

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

On August 17, 2015, Western Mason County Water District (“Western Mason”) filed a motion to intervene in the instant matter. In support of its motion, Western Mason contends that the Commission’s June 9, 2015 Order initiating this action made a finding that a prima facie case existed that Western Mason violated KRS 278.300 through entering into an evidence of indebtedness without seeking or receiving prior Commission approval. However, Western Mason notes that only the three members of the Western Mason Board of Commissioners and the district’s general manager, all in their individual capacities, were made parties to this case.

Western Mason argues that should the Commission find that Western District willfully violated KRS 278.300 and assess penalties, the district itself might be subject to possible civil penalties. Western Mason further asserts that in the event the Commission imposes penalties against the district commissioners or general manager, that Western Mason may be required to indemnify those individuals.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene is the

Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. In *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that the Commission retains the power in its discretion to grant or deny a motion for intervention, but that discretion is not unlimited. The Court enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11), requires that a person demonstrate a special interest in the proceeding that is not otherwise adequately represented, or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

The Commission finds that Western Mason has failed to establish that it has an interest in this matter. Western Mason's belief that it may be subject to penalties by virtue of a possible finding against its representatives is misplaced. As iterated in the Commission's June 9, 2015 Order, this action was opened for the purpose of requiring the Western Mason commissioners and general manager to "show cause why they should not be subject to the penalties prescribed in KRS 278.990(1) for the alleged violation of KRS 278.300."¹ Clearly, assessing penalties against Western Mason, a non-party, is outside the scope of this proceeding. Only if the Commission instituted an

¹ June 9, 2015 Order at 3.

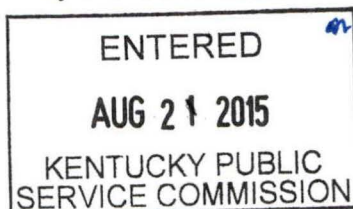
action against Western Mason would Western Mason itself be subject to possible penalties. Intervention on this basis is therefore neither required nor permitted.

Next, Western Mason contends that its interests are not adequately represented because it may be required to indemnify the district commissioners or general manager. However, such a contention is likewise without support. The Commission's June 9, 2015 show cause Order set forth the prima facie case alleging that the district commissioners and general manager, in their individual capacities, aided and abetted in allegedly violating KRS 278.300. Western Mason does not cite any basis to support its contention that the district could be required to indemnify its officials for violations that are found to be committed in the course of their duties.

Accordingly, because no violations were alleged against Western Mason and because Western Mason has not established a special interest in the proceeding, the Commission finds that its motion to intervene should be denied.²

IT IS THEREFORE ORDERED that Western Mason's motion for intervention is denied.

By the Commission



ATTEST:



Executive Director

² The Commission also notes that although the hearing in this matter was scheduled over two months prior, Western Mason waited until eight days before the hearing to request intervention. Permitting intervention at this late juncture may also serve to unduly delay and complicate the proceedings.

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