

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WESTERN MASON COUNTY WATER)	
DISTRICT COMMISSIONERS PAM)	
CARPENTER, SECRETARY; JERRY FIELDS,)	CASE NO.
TREASURER; LARRY REDDEN, CHAIRMAN;)	2015-00155
AND MANAGER DAVID FRENCH ALLEGED)	
FAILURE TO COMPLY WITH KRS 278.300(1))	

ORDER

By Order entered June 9, 2015, the Commission initiated this proceeding to determine whether Western Mason County Water District ("Western Mason District") Commissioners Pam Carpenter, secretary; Jerry Fields, treasurer; Larry Redden, chairman; and Western Mason District Manager David French (collectively "Respondents") should be subject to the penalties prescribed in KRS 278.990 for aiding and abetting an alleged violation of KRS 278.300(1), which states that no utility shall issue any form of indebtedness until it has been authorized to do so by an order of the Commission.

The alleged violation giving rise to this case is Western Mason District's outstanding ten-year promissory note dated January 17, 2014, payable to the Bank of Maysville in the amount of \$86,374 ("Note"), for which the Commission's authorization was required pursuant to KRS 278.300(1), but was never sought or received by Western Mason District. Commission Staff discovered this outstanding Note during Staff's field review of Western Mason District's financial

records in the course of reviewing Western Mason District's application for a rate adjustment pursuant to 807 KAR 5:076.¹ Pursuant to its terms, the Note matures on January 17, 2024, and requires Western Mason District to make annual payments of \$10,650.44 for ten years. The Note bears the signatures of Western Mason District Commissioners Pam Carpenter, Jerry Fields, and Larry Redden.

Commission Staff conducted two informal conferences in this matter and discussions ultimately led to the filing of the Stipulation of Facts and Settlement Agreement ("Stipulation") on August 25, 2015. The Stipulation, attached hereto as the Appendix, sets forth an agreed-upon summary of the facts and provides for remedial action by each Respondent in full settlement of this proceeding. In complete resolution of this proceeding, Commissioners Pam Carpenter, Jerry Fields, and Larry Redden agreed to complete 12 hours of training for newly appointed water district commissioners conducted pursuant to KRS 74.020(8) prior to July 1, 2016; thereafter, for the remainder of his or her current term as a water district commissioner, each agreed to complete 12 hours of Commission-accredited training every 12-month period ending June 30. If a commissioner vacates his or her office prior to the end of his or her current term, any training obligation under the Stipulation shall immediately end.

Additionally, Manager David French agreed to complete 12 hours of training for newly appointed water district commissioners conducted pursuant to KRS 74.020(8) within 12 months of the date of entry of a Commission Order approving this Stipulation, and for the following three years agreed to complete 12 hours of Commission-accredited training every 12 months. If he ceases to be employed as Western Mason

¹ Case No. 2014-00421, *Alternative Rate Adjustment Filing of Western Mason County Water District* (Ky. PSC filed Dec. 23, 2014).

District's general manager or chief executive officer, his training obligation under the Stipulation shall immediately end.

In determining whether the terms of the Stipulation are in the public interest and are reasonable, the Commission has taken into consideration the circumstances surrounding the alleged violation and the terms of the Stipulation requiring that the Western Mason District Commissioners and Manager complete Commission-accredited water training. Those training programs cover a wide variety of issues relating to the operation of water utilities, including a review of applicable statutes and regulations. Thus, their completion of water district training will benefit Western Mason District. Based on the evidence of record, and being otherwise sufficiently advised, the Commission finds that the Stipulation is in accordance with the law and does not violate any regulatory principle. The Stipulation is a product of arm's-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

IT IS THEREFORE ORDERED that:

1. The Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.

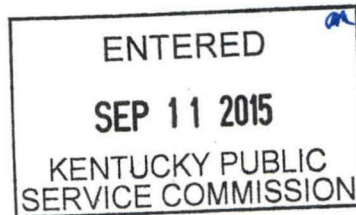
2. Commissioners Pam Carpenter, Jerry Fields, and Larry Redden shall complete 12 hours of training for newly appointed water district commissioners conducted pursuant to KRS 74.020(8) prior to July 1, 2016; thereafter, for the remainder of his or her current term as a water district commissioner, each shall complete 12 hours of Commission-accredited training every 12-month period ending June 30. If he

or she vacates his or her office prior to the end of his or her current term, any training obligation under the Stipulation shall immediately end.

3. Manager David French shall complete 12 hours of training for newly appointed water district commissioners conducted pursuant to KRS 74.020(8) within 12 months of the date of entry of a Commission Order approving this Stipulation, and for the following three years shall complete 12 hours of Commission-accredited training every 12 months. If he ceases to be employed as Western Mason District's general manager or chief executive officer, his training obligation under the Stipulation shall immediately end.

4. This case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission



ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2015-00155 DATED **SEP 11 2015**

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WESTERN MASON COUNTY WATER DISTRICT)	
COMMISSIONERS PAM CARPENTER,)	
SECRETARY; JERRY FIELDS, TREASURER;)	
LARRY REDDEN, CHAIRMAN; AND WESTERN)	CASE NO.
MASON COUNTY WATER DISTRICT)	2015-00155
MANAGER, DAVID FRENCH ALLEGED)	
FAILURE TO COMPLY WITH KRS 278.300(1))	
)	

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order entered June 9, 2015, the Commission initiated this proceeding to determine whether Western Mason County Water District ("Western Mason District") Commissioners Pam Carpenter, Secretary; Jerry Fields, Treasurer; Larry Redden, Chairman; and Western Mason District Manager, David French (collectively "Respondents") should be subject to the penalties prescribed in KRS 278.990 for aiding and abetting an alleged violation of KRS 278.300(1), which states that no utility shall issue any form of indebtedness until it has been authorized to do so by an order of the Commission.

The violation giving rise to this case is Western Mason District's outstanding 10-year promissory note dated January 17, 2014, payable to the Bank of Maysville in the amount of \$86,374 (the "Note"), for which the Commission's authorization was required pursuant to KRS 278.300, but was never sought nor received by Western Mason District. Commission Staff discovered this outstanding Note during Staff's field

review of Western Mason District's financial records in the course of reviewing Western Mason District's application for a rate adjustment pursuant to 807 KAR 5:076.¹

On June 29, 2015, Respondents filed responses to the Commission's Order. Respondents admitted that on or about January 17, 2014, Western Mason District issued the Note for \$86,374 payable to the Bank of Maysville. Pursuant to its terms, the Note matures on January 17, 2024 and requires Western Mason District to make annual payments of \$10,650.44 for the next 10 years. The Note bears the signatures of all three Western Mason District Commissioners. Respondents admitted that Public Service Commission authorization of the note was not sought or obtained. Respondents stated that based on their present understanding of KRS Chapter 278, Western Mason District's issuance of the Note without the Commission's prior authorization was contrary to and in violation of KRS 278.300. Respondents further stated that at the time of the Note's issuance, none of the Respondents were aware that the Commission's authorization was required before Western Mason District could lawfully issue the Note.

On August 18, 2015, Respondents filed an Offer of Settlement. By Order

¹ Case No. 2014-00421, *Alternative Rate Adjustment Filing of Western Mason County Water District* (Ky. PSC May 15, 2015).

entered August 19, 2015, the Commission rejected Respondents' Offer of Settlement. Commission Staff conducted an Informal Conference on August 19, 2015.

Respondents and Commission Staff submit the following Stipulation of Facts and Settlement Agreement ("Stipulation") for the Commission's consideration in rendering its decision in this proceeding,

1. Western Mason District is a water district organized pursuant to KRS Chapter 74.
2. Western Mason District is a utility and is subject to the provisions of KRS Chapter 278.
3. A three-member board of commissioners controls and manages Western Mason District's affairs.
4. The current members of Western Mason District's Board of Commissioners are Pam Carpenter, Jerry Fields, and Larry Redden.
5. Pam Carpenter is serving her second term as a member of Western Mason District's Board of Commissioners. Her current term of office ends June 30, 2018.
6. Jerry Fields is serving his third term as a member of Western Mason District's Board of Commissioners. His current term of office ends June 30, 2017.
7. Larry Redden is serving his fifth term as a member of Western Mason District's Board of Commissioners. His current term of office ends on June 30, 2019.
8. Western Mason District's Board of Commissioners has retained David French to serve as Western Mason District's chief executive officer under the title of "General Manager."

9. A true and accurate copy of the Note at issue is attached to this Stipulation as Exhibit A.

10. Pam Carpenter, Jerry Fields and Larry Redden executed the Note in their capacity as commissioners of Western Mason District and in furtherance of their duties as commissioners. The signatures that appear on Exhibit A are their signatures.

11. Pam Carpenter, Jerry Fields and Larry Redden shall each attend twelve hours of training for newly appointed water district commissioners conducted pursuant to KRS 74.020(8) prior to July 1, 2016; thereafter, for the remainder of his or her current term as Commissioner each shall complete twelve hours of Commission-accredited training every twelve-month period ending June 30. If he or she vacates his or her office prior to the end of his or her current term, any training obligation under this Stipulation shall immediately end.

12. David French shall attend twelve hours of training for newly appointed water district commissioners conducted pursuant to KRS 74.020(8) within twelve months of the date of entry of a Commission Order approving this Stipulation, and for the following three years shall complete twelve hours of Commission-accredited training every twelve months. If he ceases to be employed as Western Mason District's general manager or chief executive officer, his training obligation under this Stipulation shall immediately end.

13. The Commission's acceptance of this Stipulation will satisfy and resolve any and all claims against the Respondents, individually or collectively, and Western Mason District for any violation of KRS Chapter 278 or for any penalty under KRS

278.990 arising out of Western Mason District's issuance of promissory notes to the Bank of Maysville between October 10, 2003 and January 17, 2014.

14. This Stipulation is not an admission by any Respondent that any Respondent aided or abetted any willful violation of KRS 278.300 or of any other provision of KRS Chapter 278 or that Western Mason District willfully violated KRS 278.300. The Commission's acceptance of this Stipulation shall not be construed as a finding that Western Mason District willfully violated any statute or that any of the Respondents aided or abetted any willful violation of KRS Chapter 278.

15. In the event the Commission does not accept this Stipulation in its entirety, Respondents reserve the right to withdraw therefrom and require that a hearing be held on any and all issues herein, and that none of the provisions contained herein shall be used as an admission by Respondents of any liability in any legal proceeding or lawsuit arising out of the facts set forth in this Stipulation.

16. This Stipulation is for use in PSC Case No. 2015-00155. None of its provisions establishes any precedent for any other case. Neither Respondents nor Commission Staff shall be bound by any part of this Stipulation in any other proceeding, except that it may be used in any proceeding by the Commission to investigate or enforce the terms of this Stipulation. Respondents shall not be precluded or estopped from raising any issue, claim, or defense, therein by reason of the execution of this Stipulation.

17. If the Commission accepts and adopts this Stipulation, any Respondent failing to comply with Paragraphs 11 or 12 of this Stipulation shall have failed to obey a

Commission Order and may be subject to civil penalties under KRS 278.990(1) for his or her failure.

18. Respondents and Commission Staff agree that the foregoing Stipulation is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If adopted by the Commission, Respondents waive their right to a hearing in this matter and will not petition for rehearing or bring an action for review in Franklin Circuit Court.

WESTERN MASON COUNTY WATER DISTRICT COMMISSIONERS AND

GENERAL MANAGER

By *Greg Hill*
Title *Manager*
Date *7-21-2015*

By *Larry Redner*
Title *Chairman*
Date *8-21-2015*

By *Pam Carpenter*
Title *Secretary*
Date *8-21-15*

By *Dad Frank*
Title *Manager*
Date *8-21-15*

STAFF OF THE PUBLIC SERVICE COMMISSION

By *Molly Blake Kater*
Title *Staff Attorney*
Date *8-25-15*

EXHIBIT A

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
	WESTERN MASON WATER DISTRICT		01/17/14	MED
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$86,374.43	Wall Street Journal Prime plus 0.750%	4.000%	01/17/24	Commercial
Creditor Use Only				

PROMISSORY NOTE
(Commercial - Single Advance)

DATE AND PARTIES. The date of this Promissory Note (Note) is January 17, 2014. The parties and their addresses are:

LENDER:

BANK OF MAYSVILLE
20 WEST SECOND STREET
PO BOX 40
MAYSVILLE, KY 41056
Telephone: (606) 564-4001

BORROWER:

WESTERN MASON WATER DISTRICT
a Kentucky Other
P O BOX 49
DOVER, KY 41034

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, any participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. **Note.** Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. **Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. **Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. **Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. **Percent.** Rates and rate change limitations are expressed as annualized percentages.
- G. **Dollar Amounts.** All dollar amounts will be payable in lawful money of the United States of America.

2. REFINANCING. This Note will pay off the following described note(s):

Nota Date	Note Number	Note Amount
February 2, 2011		\$67,953.00

The remaining balance of the note listed in the table above is \$58,520.56.

3. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$86,374.43 (Principal) plus interest from January 17, 2014 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

4. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 4.000 percent (Interest Rate) until January 18, 2014, after which time it may change as described in the Variable Rate subsection.

A. **Post-Maturity Interest.** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.

WESTERN MASON WATER DISTRICT
Kentucky Promissory Note
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B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. Statutory Authority. The amount assessed or collected on this Note is authorized by the Kentucky usury laws under Ky. Rev. Stat. Ann. § 360.010.

D. Accrual. Interest accrues using an Actual/365 days counting method.

E. Variable Rate. The Interest Rate may change during the term of this transaction.

(1) **Index.** Beginning with the first Change Date, the Interest Rate will be based on the following index: the base rate on corporate loans posted by at least 70% of the 10 largest U.S. banks known as the Wall Street Journal U.S. Prime Rate.

The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this Index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.

(2) **Change Date.** Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change January 18, 2014 and daily thereafter.

(3) **Calculation Of Change.** On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.750 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) **Limitations.** The Interest Rate changes are subject to the following limitations:

(a) **Lifetime.** The Interest Rate will never be less than 4.000 percent.

(5) **Effect Of Variable Rate.** A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments will change.

5. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Documentation. A(n) Documentation fee of \$75.00 payable from the loan proceeds.

6. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 10 days late, I will be charged 5.000 percent of the Amount of Payment or \$10.00, whichever is greater. I will pay this late charge promptly but only once for each late payment.

7. PAYMENT. I agree to pay this Note in 10 payments. A payment of \$10,650.44 will be due January 17, 2015, and on the same day each year thereafter. This scheduled payment amount may change to reflect changes in the Interest Rate as described in the Variable Rate subsection of this Note. A final payment of the entire unpaid balance of Principal and interest will be due January 17, 2024.

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due, then to principal that is due, then to any charges that I owe other than principal and interest, and finally to escrow that is due. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is BUSINESS OPERATING EXPENSES.

10. DEFAULT. I will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

D. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

F. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

G. Judgment. I fail to satisfy or appeal any judgment against me.

H. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

I. Name Change. I change my name or assume an additional name without notifying you before making such a change.

J. Property Transfer. I transfer all or a substantial part of my money or property.

K. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

L. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

11. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

12. **REMEDIES.** After I default, you may at your option do any one or more of the following.

A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after the occurrence of an Event of Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, reasonable attorneys' fees as provided by law, and court costs. This amount does not include attorneys' fees for your salaried employee. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition,

*David French
Office Manager
Western Mason County Water District
2573 Mary Ingles Highway
P. O. Box 49
Dover, KY 41034-0049

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