

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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)
FRENCH)
_____) CASE NO. 2015-00155
)
ALLEGED FAILURE TO COMPLY WITH)
KRS 278.300)

**MOTION FOR DISCLOSURE OF EVIDENCE
AND POSTPONEMENT OF SCHEDULED HEARING**

Pam Carpenter, Jerry Fields, Larry Redden, and David French (“Respondents”) move that the Commission disclose the evidence that is expected to be presented at the scheduled hearing to support the contention that the Respondents willfully aided and abetted a willful violation of KRS 278.300 and postpone the scheduled hearing to afford them adequate time to prepare for the hearing after disclosure of such evidence.

Due process requires at a minimum that the subject of a judicial or administrative proceeding be permitted a meaningful opportunity to be heard.¹ “[N]o hearing in the constitutional sense exists where a party does not know what evidence is considered and is not given an opportunity to test, explain or refute.”² The U.S. Supreme Court has acknowledged that a party to an administrative proceeding has a right “to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he

¹ *Boddie v. Connecticut*, 401 U.S. 371 (1971).

² *Utility Regulatory Commission v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591, 593 (Ky.App. 1982).

may rebut it” and no agency is permitted “to use evidence in a way that forecloses an opportunity to offer a contrary presentation.”³

In its Order of June 9, 2015, the Commission did not specifically identify the evidence upon which it relied to determine that a *prima facie* case existed that the Respondents had aided and abetted a willful violation of KRS 278.300. No specific act of any Respondent is mentioned.

The Commission states only:

Pursuant to KRS 74.020(1), ‘A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district.’ The Commission finds that a *prima facie* case has been made that Western Mason District commissioners Pam Carpenter, secretary; Jerry Fields, treasurer; Larry Redden, chairman; and Western Mason District manager David French, acting in their respective individual capacities as current members of Western Mason District’s Board of Commissioners, or as the utility’s manager, willfully aided and abetted in the above violation.⁴

In its Order of June 9, 2015, the Commission also refers to the Commission Staff Report in Case No. 2014-00421.⁵ That report, however, makes no mention of any act on the part of any Respondent regarding the issuance of any debt instrument. In fact, the Report’s narrative supports Respondents’ contention that any violation of KRS 278.300 was unknowing and unintentional and that none of the Respondents sought to aid any willful violation of KRS 278.300.

The only reason cited for the Commission’s initiation of its proceeding is the Respondents’ membership on Western Mason County Water District’s Board of Commissioners. Membership on Western Mason County Water District’s Board of Commissioners, however, is

³ *Bowman Transportation v. Arkansas-Best Freight System*, 419 U.S. 281, 287 (1974). See also *Ohio Bell Telephone Company v. Public Utilities Commission*, 301 U.S. 292 (1937).

⁴ Order of June 9, 2015 at 2.

⁵ Case No. 2014-00421, *Alternative Rate Adjustment Filing of Western Mason County Water District* (Ky. PSC filed Dec. 1, 2014).

not an act but a status. The Order of June 9, 2015 is even more lacking with regards to the allegations against Respondent David French as Mr. French is not a member of Western Mason County Water District's Board of Commissioners and neither KRS 74.020 nor KRS 74.070 are applicable to him.

On three separate occasions, the Respondents have noted the lack of the specificity in the Order of June 9, 2015 and have twice requested a more definite statement of the allegations. They noted in their response to the Order of June 9, 2015 that the Order "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."⁶ At their conference with Commission Staff, they again raised this issue and requested that Commission Staff identify the acts that serve as the basis for the allegations of aiding and abetting.⁷ In a subsequent e-mail communication with Commission Staff Counsel, they again raised this issue and requested identification of the specific acts. No information has been provided to date in response to these requests.⁸

The purpose of the scheduled hearing is to determine whether the Respondents should be assessed civil penalties for allegedly aiding and abetting a willful violation of KRS 278.300. For Respondents to have a meaningful opportunity to be heard at the scheduled hearing and to defend themselves and their reputations, they must have advanced notice of the basis of the charges made and the acts that they are alleged to have committed. They cannot test, explain, or refute the Commission's evidence of alleged wrongdoing if they are only given notice of that evidence at hearing. Accordingly, the Commission should disclose the evidence that it or Commission Staff expects present at the scheduled hearing to support the allegations contained

⁶ Response to the Commission's Order of June 9, 2015 at 4.

⁷ Letter from Gerald E. Wuetcher, Counsel for Respondents, to Jeff Derouen, Executive Director, Public Service Commission (July 15, 2015) at 3 – 4.

⁸ See Exhibit A to this Memorandum. Portions of the electronic mail message related to settlement proposals between Commission Staff and the Respondents have been redacted.

in the Order of June 9, 2015 and provide the Respondents an adequate period of time to review this evidence and prepare their defense postpone the schedule hearing to afford them adequate time to prepare for the hearing after disclosure of such evidence.

Dated: August 18, 2015

Respectfully submitted,



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Counsel for Pam Carpenter, Jerry Fields, Larry Redden, and David French

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that a true and accurate copy of Respondents' Motion for Disclosure of Evidence and Postponement of Scheduled Hearing has been served by electronic mail upon Molly Blake Katen, Esq., Kentucky Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615 (Molly.Katen@ky.gov) and Western Mason County Water District, 2573 Mary Ingles Highway, P.O. Box 49, Dover, Kentucky 41034 (wmwd@maysvilleky.net) this 18th day of August, 2015.



Gerald E. Wuetcher