post Hearing Request) (filed July 27, 2023). These responses were adopted in the hearing by Aaron Owens, Kirksville Water's current manager.

adjustment by June 30, 2023.<sup>3</sup> On May 18, 2023, the Commission scheduled a hearing for July 6, 2023.<sup>4</sup> On July 6, 2023, the Commission held a hearing and heard testimony from Wayne Long, chairman of the Board of Directors of Kirksville Water (Board); Aaron Owens, the current manager of Kirksville Water; Alfred Winkler, vice chairman of the Board; and Bobby Powell, treasurer of the Board.

On July 10, 2023, Kirksville Water filed two motions: (1) a motion to excuse Randal Webb, Mike Agee and Armon Sanders from the proceeding as Randal Webb and Mike Agee were no longer affiliated with the utility, and Armon Sanders was undergoing cancer treatment, and (2) a motion for an extension of time in which to file an application for a rate adjustment.<sup>5</sup> On September 8, 2023, Kirksville Water filed its post-hearing brief. On October 19, 2023, Kirksville Water notified the Commission that Armon Sanders was no longer serving on the Board. The letter to the Commission is attached to this Order as an Appendix. There are no intervenors in this proceeding. This matter now stands submitted for a decision.

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<sup>3</sup> In Case No. 2022-00076, *Electronic Application of Kirksville Water Association Inc. for Permission to Issue Indebtedness Pursuant to KRS 278.300* (Ky. PSC June 20, 2022) at 4 (The Commission had inadvertently stated that Kirksville Water had not filed a rate case since 1985. The Commission indicated that Kirksville Water had a reduction in income and may be relying on nonrecurring income. In response to the opening Order in this case, Kirksville Water asked to be relieved of this obligation.)

<sup>4</sup> Order (Ky. PSC May 15, 2023) and Order (Ky. PSC May 18, 2023). See also Order (Ky. PSC June 30, 2023). The Commission clarified that all of Kirksville Water's board members and its manager should be available to testify at the hearing.

<sup>5</sup> See Case No. 2023-00258, *Electronic Application of Kirksville Water Association, Inc. for a Rate Adjustment Pursuant to 807 KAR 5:076*, Kirksville Water tendered an application for an alternative rate adjustment on July 31, 2023. By letter dated August 2, 2023, the Commission rejected the application for filing deficiencies. Subsequently, Kirksville Water cured the filing deficiencies and the application is deemed filed as of August 12, 2023.

## LEGAL STANDARD

### Investigations, Civil Penalties, and Removal

Pursuant to 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 practice or act relating to the utility service. Pursuant to KRS 278.012, a water association formed for the purposes of furnishing water or sewer services to the general public pursuant to KRS Chapter 273 is a public utility and is subject to the jurisdiction of the Commission. Pursuant to 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. 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 Chapter 278, Commission regulations, or Orders.

### Certificates of Public Convenience and Necessity (CPCN)

Under KRS 278.020(1)(a), no utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>6</sup>

“Need” requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

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<sup>6</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885 (KY. 1952).

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.<sup>7</sup>

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”<sup>8</sup> To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.<sup>9</sup> The fundamental principle of reasonable least-cost alternative is embedded in such an analysis. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>10</sup> All relevant factors must be balanced.<sup>11</sup>

Exceptions to the requirement for a CPCN are provided in KRS 278.020(1)(a)(2) and (3). A CPCN is not required for any ordinary extension of an existing system in the

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<sup>7</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d. 890.

<sup>8</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d. 890.

<sup>9</sup> Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

<sup>10</sup> See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

<sup>11</sup> Case No. 2005-00089, Aug. 19, 2005 final Order at 6.

usual course of business.<sup>12</sup> A CPCN is also not required for a water district or water association that undertakes a waterline extension or improvement project so long as the project will cost \$500,000 or less, or does not require the utility to issue evidence of indebtedness and does not result in an increase to customer rates.<sup>13</sup>

### Financing Approval

Pursuant to KRS 278.300(1) no utility may issue any securities or evidence of indebtedness until authorized to do so by the Commission. KRS 278.300(8) provides for an exception, which is not relevant in this instance, but which indicates Commission approval is not required for evidences of indebtedness for terms of two years or less.

### BACKGROUND

As noted in the opening Order in this matter, in Case No. 2022-00076,<sup>14</sup> Kirksville Water tendered an application, pursuant to KRS 278.300, requesting retroactive permission to issue indebtedness for a recently purchased office building. According to Kirksville Water's application, on November 22, 2021, Kirksville Water purchased a building located at 1613 Foxhaven Drive, Richmond, Kentucky, to house office and meeting space and provide a location for customers to pay bills (Foxhaven Property).<sup>15</sup> Kirksville Water requested approval to issue indebtedness for the Foxhaven Property.<sup>16</sup>

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<sup>12</sup> KRS 278.020(1)(a)(2). See also 807 KAR 5:001, Section 15(3) provides that a CPCN is not required for extensions that do not create wasteful duplication, conflict with the existing certificates or service of other utilities, and that do not involve sufficient outlay to materially affect the existing financial condition of the utility involved, or will not result in an increase charge to customers.

<sup>13</sup> KRS 278.020(1)(a)(3).

<sup>14</sup> Case No. 2022-00076, *Electronic Application of Kirksville Water Association Inc. for Permission to Issue Indebtedness Pursuant to KRS 278.300* (Ky. PSC June 20, 2022).

<sup>15</sup> Case No. 2022-00076, Application (filed March 15, 2022), paragraphs 2 and 3.

<sup>16</sup> Case No. 2022-00076, Application.

The purchase price was \$275,500 of which \$174,250 was financed with a loan from 1st Trust Bank in Richmond, Kentucky.<sup>17</sup> The terms of the loan included an interest rate of 4.5 percent over 84 months, with a balloon payment of \$131,136.16 due November 18, 2028.<sup>18</sup>

On May 13, 2022, Commission Staff issued Commission Staff's First Request for Information, requesting responses to be filed by May 27, 2022. In lieu of responding to Commission Staff's First Request for Information, Kirksville Water filed a notice of withdrawal of the application stating that the debt incurred in the purchasing of the property had been retired via cash resources.<sup>19</sup> On June 20, 2022, the Commission issued a final Order in Case No. 2022-00076, and found, among other things, that Kirksville Water had not met the legal standard for Commission approval to issue an of evidence of indebtedness. KRS 278.300(1) requires Commission approval prior to the issuance of any evidence of indebtedness, and Kirksville Water failed to request Commission approval until after it had entered into the 1st Trust Bank loan.<sup>20</sup>

Further, the Commission found that Kirksville Water failed to seek either a CPCN for its purchase and renovation of the Foxhaven Property or a declaratory order stating that a CPCN was not needed.<sup>21</sup> In the final Order in Case No. 2022-00076, the Commission found that a prima facie case existed concerning violations of KRS 278.300 for Kirksville Water's failure to seek approval for financing, and KRS 278.020 for Kirksville

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<sup>17</sup> Case No. 2022-00076, June 20, 2022 Order at 4.

<sup>18</sup> Case No. 2022-00076, June 20, 2022 Order at 4.

<sup>19</sup> Case No. 2022-00076, June 20, 2022 Order at 4.

<sup>20</sup> Case No. 2022-00076, June 20, 2022 Order at 4.

<sup>21</sup> Case No. 2022-00076, June 20, 2022 Order at 7.

Water's failure to seek a CPCN. Finally, the Commission noted a sale of "territorial rights" made by Kirksville Water.<sup>22</sup> Because KRS 278.218 states that any assets that are owned by a utility shall not be transferred without prior approval of the Commission, if the assets have an original book value of \$1,000,000, and because the Commission did not know the original book value of the asset(s) that were transferred, nor what exactly was sold, the Commission indicated in the final Order of Case No. 2022-00076, that it would conduct an investigation of this sale in this proceeding.

## DISCUSSION AND FINDINGS

### Sale of Territorial Rights

In its response to the opening Order in this proceeding Kirksville Water provided an explanation of the sale of territorial rights.<sup>23</sup> Kirksville Water explained that a parcel of land upon which it had previously provided water service to one residence and one cattle water tank was being developed and now required access to sewage services that could only be provided by the city of Richmond, Kentucky (Richmond). Therefore, the "right" to serve the water customer at that location was sold to Richmond.<sup>24</sup> The Commission finds this explanation sufficient concerning the source of the nonrecurring income, and finds insufficient evidence to warrant further investigation into the matter.

### Alleged Violation of KRS 278.300

Although each case must be examined individually, the Commission has two goals in mind when issuing a final Order in an investigation into violations of any provision of

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<sup>22</sup> Case No. 2022-00076, Application (filed March 25, 2022), KWA2021operations.pdf, pdf page 6 of 6.

<sup>23</sup> Response to Commission Order (filed Aug. 31, 2022) at unnumbered page 6.

<sup>24</sup> Response to Commission Order at unnumbered page 6.

KRS Chapter 278. First, the Commission's goal has been to obtain compliance with the requirements of the statutes in question and not to merely exact a penalty. Second, the Commission seeks to put utilities, including utility management, commissioners, and directors on notice that certain actions place the utility management employees, individual commissioners, and directors out of compliance with applicable statutes and regulations, and that future violations could result in individual penalties as well as a separate penalty against the utility.

At the hearing, members of the Kirksville Water Board testified that they, in fact, did not seek Commission approval to enter into the sales contract or the loan.<sup>25</sup> The utility stated that the situation was emergent and required an immediate response.<sup>26</sup> The Commission notes that KRS 278.300 does not contain an exception for exigent circumstances. Chairman Long and Vice Chairman Winkler each testified that he knew Commission approval was needed prior to obtaining a loan,<sup>27</sup> but the Board needed to act quickly and believed an application seeking approval would take too long and Kirksville Water would ultimately lose the Foxhaven Property.<sup>28</sup>

Based on the record, the Commission finds that Kirksville Water, its manager, and the named board members, in fact, did violate KRS 278.300. However, Kirksville Water and the Board members claimed there was no “willful” violation of the statute.<sup>29</sup> While a

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<sup>25</sup> Wayne Long, Hearing Video Testimony of the July 6, 2023 hearing (HVT) 13:53:58–13:56:56, Alfred Winkler HVT 15:33:00–15:34:25; Bobby Powell HVT 16:28:20–16:33:00.

<sup>26</sup> Wayne Long HVT 13:53:58–13:56:56.

<sup>27</sup> Wayne Long HVT 14:18:45–14:20:28; Alfred Winkler HVT 15:33:00–15:34:25.

<sup>28</sup> Wayne Long HVT 14:18:50–14:20:50.

<sup>29</sup> Wayne Long HVT 13:53:58–13:56:56.



willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily,<sup>30</sup> it has also 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.<sup>31</sup> For civil and administrative proceedings, a willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.<sup>32</sup>

The failure of the individual board members to obtain Commission approval prior to issuing an evidence of indebtedness is intentional. Board members have a fiduciary duty and responsibility to the utility.<sup>33</sup> Before a board member can act in the best interest of a utility and its customers, it stands to reason that the board member must seek to be reasonably informed about the issues confronting the utility. Becoming and remaining informed requires a board member to actively seek information. At a minimum, an individual with a fiduciary duty to act in the best interest of a public utility and its customers should seek to stay informed concerning the utility's obligations to its regulating body and seek to enable the utility to meet those obligations. In this instance, members of Kirksville Water's Board knew that Commission approval was needed prior to taking out the loan,

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<sup>30</sup> Case No. 1992-00016, *M.A. V.I.S.S., Inc. and Mr. Darby Alleged Failure to Comply with Commission Regulations* (Ky. PSC July 1, 1992).

<sup>31</sup> Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC Aug. 14, 1996), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

<sup>32</sup> Case No. 1999-00001, *Bluegrass Gas Sales, Inc., Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999) at 5, citing *Woods v. Carsey*, 200 P.2d. 208 (Cal. App. 1948).

<sup>33</sup> KRS 273.215.

but they believed they had insufficient time in which to obtain that approval, and decided not to submit an application before taking out the loan.

The Commission encourages Kirksville Water to seek experienced legal counsel on a regular basis so that it may understand the legal expectations of the statutory and regulatory guidelines of the Commission, as well as the legal obligations of its endeavors. During the hearing, it became apparent that no one was sure when counsel became aware of the need for a new building nor whether the Board actually discussed the issue with counsel after a property had been identified, but before making an offer to purchase.<sup>34</sup> Further, it is not clear when counsel or the Board were informed that Madison County Utilities District (Madison Utilities) did not plan to renew the agreement to share the office facilities.<sup>35</sup> Chairman Long testified that the Board did not receive written notice, but that Mike Agee informed the Board at a Board meeting that Madison Utilities was not renewing the agreement and that Kirksville Water would need to vacate the shared office facility by June 30, 2022.<sup>36</sup>

The named board members and manager did not take steps to comply with KRS 278.300. Even after Kirksville Water became aware that there might be an issue with an unapproved loan, the utility chose to pay the loan off, and failed to provide

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<sup>34</sup> Minutes from Kirksville Water's October 20, 2021 Board Meeting (filed July 27, 2023) indicated that the Board authorized Wayne Long to sign all paperwork necessary to purchase the Foxhaven Property and state that an offer to purchase had already been accepted as of this date. Counsel for Kirksville Water is listed in the minutes as having attended and advised the Board that "Jim Carr doesn't mind when we leave," noting that the contract with Madison Utilities did not expire until June 30, 2022.

<sup>35</sup> Wayne Long HVT 14:03:59–14:06:15. It is unclear from reading the minutes of 2021 Board meeting when the Board became aware of Madison Utilities desire to terminate the agreement to share an office, but as of October 20, 2021, an office location had been identified and an offer to purchase had been made and accepted.

<sup>36</sup> Wayne Long HVT 14:03:59–14:06:15.

information to the Commission at the time it was requested.<sup>37</sup> Chairman Long testified at the hearing that Kirksville Water paid the loan off in an attempt to “clean the slate” because the Board realized it had created a situation with the Commission that would be difficult to resolve.<sup>38</sup> However, KRS 278.300 is clear. Commission approval is required prior to a utility issuing an evidence of indebtedness payable in a term longer than two years. The statute does not contain any provision which permits utilities to issue an evidence of indebtedness for which Commission approval would otherwise be required, but avoid the necessity of obtaining that approval or the penalty for failing to do so, by retiring the debt within two years. For the reasons stated above the Commission finds that Kirksville Water, its named board members, and manager willfully violated KRS 278.300.

#### Alleged Violation of KRS 278.020

As utilized by Kirksville Water, the Foxhaven Property is a facility for furnishing utility service to the public.<sup>39</sup> KRS 278.020(1)(a) provides that no utility may construct any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission except as provided in KRS 278.020(1)(a)(1)-(3) and 807 KAR 5:001, Section 15(3), which are provisions not applicable to Kirksville Water’s purchase and renovation of an office building as explained below.

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<sup>37</sup> Wayne Long HVT 13:53:58–13:56:56. See Case No. 2022-00076, Notice of Withdrawal (filed May 27, 2022). Kirksville Water did not respond to Staff’s First Request for Information, but purported to withdraw its application.

<sup>38</sup> Wayne Long HVT 13:53:46–13:56:27.

<sup>39</sup> Case No. 2022-00076, Petition for Indebtedness (filed Mar. 25, 2022) paragraph 4.

In its response to the opening Order Kirksville Water argued that the purchase of the building and the minimal remodeling needed to make it suitable for use as an office/headquarters was an extension of an existing system in the ordinary course of business.<sup>40</sup> Kirksville Water stated that it had no office of its own and following the termination of its agreement to share space with Madison Utilities, it was forced to find space for daily operations.<sup>41</sup> Kirksville Water cited Commission regulation 807 KAR 5:001, Section 15(3) as authority for its argument that no CPCN was required for the purchase and remodeling of the Foxhaven Property.<sup>42</sup> Commission regulation 807 KAR 5:001, Section 15(3) provides guidance concerning the type of an extension that constitutes an extension in the ordinary course of business, and therefore does not require a CPCN. A CPCN is not required for extensions that do not create wasteful duplication, conflict with the existing certificates or service of other utilities, and that do not involve sufficient outlay to materially affect the existing financial condition of the utility involved, or will not result in an increase charge to customers. However, the Commission has long held that a utility's headquarters building is an integral part of its distribution system and performs system-wide functions, and as such the construction or remodeling of a utility's headquarters requires a CPCN, and is not an ordinary extension of an existing

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<sup>40</sup> Response to Commission Order at unnumbered pages 3-4.

<sup>41</sup> Response to Commission Order at unnumbered page 3.

<sup>42</sup> Response to Commission Order at unnumbered page 3.

system in the usual course of business.<sup>43</sup> In this case, Kirksville Water expended approximately \$205,837 for the building and renovations, 12 percent of the net plant in service of \$2,669,426.<sup>44</sup>

Kirksville Water did not construct a newly built facility; it purchased an existing building and modified it for use as a public utility headquarters. However, on that issue Commission precedent is also clear, because the Commission has previously required a CPCN for the purchase of an existing building and the minimal construction necessary to retrofit the building for use as a water utility headquarters, as well as for the remodeling

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<sup>43</sup> See, Case No. 1992-00136, *Henderson-Union Rural Electric Cooperative Corporation, Alleged Failure to Comply with KRS 278.020(1)* (Ky. PSC Nov. 2, 1992) Order at 2. An electric utility constructed a headquarters building without obtaining a CPCN and was assessed a \$1,250 civil penalty for a willful violation of KRS 278.020; Case No. 2013-00343, *Application of Salt River Electric Cooperative Corporation for a Certificate of Convenience and Necessity Authorizing Certain Proposed Construction Identified as the Headquarters Construction and District Renovations* (Ky. PSC Oct. 25, 2013), Order granting Salt River's request for a CPCN to construct a new warehouse/operations center; Case No. 2011-00196, *Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 19, 2011 ), Order granting Kenergy a CPCN to construct a new district office and service facility; Case No. 2010-00244; Case No. 2008- 00371, *Application of South Kentucky Rural Electric Cooperative Corporation for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility in Somerset, Kentucky* (Ky. PSC May 11 , 2010), Order granting South Kentucky a CPCN to construct proposed headquarters facilities ; Case No. 2004-00416, *Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for 2004- 2007 Construction of Work Plan* (Ky. PSC Feb. 25, 2005), Order holding that in the event Kenergy or Big Rivers desires to proceed with a headquarters construction, a separate CPCN will have to be filed; Case No. 2001 -00178, *The Application of the Big Sandy Water District for a Certificate of Public Convenience and Necessity to Construct an Improvement Project and to Issue Securities in the Approximate Principal Amount of \$822,000 for the Purpose of Financing Said Project and Refunding Certain Outstanding Revenue Bonds of the District Pursuant to the Provisions of KRS 278.020, 278.300 and 807 KAR 5:001* (Ky. PSC Dec. 20, 2001 ), Order finding that prima face evidence exists that Big Sandy violated KRS 278.020(1) by its construction of the proposed tank facilities without first obtaining a CPCN from the Commission; and Case No. 94-182, *Columbia Gas of Kentucky, Inc. Alleged Failure to Comply with KRS Chapter 278* (Ky. PSC June 27, 1994), Order initiating an investigation into Columbia's construction of a new headquarters and customer service facility prior to obtaining a CPCN.

<sup>44</sup> Kirksville Water's 2022 Annual Report at 16.

of existing facilities already in use by a utility.<sup>45</sup> Across many cases spanning a number of decades, Commission precedent consistently holds that a CPCN is necessary for the purchase or the construction of an office headquarters.

Kirksville Water also argued the situation presented an emergency, and it was forced to take “instant action”<sup>46</sup> to avoid “untenable service interruptions to customers and complete chaos.”<sup>47</sup> Kirksville Water stated that it had no intention of willfully violating any statute or regulation, but argued that it was forced into action by circumstances and believed its actions to be in the best interest of the utility’s customers.<sup>48</sup> Further, Kirksville Water argued that the exception in KRS 278.020(1)(a)(3) applied as the purchase of the building and the remodeling was less than \$500,000.<sup>49</sup> Kirksville Water claimed it relied on the advice of counsel that the purchase of the building did not require Commission

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<sup>45</sup> See Case No. 2016-00392, *Application of North Mercer Water District for a Certificate of Public Convenience and Necessity to Acquire a Building and Make Minimal Adaptions Thereto* (Ky. PSC Dec. 22, 2016); Case No. 2005-00277, *Application of Fleming-Mason Energy Cooperative Corporation for an Order and Certificate of Public Convenience and Necessity Authorizing Applicant to Construct a Garage, Warehouse, Fieldhouse, and Remodeling at Flemingsburg, Kentucky* (Ky. PSC Oct. 14, 2005); Case No. 2016-00181, *Electronic Application of Columbia Gas of Kentucky, Inc. for a Declaratory Order that the Construction of Proposed Gas Safety Training Facilities is in the Ordinary Course of Business and Does Not Require a Certificate of Public Convenience* (Ky. PSC Sept. 9, 2016) (the Commission required a CPCN for the remodeling necessary to retro-fit a portion of an existing building to accommodate a training facility). Case No. 2021-00314, *Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing Construction of a Headquarters Facility and an Order Authorizing Big Rivers to Sell Its Existing Headquarters*. (Ky. PSC Dec. 7, 2021); Case No. 2018-00244, *Application of South Anderson Water District for a Certificate of Public Convenience and Necessity to Begin Construction of New Office Headquarters* (Ky. PSC Nov. 7, 2018) (Water District applied for and was granted a CPCN to purchase an existing building for use as a headquarters and for minor renovations needed. The district had been leasing another building, which was not handicapped accessible and had very limited parking. The new building remedied both problems and the utility did not borrow money or raise rates as a result of the purchase.)

<sup>46</sup> Response to Commission Order at unnumbered page 5.

<sup>47</sup> Response to Commission Order at unnumbered page 5.

<sup>48</sup> Response to Commission Order at unnumbered page 5, and Alfred Winkler HVT 15:30:44–15:37:51.

<sup>49</sup> Alfred Winkler HVT 15:37:00–15:37:51, and Response to Commission Order at 4.

approval in the form of a CPCN.<sup>50</sup> However, Kirksville Water stated that no written opinion was provided by its attorney.<sup>51</sup>

KRS 278.020(1)(a), the applicable statute, provides:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except:

1. Retail electric suppliers for service connections to electric-consuming facilities located within its certified territory;
2. Ordinary extensions of existing systems in the usual course of business; or
3. A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project if the water district or water association is a Class A or B utility as defined in the uniform system of accounts established by the commission according to KRS 278.220 and:
  - a. The water line extension or improvement project will not cost more than five hundred thousand dollars (\$500,000); or
  - b. The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring commission approval as required by KRS 278.300.

In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers;

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<sup>50</sup> Alfred Winkler HVT 15:37:00–15:37:51, and Response to Commission Order at 5.

<sup>51</sup> Kirksville Water's Response to Staff's Second Request, Item 3.

until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

KRS 278.020(1)(a)(3), a statutory exception to the CPCN requirement, does not apply to the purchase or construction of utility headquarters, it applies to the construction of a *water line extension or improvement project*. While it is true that Kirksville Water is the type of utility to which the exception applies, as the exception only applies to water districts and associations, the project undertaken by Kirksville Water is not the type of project specified in the statute. The plain language of the statute limits its application to water line extension or improvement projects. The purchase or construction of a building neither extends nor improves waterlines. The exception is therefore inapplicable to this situation.

For the reasons set forth above, the Commission finds that Kirksville Water's named directors and manager violated KRS 278.020. At the hearing, the board members testified that they relied upon the advice of counsel in determining that no CPCN was necessary.<sup>52</sup>

The Commission further finds no merit to the contention of Kirksville Water and the named board members that their actions were not willful because they relied upon advice of counsel. While good faith reliance on advice of counsel is a defense against the violation of certain statutes that provide such exceptions for reasonable cause, the

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<sup>52</sup> Wayne Long HVT 13:53:58–13:56:56, Alfred Winkler HVT 15:37:00–15:37:51, Bobby Powell HVT 16:13:11–16:14:45, and Response to Commission Order at 4.



Commission has found that no language is provided for in KRS 278.990 allowing for such an exception.<sup>53</sup>

#### Civil Penalties Pursuant to KRS 278.990

Having found that Kirksville Water and its named directors and manager willfully violated KRS 278.300 and KRS 278.020 for the reasons set forth in this Order, the Commission finds that the assessment of civil penalties pursuant to KRS 278.990 is appropriate. Specifically, the Commission finds that Wayne Long, Alfred Winkler, and Bobby Powell should each be assessed a civil penalty of \$500. Because the Commission's primary objective in this proceeding is to impress upon the directors of Kirksville Water the importance of educating themselves concerning their statutory and regulatory responsibility, and not in exacting punishment, the Commission finds that the assessed penalties should be suspended provided that the named individuals attend 12 hours of Commission approved training within 365 days following the date of service of this Order, and when evidence of attendance at the training is filed into the post case correspondence file in this proceeding within 30 days of the training the penalties should be waived.

The Commission is mindful of the sense of urgency felt by the Board and management of Kirksville Water when it learned in the fall of 2021 that its long-standing agreement with Madison Utilities would not be renewed and that it must relocate its office by June 2022. Many times decisions are made in these circumstances that would otherwise never have been made. However, when a regulated utility finds itself in a

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<sup>53</sup> Case No. 1999-00001, *Bluegrass Gas Sales, Inc. Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999)

situation such as the one faced by Kirksville Water, any solution to the problem must take into consideration the statutory and regulatory requirements applicable to the action contemplated. This is true regardless of inconvenience. Kirksville Water assumed that seeking approval for the 1<sup>st</sup> Trust Bank loan would be so time-consuming that it would lose the Foxhaven Property to another buyer.<sup>54</sup> Had Kirksville Water's management sought to promptly comply with the requirements of KRS 278.300 and KRS 278.020 by making the appropriate applications with the Commission, and providing an explanation of the circumstances that gave birth to the sense of urgency, the Commission would have used its best efforts to provide a decision in the time available. Because Kirksville Water has been compliant with statutory and regulatory requirements in the past, the Commission, expects that this incident is not indicative of a general disregard for Commission Orders, or statutory and regulatory requirements.

#### Motion to Excuse

On July 10, 2023, Kirksville Water filed a motion to excuse the absence of Mike Agee, Randal Webb and Armon Sanders from the hearing. In support of its motion, Kirksville Water stated that Randal Webb is no longer a board member at Kirksville Water, having failed to be re-elected in 2022. As evidence of this, Kirksville Water also filed the minutes from the 2022 Annual Meeting.<sup>55</sup> The minutes support that Randal Webb failed to be re-elected on September 22, 2022, and has not served as a Board member since that time.

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<sup>54</sup> Wayne Long HVT 13:52:00–13:54:55:15.

<sup>55</sup> Motion, Exhibit A Annual Meeting Minutes (filed July 10, 2023)

Because Randal Webb was not on the Board at the time of the hearing, the Commission, having considered the motion and being otherwise sufficiently advised, finds that Mr. Webb should be excused from the hearing. Further because Mr. Webb is no longer a Board member and no longer subject to the Commission's jurisdiction, the Commission finds that he should be dismissed from this proceeding.

In support of its motion concerning Mike Agee, Kirksville Water stated that Mike Agee ceased to be employed at Kirksville Water on June 1, 2023. As evidence of this Kirksville Water filed minutes of its May 17, 2023 Board meeting. According to the minutes at the time of the meeting, Mike Agee had used all of his sick leave and had requested to be paid for his remaining accrued paid time off. The Board voted to pay Mr. Agee the value of his accrued time off and cease his benefits as of June 1, 2023.<sup>56</sup> Additionally, on July 27, 2023, Kirksville Water filed the affidavit of its current manager, Aaron Owens. Mr. Owens attested that Mike Agee is no longer an employee of Kirksville Water and has no involvement of any kind with the utility.<sup>57</sup>

Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that Mr. Agee should be excused from the hearing and dismissed from this proceeding.

Finally, in support of its motion concerning Armon Sanders, Kirksville Water stated that Armon Sanders is 87 years old and suffering from cancer.<sup>58</sup> Additionally Kirksville Water stated that Mr. Sanders informed counsel the day before the hearing that he was

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<sup>56</sup> Motion at 1, Exhibit B.

<sup>57</sup> Affidavit of Aaron Owens (filed July 27, 2023).

<sup>58</sup> Motion at 1.

scheduled for radiation treatment, and that based on the importance of treatment Mr. Sanders attended his treatment rather than appearing at the hearing. The Commission notes that Mr. Sanders no longer serves on the Board, and evidence of that is attached to this Order as an Appendix. For these reasons the Commission finds that Armon Sanders should be excused from the hearing and dismissed from this proceeding.

#### Motion for an Extension of Time

On July 10, 2023, Kirksville Water also filed a motion for an extension of time to file its rate proceeding. Kirksville Water was ordered to file an application for a rate adjustment on or before June 30, 2023.<sup>59</sup> Kirksville Water indicated it anticipated filing the application before the end of July 2023. Counsel for Kirksville Water accepted responsibility for the failure to timely file the application and assured the Commission he would endeavor to move with priority going forward.

Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that the motion for an extension of time should be denied because Kirksville Water has been on notice since June 20, 2022, that it was required to file an application for a rate adjustment,<sup>60</sup> and good cause has not been established to grant an extension of time. The Commission notes that the application for a rate adjustment was filed on August 12, 2023, and is currently under review by the Commission.<sup>61</sup>

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<sup>59</sup> Order (Ky. PSC Nov. 7, 2022).

<sup>60</sup> Case No. 2022-00076, June 20, 2022 Order.

<sup>61</sup> Case No, 2023-00258, *Electronic Application of Kirksville Water Association, Inc. for a Rate Adjustment Pursuant to 807 KAR 5:076*, Kirksville Water tendered an application for an alternative rate adjustment on July 31, 2023. By letter dated August 2, 2023, the Commission rejected the application for filing deficiencies. Subsequently, Kirksville Water cured the filing deficiencies and the application is deemed filed as of August 12, 2023.

IT IS THEREFORE ORDERED that:

1. Kirksville Water's motion to excuse Mike Agee, Randal Webb, and Armon Sanders from the hearing is granted.

2. Mike Agee, Randal Webb, and Armon Sanders are dismissed from this proceeding.

3. Kirksville Water's motion for an extension of time in which to file an application for a rate adjustment is denied.

4. Kirksville Water's Board members Wayne Long, Alfred Winkler, and Bobby Powell are individually assessed a civil penalty of \$500 for willful violations of KRS 278.300 and KRS 278.020.

5. Payment pursuant to ordering paragraph 4 shall be made by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Office of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602 within 365 days of the date of service of this Order.

6. The Commission shall waive the civil penalty of \$500 for each individual who attends 12 hours of Commission approved training within 365 days following the date of service of this Order and provides written notice that they attended the training within 30 days of the training.

7. Any written notice provided pursuant to ordering paragraph 6 shall include the case number for this case and be maintained in the post case correspondence file for this case.

8. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
MAR 04 2024 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2022-00197 DATED MAR 04 2024

ONE PAGE TO FOLLOW

# Kirksville Water Association

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Richmond, KY 40476-1150  
Phone: (859)963-2555  
Fax: (859)963-2558  
info@kirksvillewaterassociation.com

RECEIVED

OCT 19 2023

PUBLIC SERVICE  
COMMISSION

October 19, 2023

Kentucky Public Service Commission  
211 Sower Boulevard  
PO Box 615  
Frankfort, KY 40602

Kirksville Water Association has new board members as of their annual meeting that was held in September 2023. As of the October 2023 board meeting, the following Commissioners were appointed as follows:

Wayne Long – Chairman

Alfred Winker – Vice Chairman

Joanna Jones – Secretary

Bobby W. Powell – Treasurer

Shannon Young – Board Member

Wayne Long was re-elected by the Association after his term expired September 2023, and Joanna Jones was elected by the Association to replace Armon Sanders, whose term also expired in September 2023.

If you have further questions, please contact me at (859)963-2555.

Respectfully,

Ashley N. Owens  
**Office Manager**  
**Kirksville Water Association**



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\*Honorable Jud Patterson  
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\*Bobby W Powell  
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Richmond, KY 40476

\*Armon Sanders  
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