

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JUN 29 2015

PUBLIC SERVICE
COMMISSION

In the Matter of:

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

RESPONSE TO THE COMMISSION'S ORDER OF JUNE 9, 2015

Pursuant to the Public Service Commission's Order of June 9, 2015 in this matter, Pam Carpenter, Jerry Fields, Larry Redden, and David French (collectively "the Respondents"), through counsel, jointly and individually state:

RESPONSE TO ALLEGATIONS

1. Western Mason County Water District ("Western Mason District") is a water district organized pursuant to KRS Chapter 74. It provides water service to portions of Bracken and Mason Counties, Kentucky
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. The current members of Western Mason District's Board of Commissioners are Pam Carpenter, Jerry Fields, and Larry Redden.

4. Pursuant to KRS 74.040, Western Mason District's Board of Commissioners has retained David French to serve as Western Mason District's chief executive officer under the title "General Manager."

5. On or about January 17, 2014, Western Mason District issued a promissory note ("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 provides for a variable interest rate that is based upon the Wall Street Journal U.S. Prime Rate but is never less than four percent per annum.

6. The Public Service Commission did not authorize Western Mason District to issue the Note.

7. Based upon Respondents' present understanding of KRS Chapter 278, Western Mason District's issuance of the Note without the Public Service Commission's prior authorization was contrary to and in violation of KRS 278.300.

8. At the time of the Note's issuance, none of the Respondents were aware that Public Service Commission's authorization was required before Western Mason District could lawfully issue the Note.

9. Any violation of KRS 278.300 resulting from the Note's issuance without the Public Service Commission's authorization was committed unknowingly and unintentionally.

10. Western Mason District issued the Note without first obtaining legal advice. Western Mason District has limited funds and has always sought to avoid unnecessary expenses when possible. It does not have legal counsel on retainer and did not seek legal counsel in this instance. Western Mason District and the Respondents acted under the belief that the Bank of Maysville, which has significant expertise in financial and lending transactions, would be aware

of any legal requirements attached to the Note and would inform Western Mason District and the Respondents of such requirements. Neither Western District's commissioners nor its general manager have any significant education, training or experience in legal or financial matters.

11. The Respondents are without sufficient knowledge or information to form a belief as to when Commission Staff learned of the Note's existence, but they affirmatively state that neither Western Mason District nor they made any effort to conceal the Note's existence.

a. Western Mason District included a copy of the Note with the application which the Commission received on December 1, 2014 and docketed as Case No. 2014-00421. Because the copy of the Note contained an unredacted loan number, the Commission removed the Note from the application and returned it to Western Mason District. On December 23, 2014, when responding to the letter of December 9, 2014 from the Public Service Commission's Director of Filings, Western Mason District provided another copy of the Note with the loan number redacted.

b. In its Application, Western Mason District plainly refers to the Note's existence on Attachment SR (Reasons For Application): "We currently have a bank loan that needs to be repaid. We have borrowed money from a local bank to pay our debt service in years past and need to get this loan repaid quickly to keep up credit availability with them if needed again."

c. Western Mason District has reported all notes and other evidences of indebtedness in its annual financial and statistical reports to the Public Service Commission. A review of these reports since 2003 will show that the notes listed in the Commission Staff Report of March 24, 2015 are reflected therein.

d. When interviewed during the course of Commission Staff's field review in March 2015, Western Mason District's General Manager openly acknowledged the Note's existence and did not evade or avoid Commission Staff's inquiries.

12. The Respondents are without sufficient knowledge or information to form a belief as to the allegation that in addition to issuing the Note "without prior approval, Western Mason District had entered into three prior evidences of indebtedness, none of which are still outstanding, without prior approval." They affirmatively state, however, that except for the issuance of bonded debt or debt to finance construction projects, Western Mason District has not sought prior Public Service Commission approval to issue any debt and did not do so because of its belief that such approval was not required for that type of indebtedness. KRS 278.300 does not require prior Public Service Commission authorization for all evidences of indebtedness.

13. As they acted without knowledge of the specific requirements of KRS 278.300, the Respondents did not willfully aid or abet Western Mason District's violation of KRS 278.300.

FIRST AFFIRMATIVE DEFENSE

The Order of June 9, 2015 fails to identify any specific act or omission by any of the Respondents that aided or abetted Western Mason District's violation of KRS 278.300.

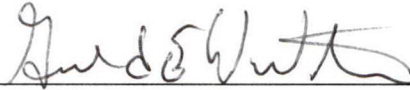
SECOND AFFIRMATIVE DEFENSE

KRS 500.050 bars this proceeding as the alleged offense occurred more than one year prior to the commencement of this proceeding.

WHEREFORE, Respondents jointly and individually request that the Public Service Commission issue an Order dismissing this proceeding with prejudice.

Dated: June 29, 2015

Respectfully submitted,



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