

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF JESSAMINE-	)	
SOUTH ELKHORN WATER DISTRICT AND ITS	)	
INDIVIDUAL COMMISSIONERS, JAMES F. HALL,	)	CASE NO.
JERRY HAWS, THOMAS BEAL, AND CLAY	)	2022-00344
CORMAN, ALLEGED VIOLATION OF KRS	)	
278.300	)	

ORDER

The Commission, on its own motion, establishes this proceeding to conduct a formal investigation into the alleged failure of Jessamine-South Elkhorn Water District (Jessamine-South Elkhorn District) and its individual commissioners, James F. Hall, Jerry Haws, Thomas Beal, and Clay Corman, to comply with KRS 278.300 by entering into four promissory notes without the Commission's prior approval, and, if a determination is made that there has been a willful violation of KRS 278.300, for Jessamine-South Elkhorn District, Mr. Hall, Mr. Haws, Mr. Beal, and Mr. Corman to show cause why they should not be subject to civil penalties pursuant to KRS 278.990.

LEGAL STANDARD

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 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, the Commission has the authority to determine the just, reasonable, safe, proper, adequate, or sufficient practice or act or method to be observed.

Upon a finding of a willful violation of 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.

Pursuant to KRS 74.025(1) and (2), following a hearing on the matter, and upon a finding of good cause, the Commission may remove water district commissioners from office. Good cause includes incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including failure to comply with rules, regulations, and Orders issued by the Commission.<sup>1</sup>

Under KRS 278.300, a utility cannot issue any evidences of indebtedness until authorized to do so by Commission order. The exception to that provision is contained in KRS 278.300(8), which states that Commission approval is not required for notes “for proper purposes and not in violation of law,” that are payable for periods of two years or less or are renewals of such notes not to exceed an aggregate of six years.

The legal standard contained in KRS 278.300(3) establishes the purview of Commission review, stating:

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.

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<sup>1</sup> KRS 74.025(1).

## BACKGROUND

Jessamine-South Elkhorn District, a water district organized pursuant to KRS Chapter 74, provides water service to approximately 3,097 residential customers and 63 commercial customers in Jessamine County, Kentucky.<sup>2</sup> Jessamine-South Elkhorn District is administered by a board of commissioners which control and manage the affairs of the district in accordance with KRS 74.020(1). It is a utility subject to the Commission's jurisdiction under KRS 278.010(3)(d), KRS 278.015, and KRS 278.040.

In the course of processing Jessamine-South Elkhorn District's application for rate adjustment in Case No. 2022-00050,<sup>3</sup> the Commission became aware of four promissory notes, and a modification to two of the notes that extended the terms of the notes, that were entered into without approval of the Commission, as required by KRS 278.300. In the final Order in that case, the Commission found it was necessary to open a separate proceeding to investigate the alleged violation of KRS 278.300.<sup>4</sup>

The promissory notes in question are a Kentucky Infrastructure Authority (KIA) loan issued on January 2008, a KIA Loan issued April of 2013, and two loans held by Central Bank that were issued in September of 2014, and then modified in September of 2019.<sup>5</sup>

As an initial matter, none of the four promissory notes are payable in under two years or are renewals of notes payable in under two years. Therefore, the exception in

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<sup>2</sup> *Annual Report of Jessamine-South Elkhorn District to the Public Service Commission for Water Service for the Calendar Year Ended December 21, 2021*, at 12 and 49.

<sup>3</sup> Case No. 2022-00050, *Electronic Application of Jessamine-South Elkhorn Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Sept. 22, 2022).

<sup>4</sup> Case No. 2022-00050, Sept. 22, 2022 Order at ordering paragraph 6.

<sup>5</sup> Case No. 2022-00050, (filed Feb. 25, 2022) Application, Attachment #8.

KRS 278.300(8) regarding two-year notes is not applicable, and the general rule requiring Commission approval prior to issuing evidence of indebtedness applies to the four promissory notes. There is no evidence in Case No. 2022-00050, or prior cases, that Jessamine-South Elkhorn District obtained Commission approval before entering into any of the four promissory notes at issue.

According to Jessamine-South Elkhorn Water District's 2008 annual report, Mr. Hall, and Mr. Haws were board members at the time the 2008 KIA Loan was taken. The Jessamine-South Elkhorn Water District's 2013 annual report indicates that Mr. Hall, Mr. Haws, and Mr. Beal were board members when the 2013 KIA loan was taken out. The Jessamine-South Elkhorn Water District's 2014 annual report indicates that Mr. Hall, Mr. Haws, and Mr. Beal were board members when the 2014 KIA loan was taken out. Finally, the Jessamine-South Elkhorn Water District's 2019 annual report indicates that Mr. Hall, Mr. Haws, Mr. Beal, and Mr. Corman were board members when the 2019 KIA loans were modified and extended.

### FINDINGS

Based on the evidence developed in Case No. 2022-00050 and being otherwise sufficiently advised, the Commission finds that *prima facie* evidence exists that Jessamine-South Elkhorn District and its individual commissioners, James F. Hall, Jerry Haws, Thomas Beal, and Clay Corman failed to comply with KRS 278.300 and that in accord with the final Order in Case No. 2022-00050 entered on September 22, 2022, an investigation should be conducted into the compliance of Jessamine-South Elkhorn District, Mr. Hall, Mr. Haws, Mr. Beal, and Mr. Corman with KRS 278.300. The Commission further finds that the record in Case No. 2022-00050 should be incorporated

into this case by reference and a procedural schedule should be established for the orderly processing of this proceeding. A procedural schedule is attached as an Appendix to this Order.

IT IS HEREBY ORDERED that:

1. This proceeding is established to investigate whether Jessamine-South Elkhorn District, and commissioners James F. Hall, Chairman; Jerry Haws, Vice Chairman, Thomas Beal, Secretary; and Clay Corman, Vice Secretary are in violation of KRS 278.300 or any other provisions of KRS Chapter 278 or 807 KAR, Chapter 5.

2. Jessamine-South Elkhorn District, and commissioners James F. Hall, Chairman; Jerry Haws, Vice Chairman; Thomas Beal, Secretary; and Clay Corman, Vice Secretary; individually and in their respective capacities as commissioners, shall submit to the Commission individual written responses to the allegations contained herein within 30 days of service of this Order.

3. Counsel for the parties shall enter an appearance or appearances within 20 days of the date of service of this Order.

4. Pursuant to 807 KAR 5:001E, Section 8(9), within seven days of the date of service of this Order, counsel for each party shall file a written statement with the Commission that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

5. The Commission directs Jessamine-South Elkhorn District and the individual parties to the Commission's July 22, 2021 Order in Case No. 2020-00085<sup>6</sup> regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

6. The record in Case No. 2022-00050 shall be incorporated into this case by reference only.

7. The procedural schedule set forth in the Appendix to this Order shall be followed.

8. The parties shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

9. Jessamine-South Elkhorn District shall give notice of any scheduled hearing in accordance with the provisions set forth in 807 KAR 5:001E, Section 9(2). In addition, the notice of hearing shall include the following statement: "This hearing will be streamed live and may be viewed on the PSC website, [psc.ky.gov](http://psc.ky.gov)"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listing on the PSC website, [psc.ky.gov](http://psc.ky.gov)." At the time publication is requested, Jessamine-South Elkhorn District shall forward a duplicate of the notice and request to the Commission.

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<sup>6</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8)

10. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

11. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001E, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.

12. Witnesses who sponsor schedules, testimony, or responses to data requests shall participate in person at any hearing scheduled in this matter.

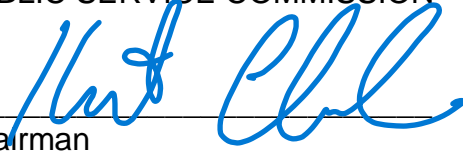
13. Pursuant to KRS 278.360 and 807 KAR 5:001E, Section 9(9), a digital video recording shall be made of the hearing.

14. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

15. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

16. The Executive Director shall serve a copy of this Order on Jessamine-South Elkhorn District, and commissioners James F. Hall, Chairman; Jerry Haws, Vice Chairman; Thomas Beal, Secretary; and Clay Corman, Vice Secretary by U.S. Certified Mail, sent to 802 S Main Street, P. O. Box 731, Nicholasville, KY 40356.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
APR 14 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director



APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2022-00344 DATED APR 14 2023

All initial requests for information to any party  
shall be filed no later than ..... 05/01/2023

Parties shall file responses to initial requests for  
information no later than..... 05/22/2023

All supplemental requests for information to any party  
shall be filed no later than ..... 06/05/2023

Parties shall file responses to supplemental requests  
for information no later than ..... 06/14/2023

Last day for Parties to request a Public Hearing or submit a  
request for the matter be decided based upon the written record ..... 06/05/2023

\*Jerry Haws  
Chairman  
Jessamine-South Elkhorn Water District  
802 S Main Street  
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Nicholasville, KY 40356

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\*Clay Corman  
Vice Secretary  
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\*Thomas Beall  
Secretary  
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\*James Hall  
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