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September 11, 2017

RECEIVED

SEP 12 2017

PUBLIC SERVICE  
COMMISSION

John Lyons, Acting Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602-0615

RE: Martin County Concerned Citizens Inc.'s  
Second Motion to Intervene  
PSC Case No. 2016-142

Dear Mr. Lyons,

I enclose here an original and five copies of Martin County Concerned Citizens Inc.'s  
Second Motion to Intervene in case number 2016-142.

I also send a copy of this motion to counsel for the Martin County Water District by U.S.  
mail today.

Please contact me if you have any questions regarding this filing.

Sincerely,



Mary Varson Cromer

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In The Matter Of:**

**INVESTIGATION OF THE  
OPERATING CAPACITY OF  
MARTIN COUNTY WATER  
DISTRICT PURSUANT TO KRS  
278.280**

**Case No 2016-00142**

**RECEIVED**

**SEP 12 2017**

**PUBLIC SERVICE  
COMMISSION**

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**SECOND<sup>1</sup> MOTION OF MARTIN COUNTY CONCERNED CITIZENS, INC.  
TO INTERVENE IN THIS MATTER**

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Pursuant to KRS § 278.310 and 807 KAR 5:001 § 4(11)(a), Martin County Concerned Citizens, Inc. (“MCCC”) respectfully moves the Commission for leave to intervene in the above-captioned investigation on behalf of its members. MCCC seeks full intervention to protect its members’ interests in ensuring that Martin County Water District (“MCWD”) provides reasonable, safe, and adequate water service to its customers and to bring to this investigation its members’ specific knowledge regarding the current inadequacies of the MCWD service. MCCC also seeks to intervene in the hopes that it can work with Commission staff and MCWD to craft solutions that are acceptable to the community.

**I. Introduction**

MCCC is a non-profit, non-stock membership corporation with offices at P.O. Box 938, Inez, Kentucky. MCCC can be contacted via email through the undersigned attorney at [mary@appalachianlawcenter.org](mailto:mary@appalachianlawcenter.org). MCCC currently has over 50 members who are customers of MCWD. MCCC was formed when a group of community members started meeting together in the spring of 2017 to organize the community’s response to MCWD’s failure to provide a safe,

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<sup>1</sup> MCCC previously filed a Motion to Intervene in this matter on August 7, 2017. MCWD filed an objection to MCCC’s motion on August 11, 2017. On August 17, 2017, the Commission filed an Order denying the Motion to Intervene for lack of standing. The denial was without prejudice. The Commission found that MCCC lacked standing to intervene because it was not yet incorporated. MCCC was incorporated on September 7, 2017.

dependable water supply to the county's residents. MCCC was incorporated on September 7, 2017.

MCCC is aware of the August 23, 2017 Order in this matter. If MCCC is granted intervention, it will be prepared to provide a witness and exhibit list by October 3 and will be prepared to participate in the October 17 hearing.

MCCC meets regularly in Martin County to keep its members apprised of the progress and potential outcomes of this investigation and the Energy and Environment Cabinet's ("EEC") enforcement of the Safe Drinking Water Act as it relates to MCWD. MCCC also chronicles MCWD's failures to provide adequate water service. MCCC is working with community health researchers to track the health problems that may be related to the inadequate and unsafe water service issues seen throughout the county and is starting a program to sample tap water from MCWD customers to determine the extent to which pollutants are infiltrating the broken service lines. MCCC's goal is to ensure that each customer of MCWD has a safe, affordable, and adequate supply of water.

As the Commission notes in its April 11, 2016 Order initiating this current investigation, this is the third investigation into deficiencies in MCWD's operations. The first two investigations resulted in settlement agreements that were not fulfilled by MCWD. MCCC believes that those failures to comply with past orders have caused a serious and imminent threat to the health and safety of many of MCWD's customers.

MCCC members have taken advantage of the opportunities for public comment provided by the Commission. In particular, MCCC members are grateful to the Commission and to EEC for the public forum held in Inez on August 29. MCCC members took advantage of the opportunity to hear from the two agencies regarding their respective regulatory roles in ensuring

that MCWD provides a safe, reasonable water service to its customers. MCCC members are grateful for the opportunity to speak directly to the Commission without having to travel to Frankfort. However, MCCC believes that the opportunity to provide public comment, while important, is not sufficient to adequately represent the interests of MCWD's customers in ensuring that this investigation finally resolves the service and potability issues that have plagued the water district for many years.

**II. MCCC Meets the Standards for Intervention Set Forth in 807 KAR 5:001 Sec. 4(11).**

807 KAR 5:001(4)(11)(b) provides, “[t]he commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.” More recently, this Commission has found that “any person requesting to intervene in a Commission proceeding must state with specificity the person’s special interest in a utility’s rates and service that is not otherwise adequately represented, or the issues and facts the person will present that will assist the Commission in fully considering the matter.” Jul. 12, 2017 Order, Case No. 2017-179.

As set forth more fully below, this motion to intervene, while filed over a year after the Commission initiated its current investigation, is timely in that the proceedings in this matter are ongoing and MCCC’s intervention is filed early enough in the overall process of the lengthy investigation that the Commission will still benefit from MCCC’s participation. As no party has intervened in this matter, MCCC’s members’ interests are not adequately represented before the Commission. And finally, MCCC will present testimony on service quality deficiencies that will

assist the Commission in fully investigating this matter.

**A. Timeliness**

Based on Movant's review of this investigative docket, the Commission has not established a deadline for intervention in this matter. MCCC files this motion more than one year after the Commission initiated its investigation into the serious deficiencies in MCWD's water service delivery to its customers. MCCC's motion is nonetheless timely because the Commission's investigation is ongoing and likely to continue for some time. The Commission has indicated that it will continue to hold regular hearings in this matter until it is satisfied that the deficiencies in MCWD's water service will be corrected. The Commission has conducted two hearings in this matter to date. During the June 1, 2017 hearing, the Commission indicated that it would hold another hearing in the early fall to receive additional testimony regarding MCWD's efforts to correct the deficiencies. Such testimony will likely include the results of the current management audit being conducted by a third party hired by MCWD. Any efforts of MCWD to correct its deficiencies should incorporate the recommendations of that management audit, as well as the recommendations of the 2007 performance audit that were not implemented by MCWD.

In short, despite the fact that this investigation has been going on for over 15 months, it is far from over. At this point, the Commission has not been presented with any specific plan by MCWD for ways in which it will improve its water service or otherwise correct its deficiencies. Therefore, testimony presented by MCCC on the scope of those deficiencies and the impacts those deficiencies have on MCWD's customers are still relevant to the Commission's consideration of the best way to address MCWD's problems.

**B. MCCC's Interests Are Not Otherwise Represented**

At this time, no other party has moved to intervene in this matter. The only party before the Commission in this investigation is MCWD. In particular, the Attorney General has not intervened in this matter on behalf of MCWD's customers.

MCCC members are MCWD customers. As a community group representing the interests of MCWD's water customers, MCCC's members have special interests in this investigation that are not otherwise represented. In particular, MCCC members' interests are in making sure that MCWD provides adequate service to its customers. At a minimum, adequate service requires that all parts of MCWD's service area must be provided with consistent and sufficient pressure and minimal disruptions, and that when disruptions or low pressures occur that boiled water advisories are timely issued and the community is given notice. MCCC members' interests are also in making sure that MCWD provides safe and reasonable water to its customers, meaning that the water provided should at all times be potable, should not have a disagreeable smell, and should not cause skin irritations from bathing and showering. Movant understands that EEC's Division of Water is the regulatory agency with authority over the district's compliance with the Safe Drinking Water Act. However, Movant believes that this Commission's authority to ensure the delivery of a safe water service to its customers includes the authority to determine whether the district is delivering safe, potable water.

MCWD objected to MCCC's first Motion to Intervene arguing, in part, that MCCC's interests are sufficiently represented because MCCC members have been given opportunities to provide comments to the Commission regarding the investigation. (MCWD Objection to Intervention, Aug. 11, 2017, at 2.) MCCC members appreciate the opportunities they have been given to comment. Many members have provided comments. However, what MCCC seeks is

the opportunity to present evidence and witnesses regarding the impact of MCWD's failures to its customers, the opportunity to cross examine witnesses, and the opportunity to participate as a full party in any settlement negotiations.

**C. MCCC Is Likely to Present Issues or Develop Facts That Assist the Commission in Fully Considering the Matter without Unduly Complicating or Disrupting the Proceedings**

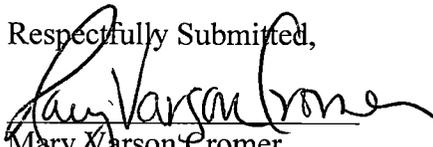
MCCC's intervention will assist the Commission in fully considering the deficiencies in MCWD's system and the effects of those deficiencies on MCWD's customers. MCCC expects to present factual testimony regarding the history of inadequate service in the county and the effects of that service on particular sectors of MCWD's customers, including school systems, fire departments, and customers who live at the far reaches of MCWD's distribution lines. MCCC also hopes to offer testimony on the financial impact on the county's residents from having to buy potable water while also paying for water service and having to replace appliances and plumbing on a regular basis because of the debris in the water provided by MCWD's water service.

Perhaps more importantly, MCCC's intervention may guide the Commission and MCWD in exploring solutions that will be acceptable to the community. An order or settlement the community accepts is more likely to be adhered to, because the community will be invested in making sure MCWD follows through with its commitments. MCWD asserts that if MCCC is allowed to intervene, "the likelihood of a settlement which concludes with an agreed order becomes questionable, at best." (MCWD Objection to Intervention, Aug. 11, 2017, at 2.) At this juncture, MCCC cannot judge the likelihood of settlement of this matter. However, if a settlement is reached that includes MCCC, MCCC believes that the likelihood that the settlement will result in meaningful improvement in the district's operations is far greater.

MCWD also objects to MCCC's intervention arguing that it will unduly complicate these proceedings. (MCWD Objection to Intervention, Aug. 11, 2017, at 2.) It is true that MCCC's participation in this investigation as a full party may increase MCWD's burdens in responding to this investigation. However, the benefit of MCCC's participation outweighs the additional burden placed on the utility. In particular, this investigation is necessitated because of MCWD's failures to comply with the settlement agreements intended to resolve the past two investigations. Those failures have resulted in unreasonable, unsafe, improper, inadequate or insufficient service to MCCC's members. MCCC's members are in the best position to provide evidence regarding the degree to which the service remains insufficient, inadequate, and unsafe. Furthermore, MCCC will be able to cross-examine MCWD witnesses with the benefit of knowledge from the community.

#### **Conclusion**

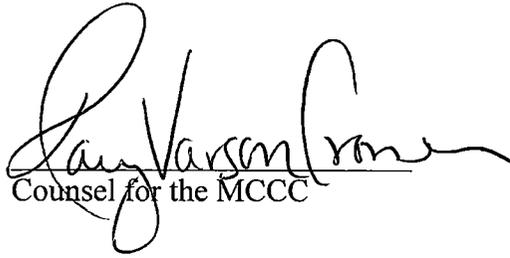
WHEREFORE, MCCC requests that it be granted leave for full intervention and it be certified as a full party in this proceeding, giving it the right to present testimony and exhibits, present witnesses, cross-examine witnesses, and be served with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by the parties or orders of the Commission.

Respectfully Submitted,  
  
Mary Varson Cromer  
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Whitesburg, Kentucky 41858  
Telephone: 606-633-3929  
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mary@appalachianlawcenter.org  
*Counsel for MCCC*

**CERTIFICATE OF SERVICE**

Pursuant to 807 KAR 5:001 Sec. 4(8), I, Mary Varson Cromer, hereby certify that on September 12, 2017, a true and accurate copy of the foregoing SECOND MOTION OF THE MARTIN COUNTY CONCERNED CITIZENS, INC. TO INTERVENE IN THIS MATTER was served via postage-paid U.S. mail and electronic mail to the following:

Brian Cumbo  
86 W. Main St., STE 100  
P.O. Box 1844  
Inez, KY 41224  
cumbolaw@cumbolaw.com  
*Counsel for Martin County Water District*

  
Counsel for the MCCC