

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN WATER DISTRICT;)	
RHONDA JAMES, COMMISSIONER AND)	
CHAIRPERSON; LESTER "JOHN" COLLINS,)	CASE NO.
COMMISSIONER; TONI AKERS, FORMER)	2015-00353
COMMISSIONER; AND MIKE LITAFIK,)	
FORMER COMMISSIONER)	
_____)	
)	
ALLEGED FAILURE TO COMPLY WITH)	
KRS 278.300(1))	

ORDER

By Order entered November 2, 2015, the Commission initiated this proceeding to determine whether Mountain Water District ("Mountain District"); Rhonda James, former commissioner and chairperson; Lester "John" Collins, former commissioner; Toni Akers, former commissioner; and Mike Litafik, former commissioner (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.¹

The alleged violation giving rise to this case is Mountain District's execution of a \$500,000 "forgivable loan" payable to Utility Management Group, LLC ("UMG"), for

¹ Respondents James, Collins, Akers, and Litafik are all former members of the Mountain District Board of Commissioners. See Stipulation of Facts and Settlement Agreement (Ky. PSC filed Jan. 20, 2016) at 4.

which prior Commission approval was required under KRS 278.300, but was never sought or obtained. Commission Staff alleges that it discovered this forgivable loan during an examination of Mountain District's financial record in the course of reviewing Mountain District's application for a rate adjustment in Case No. 2014-00342.² The "forgivable loan" was executed as part of the "Amendment to Agreement for Operations, Maintenance and Management Service" dated April 29, 2009, wherein UMG agreed to provide Mountain District a \$500,000 forgivable loan to be amortized over a five-year period at a simple interest rate of 5 percent per annum.³

The minutes of the Mountain District Board Special Meeting held on April 3, 2009, reflect that UMG had proposed to provide Mountain District with a \$500,000 forgivable loan in exchange for Mountain District's extending its contract with UMG.⁴ The minutes of the Mountain District Board Special Meeting held on April 6, 2009, reflect that all Mountain District Commissioners then serving, with the exception of Earl Sullivan, voted to approve a proposed amended contract with UMG containing the loan provision.⁵ The minutes of the Mountain District Board Regular Meeting held on April 29, 2009, reflect that then-serving Commissioner and Chairperson Akers,

² Case No. 2014-00342, *Application of Mountain Water District for an Adjustment of Water and Sewer Rates* (Ky. PSC Oct. 9, 2015).

³ *Id.*, Mountain District's Response to Commission Staff's First Request for Information, Vol. 1 of 7 (filed Dec. 3, 2014), Item 3.c.

⁴ *Id.*, Item 3.b. Minutes of Mountain District Board of Commissioners Special Meeting, April 3, 2009.

⁵ *Id.*, Minutes of Mountain District Board of Commissioners Special Meeting, April 6, 2009.

Commissioner Litafik, and Commissioner Collins again voted to approve the amended contract containing the loan provision.⁶

Commission Staff conducted an informal conference in this matter, and discussions ultimately led to the filing of a Stipulation of Facts and Settlement Agreement (“Stipulation”) on January 20, 2016. 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, Mountain District agrees to pay a \$500 civil fine pursuant to KRS 278.990. Should any of the remaining Respondents assume the role of commissioner of Mountain District, they agree to attend five extra hours of Commission-accredited training within 12 months of his or her appointment, in addition to the mandatory new-commissioner training requirement.

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 Mountain District to pay a civil fine and the remaining Respondents to complete, in addition to the mandatory new-commissioner training requirement, five extra hours of Commission-accredited water training should any of them again assume the role as commissioner of Mountain District. Such training programs cover a wide variety of issues relating to the operation of water utilities, including a review of applicable statutes and regulations. Thus, should they again assume the role as commissioner of Mountain District, their completion of this enhanced training requirement will benefit Mountain District. Based on the evidence of record, and being otherwise sufficiently advised, the Commission

⁶ *Id.*, Minutes of Mountain District Board of Commissioners Regular Meeting, April 29, 2009.

finds that the Stipulation is in accordance with 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. In the event that Rhonda James, Lester "John" Collins, Toni Akers, or Mike Litafik assume the role as commissioner of Mountain District in the future, each as a new Commissioner shall complete the mandatory new-commissioner training required pursuant to KRS 74.020(8)(a), and as a new commissioner shall, in addition to the mandatory training, complete an extra five hours of Commission accredited training within 12 months of his or her appointment.

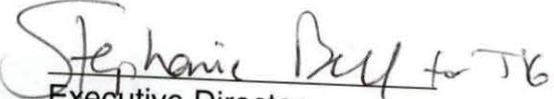
3. Mountain District shall pay \$500 as a civil penalty within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

4. Upon payment of the \$500 civil penalty, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission

ENTERED 
FEB 15 2016
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2015-00353 DATED **FEB 15 2016**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN WATER DISTRICT;)	
RHONDA JAMES, COMMISSIONER AND)	
CHAIRPERSON; LESTER "JOHN" COLLINS,)	CASE NO.
COMMISSIONER; TONI AKERS, FORMER)	2015-00353
COMMISSIONER; AND MIKE LITAFIK,)	
FORMER COMMISSIONER)	
_____)	
)	
ALLEGED FAILURE TO COMPLY WITH)	
KRS 278.300(1))	

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order entered November 2, 2015, the Commission initiated this proceeding to determine whether Mountain Water District ("MWD"); Rhonda James, Former Commissioner and Chairperson; Lester "John" Collins, Former Commissioner; Toni Akers, Former Commissioner; and Mike Litafik, Former Commissioner (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 MWD's execution of a \$500,000 "forgivable loan" payable to Utility Management Group, LLC ("UMG"), for which prior Commission approval was required under KRS 278.300, but was never sought or obtained. Commission Staff alleges that it discovered this "forgivable loan" during an examination of MWD's financial records in the course of reviewing MWD's application

for a rate adjustment pursuant to 807 KAR 5:076.¹ The "forgivable loan" was executed as part of the "Amendment to Agreement for Operations, Maintenance and Management Services" dated April 29, 2009, wherein UMG agreed to provide MWD a \$500,000 forgivable loan, to be amortized over a five-year period at a simple interest rate of five percent per annum.²

The minutes of the MWD Board Special Meeting held on April 3, 2009, reflect that UMG had proposed to provide MWD with a \$500,000 forgivable loan in exchange for MWD extending its contract with UMG.³ The minutes of the MWD Board Special Meeting held on April 6, 2009, reflect that all MWD Commissioners then serving, with the exception of Commissioner Earl Sullivan, voted in favor of approving a proposed amended contract with UMG containing the loan provision.⁴ The minutes of the MWD Board Regular Meeting held on April 29, 2009, reflect that then serving Commissioner and Chairperson Akers, Commissioner Litafik, and Commissioner Collins again voted to approve the amended contract containing the loan provision.⁵

On November 23, 2015, each of the Respondents filed responses to the Commission's Order. They each admitted that one of the provisions of the April 29, 2009 Operating Agreement with UMG was a "forgivable loan" in the amount of

¹ Case No. 2014-00342, *Application of Mountain Water District for an Adjustment of Water and Sewer Rates* (Ky. PSC Oct. 9, 2015).

² Case No. 2014-00342, MWD Response to PSC First Request for Information ("PSC First Request"), Vol. 1 of 7, Item 3(c) (attached hereto as Appendix A).

³ Case No. 2014-00342, MWD Response to PSC First Request, Vol. 1 of 7, Item 3(b). Minutes of MWD Board of Commissioners Special Meeting, April 3, 2009 (attached hereto as Appendix B).

⁴ Case No. 2014-00342, MWD Response to PSC First Request, Vol. 1 of 7, Item 3(b). Minutes of MWD Board of Commissioners Special Meeting, April 6, 2009 (attached hereto as Appendix C).

⁵ Case No. 2014-00342, MWD Response to PSC First Request, Vol. 1 of 7, Item 3(b). Minutes of MWD Board of Commissioners Regular Meeting, April 29, 2009 (attached hereto as Appendix D).

\$500,000, but disputed whether the "forgivable loan" was in fact an "evidence of indebtedness" or otherwise set to expire after two years so as to fall under KRS 278.300, and they argued that this action was barred by the statute of limitations. Each of the named former commissioners also disputed any "willful" action on their respective part in committing the alleged violation, emphasizing their reliance on MWD's legal counsel. Each former commissioner further maintained that the Commission received reasonable notice of the "forgivable loan" by way of MWD's financial disclosure statement in July 2010, as well as MWD's financial audit in September 2010. Additionally, each commissioner argued that this action was barred by statutory immunity and that the proceedings violate their respective due process rights. Respondent Rhonda James also stated that she is a former Commissioner and Chairperson of MWD's Board of Commissioners,⁶ while respondent Lester "John" Collins stated that he too is a former Commissioner of MWD's Board of Commissioners.⁷

At Respondents' request, Commission Staff conducted an informal conference on January 5, 2016. At that conference, Respondents' responses to the allegations were discussed, as well as possible terms of a stipulation agreement.

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. MWD is a water district organized pursuant to KRS Chapter 74.

⁶ Respondent Rhonda James' Response to the Commission's Order of November 2, 2015 (filed Nov. 23, 2015) at 1.

⁷ Respondent Lester "John" Collins' Response to the Commission's Order of November 2, 2015 (filed Nov. 23, 2015) at 1.

2. MWD is a utility and is subject to the provisions of KRS Chapter 278.
3. A five-member board of commissioners controls and manages MWD's affairs.
4. Former members of MWD's Board of Commissioners include Rhonda James, Lester "John" Collins, Toni Akers, and Mike Litafik.
5. Minutes of the MWD Board of Commissioners Special Meeting held on April 3, 2009 and April 6, 2009 are attached hereto, in addition to minutes of the MWD Board of Commissioners Regular Meeting held on April 29, 2009.
6. Rhonda James, Lester "John" Collins, Toni Akers, and Mike Litafik approved the "forgivable loan" with UMG in their capacity as commissioners of MWD and in furtherance of their duties as commissioners, as reflected by the Board minutes attached hereto.
7. Should Rhonda James, Lester "John" Collins, Toni Akers, and Mike Litafik assume the role as commissioner of MWD in the future, they shall attend the mandatory new commissioner training required pursuant to KRS 74.020(8)(a), and they shall, in addition to the mandatory training, attend an extra five hours of Commission accredited training within twelve months of his or her appointment.
8. MWD shall pay a fine of \$500, pursuant to KRS 278.990, which allows for the imposition of a fine for a violation of KRS 278.300.
9. The Commission's acceptance of this Stipulation will satisfy and resolve any and all claims against the Respondents, individually or collectively, and MWD for any violation of KRS Chapter 278 or for any penalty under KRS 278.990 arising out of MWD's execution of the "forgivable loan" at issue.

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

11. 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.

12. This Stipulation is for use in PSC Case No. 2015-00353. 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.

13. If the Commission accepts and adopts this Stipulation, any Respondent failing to comply with Paragraphs 7 or 8 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.

14. The Commission's acceptance and adoption of this Stipulation does not result in any change or alteration to the forfeiture provision of KRS 74.020(8)(b) for a

failure of any Respondent to complete the program of instruction described in KRS 74.020(8)(a).

15. 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.

MOUNTAIN WATER DISTRICT FORMER COMMISSIONER

By: (Print name) MIKE LITAFIK

(Sign name) Mike Litafik

Title FORMER COMMISSIONER

Date 1/14/16

MOUNTAIN WATER DISTRICT FORMER COMMISSIONER

By: (Print name) Toni Akers

(Sign name) Toni Akers

Title Former Commissioner

Date 1-13-15

MOUNTAIN WATER DISTRICT FORMER COMMISSIONER

By: (Print name) Rhonda James

(Sign name) Rhonda James

Title Former Commissioner

Date 1/15/2016

MOUNTAIN WATER DISTRICT FORMER COMMISSIONER

By: (Print name) Lester "John" Collins

(Sign name) Lester Collins

Title Former Commissioner

Date 1/13/14

MOUNTAIN WATER DISTRICT

By: (Print name) Anc. E Casey
(Sign name) Ancie Casey
Title Chairman
Date 1-13-16

STAFF OF THE PUBLIC SERVICE COMMISSION

By: (Print name) David Edward Speward
(Sign name) David Speward
Title Staff Attorney
Date 1/19/2016

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