

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO NICHOLAS)	
COUNTY WATER DISTRICT FOR AN ALLEGED)	CASE NO.
FAILURE TO COMPLY WITH A COMMISSION)	2023-00314
ORDER, 807 KAR 5:006, SECTION 4(2), AND KRS)	
278.160)	

ORDER

The Commission, on its own motion, opened this proceeding on October 3, 2023, to investigate Nicholas County Water District's (Nicholas District) alleged failure to file tariffs containing its approved rates in violation of KRS 278.160 and the Commission's March 10, 2023 Order in Case No. 2023-00024.¹ The Commission, on its own motion, expanded this investigation on October 31, 2023, to include Nicholas District's alleged failure to file a complete 2021 Annual Report in violation of 807 KAR 5:006, Section 4(2) and the Commission's March 10, 2023 Order in Case No. 2023-00024. On November 30, 2023, Nicholas District filed a response to the October 3, 2023 and the October 31, 2023 Orders in which it indicated that it made filings in compliance with the orders to correct the issues raised, committed to correct issues going forward, and requested that the Commission close this proceeding. This matter is now before the Commission for a decision on the merits.

¹ Case No. 2023-00024, *Electronic Application of Nicholas County Water District for a Certificate of Public Convenience and Necessity to Construct a System Improvements Project and an Order Approving a Change in Rates and Authorizing the Issuance of Securities Pursuant to 278.023* (Ky. PSC Mar. 10, 2023).

BACKGROUND

Among other things, the March 10, 2023 Order in Case No. 2023-00024 approved a change in rates effective as of the date of the Order and required Nicholas District to file revised tariff sheets reflecting the rates set forth in the Appendix to the Order within 30 days of service of the Order.² The rates approved in the March 10, 2023 Order increased all rates approved in Nicholas District's previous rate case except for a Phase 2 wholesale rate that had an effective date of August 13, 2023, which the March 10, 2023 Order did not change.³ The March 10, 2023 Order also noted that Nicholas District had filed a 2021 Annual Report missing much of the required information and required Nicholas District to file a complete 2021 Annual Report within 60 days of service of the final Order.⁴

The October 3, 2023 Order in this matter noted that Nicholas District failed to file revised tariff sheets reflecting the rates approved in Case No. 2023-00024 as required by the March 10, 2023 Order and KRS 278.160. The October 3, 2023 Order required Nicholas District to file a revised tariff reflecting the rates approved in the March 10, 2024 Order within ten days of service of the order and required Nicholas District to file a revised tariff reflecting the rates approved in the March 10, 2024 Order, along with the Phase 2 wholesale rate approved in the previous case, within 20 days of service of the order. The October 3, 2023 Order also required Nicholas District to provide notice to its customers of the rates approved in the March 10, 2024 Order, along with the Phase 2 wholesale

² Case No. 2023-00024, March 10, 2023 final Order at 6-7.

³ Case No. 2023-00024, March 10, 2023 final Order at 3.

⁴ Case No. 2023-00024, March 10, 2023 final Order at 5-6.

rate, within 20 days of service of the order by publishing a one-time notice of the rates in a newspaper of general circulation in its territory or placing an insert in bills rendered to its customers. The October 31, 2023 Order in this matter noted that Nicholas District had failed to file a complete 2021 Annual Report and required Nicholas District to file an answer to the allegations in both the October 3, 2023 Order and the October 31, 2023 Order within 30 days.

Nicholas District filed an answer to the allegations in the October 3, 2023 and October 31, 2023 Orders on November 30, 2023. In the answer, Nicholas District stated that it filed the revised tariff sheets in compliance with the October 3, 2023 Order on October 9, 2023, and that the tariff sheets were accepted as filed by the Commission on November 3, 2023. Nicholas District indicated that it provided customer notice pursuant to the October 3, 2023 Order by publishing the notice in the Carlisle Mercury on October 18, 2023, and provided a copy of the notice and an affidavit of publication. Nicholas District indicated that it filed an updated 2021 Annual Report on November 29, 2023.

Nicholas District stated that it has sought the assistance of Kentucky Rural Water Association to correct the deficiencies noted in the October 3, 2023 and October 31, 2023 Orders. Nicholas District acknowledged its obligations to follow the law and timely comply with all statutes, regulations, and Commission Orders, and stated that it apologizes and takes responsibility for the failure to do so. However, Nicholas District affirmatively stated that it is providing adequate, efficient and reasonable water service to its customers despite the deficiencies set forth in the orders. Nicholas District requested that the Commission accept its answer and close this case.

LEGAL STANDARD

Investigation by the Commission

Pursuant to KRS 278.250, the Commission may investigate and examine the condition of any utility subject to its jurisdiction. Pursuant to KRS 278.260, the Commission may, on its own motion, make an investigation relating to any rate or service of any utility subject to its jurisdiction to determine whether that rate or service is unreasonable, unjustly discriminatory, unsafe, insufficient, or inadequate. KRS 278.280 requires the Commission to find that the practices or service of a utility are unjust, unreasonable, unsafe, improper, inadequate, or insufficient before prescribing a practice or rule for providing service. The Commission is required by KRS 278.250, 278.260, and KRS 278.280 to conduct a hearing on the matter before entering an order affecting the utility.

Enforcement of Orders

Pursuant to KRS 278.390, the Commission may compel obedience to its lawful orders by mandamus, injunction or other proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction. Every Order of the Commission continues in full force until the expiration of time named by the Commission, or until revoked or modified by the Commission, unless the Order is suspended or vacated by order or decree of a court of competent jurisdiction.

Filing and Adherence to Rate Schedules

Under KRS 278.160, utilities must file with the Commission, within the time and in the form designated by the Commission, schedules showing all rates and conditions of service established by it and collected or enforced.

Annual Reports and Timeliness

Commission regulation 807 KAR 5:006, Section 4(2) requires every utility subject to the Commission's jurisdiction to file, by March 31 every year, a financial and statistical report based on the statistics and financial data of the prior year. The Commission makes the necessary forms available on its website.

Penalties for violations

Pursuant to KRS 278.990, if any utility willfully violates any provision of KRS Chapter 278, or any regulation promulgated pursuant to KRS Chapter 278, or fails to comply with Commission Order, the utility shall be subject to a civil penalty for each offense of not less than \$25 nor more than \$2,500.

A willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily,⁵ 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.⁶ 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 done with the purpose to violate the law.⁷

⁵ 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).

⁶ Case No. 1993-00044, *In the Matter of: 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).

⁷ Case No. 1999-00001, *In Matter of :Bluegrass Gas Sales, Inc., Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999), Order at 5, citing *Woods v. Carsey*, 200 P.2d 208 (Cal. App. 1948).

DISCUSSION AND FINDINGS

There is no dispute that Nicholas District had not filed tariffs reflecting its rates approved in Case No. 2023-00024 or filed a complete 2021 Annual Report as of the date this case was initiated, which violated the Commission's March 10, 2023 Order in Case No. 2023-00024 and KRS 278.160 and 807 KAR 5:006, Section 4(2), respectively. However, as it indicated in its response, Nicholas District filed revised tariff sheets on October 9, 2023, with its rates approved in Case No. 2023-00024 and the Phase 2 rate for wholesale customers. Nicholas District also filed an updated 2021 Annual Report on November 29, 2023, with the information that had been missing from previous versions. Lastly, Nicholas District provided sworn evidence that it provided notice as required by the October 3, 2023 Order. Thus, the Commission finds that the violations and failures referenced in the October 3, 2023 and October 31, 2023 Orders have been cured and that Nicholas District has otherwise complied with the orders.

The Commission could still impose a penalty on Nicholas District, and its water district commissioners and managers for the violations and failures pursuant to KRS 278.990 if it determined that they were willful, and there is evidence to support such a finding.⁸ However, because Nicholas District has now filed the required financial and statistical report and corrected its failure to file its revised tariff sheets, implemented the Commission approved rates, taken responsibility for the deficiencies, and sought assistance from the Kentucky Rural Water Association to assure these issues are not

⁸ Nicholas District's failure to file a complete 2021 Annual Report was noted in the March 10, 2023 Order, which should have placed the utility and its representatives on notice that the district failed to comply with 807 KAR 5:006, Section 4(2). Similarly, the March 10, 2023 Order reiterated the requirements of KRS 278.160 and related regulations that Nicholas District filed a revised tariff with its approved rates.


repeated, the Commission finds that a penalty would not be necessary or appropriate at this time. Thus, the Commission finds that this matter should be closed without further action as requested by Nicholas District, but notes that any future violations of a statute or regulation, or failure to obey a Commission Order will likely result in the imposition of a penalty.

IT IS THEREFORE ORDERED that:

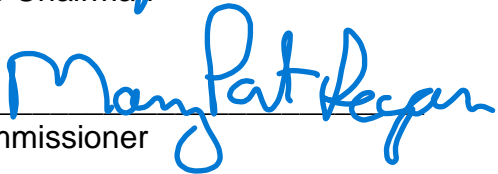
1. No penalty shall be assessed for the violations referenced in this Order at this time.
2. This case is closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
JUN 12 2024 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Honorable Damon R Talley
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Emily S. Childress
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Jason Pennell
Kentucky Rural Water Association
Post Office Box 1424
1151 Old Porter Pike
Bowling Green, KENTUCKY 42102-1424

*Nicholas County Water District
1639 Old Paris Road
Carlisle, KY 40311

*Nicholas County Water District
Nicholas County Water District
1639 Old Paris Road
Carlisle, KY 40311