

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF UNION)	
COUNTY WATER DISTRICT AND ITS)	
INDIVIDUAL COMMISSIONERS, RAYMOND)	CASE NO.
ARNOLD AND JOYCE GREENWELL, AND)	2023-00120
MANAGER GARY SHEFFER ALLEGED FAILURE)	
TO COMPLY WITH KRS 278.300 AND KRS)	
278.020)	

ORDER

On May 22, 2023, the Commission opened an investigation into Union County Water District's (Union District), its Board of Commissioners, and its Managers (collectively, Parties) failure to comply with KRS 278.300 by entering into an indebtedness without the Commission's prior approval and alleged failure to comply with KRS 278.020(1) by purchasing and renovating an office building to be used as the utility's headquarters.¹

On June 19, 2023, the Parties filed a response to the opening Order.² The Parties responded to two sets of requests for information from Commission Staff.³ On August 25, 2023, the Parties filed a motion to submit the case on the record and waived their rights to a hearing.⁴

¹ Order (Ky. PSC May 22, 2023).

² Notice of Filing (filed June 19, 2023).

³ Union District's Response to Commission Staff's First Request for Information (filed July 6, 2023); Union District's Response to Commission Staff's Second Request for Information (filed Aug. 4, 2023).

⁴ Statement Regarding the Need for a Hearing (filed Aug. 25, 2023).

This matter stands submitted for a decision.

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.

KRS 278.300 requires Commission approval before a utility may “issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person.”⁵ 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.

Additionally, KRS 278.300(8) establishes that KRS 278.300 does not apply if the proposed issuance of securities or indebtedness is payable at periods of not more than two years from the issuance date and any renewals of such notes do not exceed six years from the initial issuance date.

⁵ KRS 278.300(1).

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

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.⁶

BACKGROUND

Union District, a water district organized pursuant to KRS Chapter 74, provides water service to approximately 2,300 residential and commercial customers in Union County, Kentucky.⁷ Union District is administered by a board of commissioners which control and manage the affairs of the district in accordance with KRS 74.020(1). Union District is a utility subject to the Commission's jurisdiction under KRS 278.010(3)(d), KRS 278.015, and KRS 278.040.

⁶ KRS 74.025(1)

⁷ *Annual Report of Union District to the Public Service Commission for Water Service for the Calendar Year Ended December 21, 2021* (2021 Annual Report) at 12 and 49.

In the course of processing Union District's application for a rate adjustment in Case No. 2022-00160,⁸ the Commission became aware of a promissory note that was entered into without approval of the Commission, as required by KRS 278.300. The ten-year \$75,000 promissory note is a loan held by United Community Bank of West Kentucky (United Bank) that was issued in August of 2021.⁹ Union District used the loan proceeds to purchase its office building located at 409 North Court Street in Morganfield, Kentucky from the Union County Fiscal Court.¹⁰

In the final Order in Case No. 2022-00160, the Commission found it was necessary to open a separate proceeding to investigate the alleged violation of KRS 278.300 and KRS 278.020(1).¹¹ The Commission noted that utilities have been required to follow the requirements of KRS 278.020(1) by obtaining a CPCN before purchasing an existing building and performing any minimal construction to retrofit the building for use as a water utility headquarters or to remodel existing facilities already in use by a utility.¹²

According to Union District's 2021 Annual Report on file with the Commission, Raymond Arnold and Joyce Greenwell are commissioners of Union District's Board of

⁸ Case No. 2022-00160, *Electronic Application of Union County Water District for an Alternative Rate Adjustment* (Ky. PSC May 5, 2022).

⁹ Case No. 2022-00160, (filed June 3, 2022) Application at 52.

¹⁰ Case No. 2022-00160, May 5, 2023 Order at 20.

¹¹ Case No. 2022-00160, May 5, 2022 Order at ordering paragraph 4.

¹² 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); and 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).

Commissioners and Gary Sheffer serves as Manager of Union District, and these individuals served in their respective positions at the time the 2021 United Bank Loan was taken.¹³

The promissory note in question is not payable in under two years, therefore the exception in KRS 278.300(8) regarding two-year notes is not applicable here, and the general rule requiring Commission approval prior to issuing evidence of indebtedness applies to the promissory note.

In their response to the Commission's Order opening this investigation, the Parties stated that the Union County Water District has rented from the Union County Fiscal Court an office building at 409 North Court Street since 2008 and the building had begun to need repair and updating.¹⁴ A discussion occurred regarding whether the Union County Fiscal Court would possibly sell the property to Union District at a reasonable cost to help offset the upgrades needed to the building.¹⁵ The Union County Fiscal Court agreed to sell the property for \$50,000 and the Union District Board members agreed to purchase the building.¹⁶ The Parties stated they believed this to be a good move for the district to own the property instead of renting it, and therefore obtained a loan for the purchase price of \$50,000 plus an additional \$25,000 for necessary upgrades and repair.¹⁷

¹³ *Annual Report of Union District to the Public Service Commission for Water Service for the Calendar Year Ended December 21, 2021*, at 49. (Gerald Hunter was the Chairman of the Board at the time the loan was taken, but has since retired as of June 2022.)

¹⁴ Notice of Filing at 3.

¹⁵ Notice of Filing at 3.

¹⁶ Notice of Filing at 3.

¹⁷ Notice of Filing at 3.

The Parties admit that the promissory note was entered into, and the building purchased, without prior Commission approval.¹⁸ The Parties asserted they were unaware that Commission approval was necessary to enter the promissory note and claimed that they did not willfully ignore Commission rules, simply thinking they were making a good business decision.¹⁹ As a proactive measure, Union District enrolled Andrew Arnold, Joyce Greenwell, Gary Sheffer, and new board member Steven Loxley for Commission training, which they attended on July 11-12, 2023.²⁰ The Parties further stated they plan to be better informed through training so that they can avoid any failure to comply with Commission regulations.²¹

DISCUSSION AND FINDINGS

Based upon the case record, the Commission finds that there was a clear violation of KRS 278.300 and KRS 278.020(1). Specifically, the Parties acknowledged that the district failed to obtain Commission approval to enter the promissory note or purchase the office building. However, they claimed there was no “willful” violation of Commission statute.

While a willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily,²² 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

¹⁸ Notice of Filing at 3.

¹⁹ Notice of Filing at 3.

²⁰ Notice of Filing at 3.

²¹ Notice of Filing at 3.

²² 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).

conduct which reflects an indifference to its natural consequences.²³ 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.²⁴

Here, the manager and named commissioners' failure to inquire whether entry into the promissory note or purchase and renovations of the office building would require Commission approval exhibited an indifference to ensuring the district's compliance with statutes that rose to the level of willful violation, given the water commissioners' statutory obligations to manage and control the district. Thus, based on the record and being otherwise sufficiently advised, the Commission finds that the manager and the named commissioners willfully violated KRS 278.300 and KRS 278.020(1).

Pursuant to KRS 278.990, the Commission finds that Raymond Arnold, Joyce Greenwell, and Gary Sheffer, individually, shall each be assessed a civil penalty in the amount of \$250. However, given the Parties' response, which included proactive training for the district's manager and board members in July 2023 in an effort to be better informed and to avoid any further failure to comply with Commission regulations,²⁵ the Commission has determined it will waive the fine for each individual. The Commission expects that, as demonstrated in their response, the Parties will use this opportunity to improve the policies and procedures of Union District.

²³ Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

²⁴ 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).

²⁵ Notice of Filing at 3.

IT IS THEREFORE ORDERED that:

1. Raymond Arnold, Joyce Greenwell, and Gary Sheffer, individually, are each assessed a civil penalty of \$250 for failure to comply with KRS 278.300 and KRS 278.020(1).
2. The Commission waives the civil penalty of \$250 for each individual, given their proactive attendance at Commission training in July 2023.
3. Any newly adopted or amended policies and procedures for Union District as result of this case shall be filed with the Commission and include the case number for this case and be maintained in the post-case correspondence file for this case.
4. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION



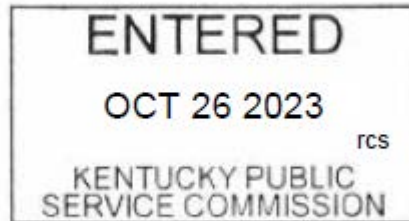
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ATTEST:



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