

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WESTERN FLEMING COUNTY WATER	)	
DISTRICT AND ITS INDIVIDUAL	)	
COMMISSIONERS, VERNON BARTON, JAMES	)	
HUSTON; LARRY INGRAM; BILLY MCINTYRE,	)	CASE NO.
ANTHONY OVERBY, AND FRED ROSE	)	2014-00400
ALLEGED FAILURE TO COMPLY WITH KRS	)	
278.020(1) AND KRS 278.300(1)	)	

ORDER

On February 14, 2014, Western Fleming County Water District (“Western Fleming District”) tendered its application for a rate adjustment pursuant to 807 KAR 5:076. This application was assigned Case No. 2014-00048.<sup>1</sup> After Western Fleming District corrected filing deficiencies, the Commission accepted the Application for filing on April 28, 2014.

The Commission issued an Order on May 20, 2014, establishing a procedural schedule. Pursuant to the procedural schedule, Commission Staff filed a Staff Report on July 28, 2014, after conducting a field review of Western Fleming District’s financial records.

During its field review, Commission Staff discovered that Western Fleming District completed a major construction project at its water treatment facilities that was funded with a \$2,518,000 loan for a term of 30 years from the Kentucky Infrastructure

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<sup>1</sup> Case No. 2014-00048, Application of Western Fleming County Water District for Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076 (filed Apr. 28, 2014).

Authority (“KIA”)<sup>2</sup> and a House Bill 380 grant of \$50,000. Western Fleming District was not able to produce any indication that it applied to the Commission for a Certificate of Public Convenience and Necessity (“CPCN”) for the construction, nor was there any evidence that Western Fleming District requested an order from the Commission authorizing Western Fleming District to enter into the KIA loan.

Western Fleming District continued to take draws on the loan up to, and including 2013. The construction project was completed in phases. The Division of Water approved the plans and specification for one phase of the construction project on October 6, 2011.<sup>3</sup>

KRS 278.020(1) requires a utility to obtain from the Commission a CPCN prior to beginning the construction of any facilities that are not an ordinary extension constructed in the usual course of business. KRS 278.300(1) states that no utility shall issue any form of indebtedness unless it has been authorized to do so by an order of the Commission.

The Commission finds that a prima facie case has been made that Western Fleming District constructed a facility without obtaining a CPCN in violation of KRS 278.020. The Commission also finds that a prima facie case has been made that Western Fleming District obtained a \$2,518,000 loan for a term of 30 years from the KIA without obtaining an order from the Commission authorizing Western Fleming District to issue the indebtedness in violation of KRS 278.300.

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<sup>2</sup> October 1, 2009, KIA Assistance Agreement, Fund F, Project Number F08-01, Western Fleming District, Exhibit A, Project Specifics.

<sup>3</sup> Letter from Greg Goode, P.E., Acting Supervisor, Engineering Section, Water Infrastructure Branch, Division of Water, to Vernon Barton, Chairman, Western Fleming District (Oct. 6, 2011).



The Commission further finds that, pursuant to KRS 74.020(1), "A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district." The Commission finds that a prima facie case has been made that Western Fleming District and the current and former members of its Board of Commissioners: Vernon Barton, Chairperson; Anthony Overby and Fred Rose, Secretary;<sup>4</sup> James Huston, Treasurer; Larry Ingram, Commissioner; and Billy McIntyre, Commissioner, acting in their respective individual capacities as current or former members of Western Fleming District's Board of Commissioners, willfully aided and abetted the above violations.

IT IS THEREFORE ORDERED that:

1. Western Fleming District and Vernon Barton, Anthony Overby, Fred Rose, James Huston, Larry Ingram, and Billy McIntyre, individually in their respective capacities as current or former Commissioners of Western Fleming District, shall submit to the Commission individual written responses to the allegations contained herein within 30 days of the date of this Order.

2. Western Fleming District and Vernon Barton, Anthony Overby, Fred Rose, James Huston, Larry Ingram, and Billy McIntyre, individually in their respective capacities as current or former Commissioners of Western Fleming District, shall appear at a hearing scheduled for Thursday, March 26, 2015, at 10:00 a.m., Eastern Daylight Time ("EDT"), in Hearing Room 1 of the Commission's offices at 211 Sower

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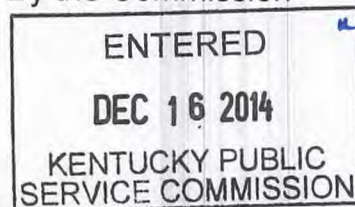
<sup>4</sup> Western Fleming District's annual reports filed with the Kentucky Public Service Commission for the years ended December 31, 2009, 2010, and 2012, identify Fred Rose as the Secretary. Western Fleming District's annual reports filed with the Kentucky Public Service Commission for the years ended December 31, 2011 and 2013, identify Anthony Overby as the Secretary.

Boulevard, Frankfort, Kentucky, and be prepared to show cause why they should not be subject to the penalties prescribed in KRS 278.990(1) for the alleged violations of KRS 278.020 and 278.300.

3. The 10:00 a.m. EDT, March 26, 2015, hearing shall be recorded by videotape only.

4. Any request for an informal conference, which may be held via phone with Commission Staff at the request of Western Fleming District or any of the above-named current or former Commissioners to discuss the issues in this case, shall be set forth in writing and filed with the Commission within 20 days of the date of this Order.

By the Commission



ATTEST:

  
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Executive Director

Vernon Barton  
Chairman  
Western Fleming County Water District  
1500 Ewing Road  
P. O. Box 16  
Ewing, KY 41039