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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ESTILL COUNTY WATER DISTRICT NO. 1)	
AND ITS INDIVIDUAL COMMISSIONERS,)	
GREG WRIGHT, WILLIAM BEARD, AND)	
JERRY ARNOLD)	
_____)	CASE NO. 2017-00467
)	
ALLEGED FAILURE TO COMPLY WITH)	
KRS 278.300)	

**MOTION TO AMEND AND CORRECT THE
COMMISSION'S ORDER OF FEBRUARY 20, 2018**

Pursuant to KRS 278.400, Estill County Water District No. 1 ("Estill District") moves to amend the Commission's Order of February 20, 2018 to correct certain factual errors. In support of its motion, Estill District states:

1. On February 20, 2018, the Commission issued an order in this proceeding in which it asserted that Estill District had moved for an Order dismissing Estill District Commissioners Greg Wright, William Beard, and Jerry Arnold ("Estill District Commissioners") as parties to this proceeding.

2. On January 31, 2018, the Estill District Commissioners filed with the Commission their *Motion to Dismiss Respondent Commissioners As Parties to Proceeding* in which they asserted that KRS 278.350 barred the Commission from assessing, imposing or adjudging any penalty against them for conduct about which they were compelled to testify at the November 1, 2017 hearing that the Commission held in Case No. 2017-00176. A copy of that motion is attached as Exhibit A.

3. An examination of the *Motion to Dismiss Respondent Commissioners As Parties to Proceeding* clearly shows that only the Estill District Commissioners were movants. This motion clearly identifies that it is filed on behalf of the Estill District Commissioners. Estill District was not a movant nor did it subsequently file any response or other pleading in support of the motion.

4. In its Order of February 20, 2018, the Commission erroneously characterized the motion as one filed and brought by Estill District

5. In its Order of February 20, 2018, the Commission also addressed the joint motion of Estill District and the Estill District Commissioners entitled *Motion to Dispense with Evidentiary Hearing and Submit Case for Decision*. The Commission identifies only Estill District as the movant and omits the Estill District Commissioners as movants. The Commission's omission of all movants erroneously suggests that Estill District submitted the Motion on behalf of the Estill District Commissioners. The motion clearly states that it was made jointly and individually. A copy of the Motion is attached as Exhibit B.

6. In its present form, the Commission's Order of February 20, 2018 is factually incorrect and misleading.

WHEREFORE, Estill District respectfully requests that the Commission amend and correct its Order of February 20, 2018 to correct the noted errors.

Dated: February 26, 2018

Respectfully submitted,




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Counsel for Estill County Water District No. 1

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 6, I certify that a copy of this Motion was duly served upon the following by mailing a true copy of the same, U.S. Mail postage pre-paid, this 26th day of February, 2018 to: Greg Wright, 330 Pea Ridge Road, Irvine, KY 40336; Jerry Arnold, 214 Harris Ferry Road, Irvine, KY 40336; William Beard, 320 Sunset Cove, Irvine, KY 40336.



Gerald E. Wuetcher
Counsel for Estill County Water District No. 1

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ALLEGED FAILURE TO COMPLY WITH)	
KRS 278.300)	

MOTION TO DISMISS RESPONDENT COMMISSIONERS
AS PARTIES TO PROCEEDING

Greg Wright, William Beard, and Jerry Arnold (“Respondents”) individually and jointly move for the issuance of an Order dismissing each as a party to this proceeding on the grounds that KRS 278.350 bars the Public Service Commission (“the Commission”) from assessing a penalty against them for their actions arising out of the issuance of the promissory notes that are the subject of this proceeding. In support of their motion, the Respondents state:

1. Respondents are commissioners of Estill County Water District No. 1 and each has held that office since on or before January 1, 2010.
2. On May 10, 2017, Estill District applied for an adjustment of its rates pursuant to 807 KAR 5:076.
3. On June 12, 2017, the Commission docketed this application as Case No. 2017-00176¹ and directed its Staff to prepare a written report containing its findings and recommendations regarding the proposed rate adjustment.

¹ *Electronic Application of Estill County Water District No. 1 For Rate Adjustment Pursuant To 807 KAR 5:076, Case No. 2017-00176 (Ky. PSC filed May 10, 2017).*

4. On August 9, 2017, Commission Staff issued a report on the proposed rate adjustment. In its report, Commission Staff alleged that Estill District has issued three promissory notes to Citizens Guaranty Bank of Irvine, Kentucky without Commission authorization in violation of KRS 278.300.² It further advised Estill District and the Respondents of a separate proceeding “to more thoroughly investigate the possible violations of Commission statutes and regulations” and suggested that the Respondents were subject to possible penalties for their involvement in the issuance of these notes.³ Pursuant to the Commission’s Order of June 12, 2017, Estill District was permitted 14 days in which to respond to the findings and recommendations contained in the Staff Report.

5. On August 18, 2017, the Commission ordered that a hearing be held on Estill District’s application. More specifically, the Commission ordered that:

Estill District shall, in addition to any other witnesses it may seek to present, produce for examination at the November 1, 2017 hearing the following witnesses: Greg Wright, William Beard, Jerry Arnold, and Audrea Miller. Further, Estill District shall produce a witness or witnesses qualified and prepared to discuss 1) line loss; 2) indebtedness incurred without adhering to the procedures in KRS 278.300(1), specifically the three outstanding loans payable to Citizens, originating on October 31, 2013, January 29, 2015, and January 24, 2017; respectively and 3) reasons for obtaining loans to pay operating expenses and debt payments that should be paid through the process of collecting operating revenue.⁴

6. Estill District failed to timely respond to the Commission Staff Report or request for hearing. Pursuant to the Commission’s Order of June 12, 2017, Estill District’s failure

² The promissory notes in question are: (1) a note in the amount of \$200,305 issued on January 31, 2013 and payable on or before October 30, 2017; (2) a note in the amount of \$100,305 issued on January 29, 2015 and payable on or before January 28, 2019; and (3) a note in the amount of \$110,330 issued on January 24, 2017 and payable on or before February 10, 2021.

³ Staff Report on Estill County Water District No. 1 at 4, fn. 4 (citing KRS 278.990(1)).

⁴ Order of Aug. 18, 2017 at 2 (emphasis added).

constituted a waiver of any objections to the Commission Staff Report's findings, a waiver of any right to a hearing on its application, and a request to submit the case for decision.⁵

7. On October 9, 2017, Estill District moved for leave to file a response to the Commission Staff Report. In its tendered response, Estill District accepted the Commission Staff Report's findings, expressly waived its right to a hearing on its application, and advised the Commission that a hearing in Case No. 2017-00176 was not necessary. The Commission denied this motion on November 1, 2017.⁶

8. On November 1, 2017, the Commission conducted the hearing in Case No. 2017-00176 as ordered. The Respondents appeared as ordered and were extensively questioned by the Commission and its staff regarding the issuance of the three promissory notes to which the Commission referred in its Order of August 18, 2017. The Respondents answered all questions truthfully and to the fullest extent of their knowledge.

9. On December 20, 2017, the Commission issued its final order in Case No. 2017-00176 in which it approved the rates that Commission Staff had previously recommended. In its Order, the Commissioner expressly found that Estill District had "three loans outstanding that are payable to Citizens Guaranty Bank for which Estill County did not obtain Commission approval as required by KRS 278.300." Specifically referring to KRS 278.990(1), the Commission further advised that "[i]f a determination is made that there has been a willful violation of any provision of KRS Chapter 278 and 807 KAR Chapter 5, the members of the Board of Commissioners may be held accountable."

⁵ Order of 6/9/2017 at 2. The Commission affirmed this position in its Order of December 20, 2017. Order of 12/20/2017 at 2.

⁶ Case No. 2017-00176, VR 11/01/2017; 09:10:24.

10. On January 11, 2018, the Commission initiated this proceeding to investigate Estill District's issuance of the three promissory notes referenced in its Order of August 18, 2017 in Case No. 2017-00176 and to determine whether the Respondents should be subject to penalties set forth in KRS 278.990(1). The Commission found that a *prima facie* case existed that Estill District had violated KRS 278.300(1) by its issuances of those notes. It further found that a *prima facie* case existed that the Respondents had willfully aided and abetted Estill District in violating KRS 278.300(1). The Commission expressly referred to testimony that the Respondents gave at the November 1, 2017 hearing:

A hearing was held on November 1, 2017, during which testimony and evidence were taken that further support the findings in the Staff Report. Estill District commissioners, Greg Wright, chairman; William Beard, treasurer; and Jerry Arnold, secretary; testified that they signed promissory notes on behalf of Estill District creating indebtedness in the form of the three outstanding loans payable to Citizens referenced above. The four-year terms of the three loans appear not to comply with KRS 278.300(8)4, which grants an exception for loans with an initial term of not more than two years.

The Commission then ordered the Respondents to appear before it to "show cause, if any, why they should not be subject to penalties pursuant to KRS 278.990 for failure to comply with the requirements of KRS 278.300."

11. KRS 278.350 provides:

No person shall be prosecuted or subjected to any forfeiture or penalty for, or on account of, anything concerning which he was compelled to testify under oath or to produce documentary evidence, except that no person so testifying shall be exempt from prosecution or punishment for perjury committed by him in his testimony

12. As Respondents were compelled by Commission Order to testify at the November 1, 2017 hearing about the issuance of the three promissory notes that are the subject of the current proceeding, KRS 278.350 prohibits the assessment of any penalties against them

for allegedly aiding and abetting any willful violation of KRS 278.300 or other statute that may have resulted from the issuance of those promissory notes.

WHEREFORE, the Respondents respectfully request that they be dismissed as parties to Case No. 2017-00467 and the assessment of any penalties against the Respondents for their actions related to the assessment of the three promissory notes referenced in its Order of August 18, 2017 be removed from the scope of this proceeding.

Dated: January 31, 2018

Respectfully submitted,



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*Counsel for Greg Wright, William Beard, and Jerry
Arnold ("Respondent Commissioners")*

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MOTION TO DISPENSE WITH EVIDENTIARY HEARING
AND SUBMIT CASE FOR DECISION

Greg Wright, William Beard, and Jerry Arnold (collectively “Respondents”) and Estill County Water District No. 1 (“Estill District”) individually and jointly move that the Public Service Commission (“Commission”) dispense with an evidentiary hearing in this matter and consider this case submitted for decision.

In support of their motion, the Respondents and Estill District state:

1. On August 9, 2017, Commission Staff issued a lengthy report in Case No. 2017-00176 in which it found, among other things, that Estill District had issued three promissory notes to Citizens Guaranty Bank of Irvine, Kentucky without Commission authorization in violation of KRS 278.300.¹ Commission Staff’s action followed a review of documents that Estill District had submitted in support of its application for rate adjustment and an inspection of Estill District’s records at Estill District’s offices in Irvine, Kentucky.

¹ The promissory notes in question are: (1) a note in the amount of \$200,305 issued on January 31, 2013 and payable on or before October 30, 2017; (2) a note in the amount of \$100,305 issued on January 29, 2015 and payable on or before January 28, 2019; and (3) a note in the amount of \$110,330 issued on January 24, 2017 and payable on or before February 10, 2021.

2. On October 9, 2017, Estill District in Case No. 2017-00176 moved for leave to file a response to the Commission Staff Report. In its tendered response, Estill District, among other things, accepted the Commission Staff Report's findings and addressed the allegations regard the three promissory notes.

3. On November 1, 2017, the Commission conducted the hearing in Case No. 2017-00176 at which the Commission and its staff extensively questioned the Respondents and the members of Estill District's staff regarding the issuance of the three promissory notes.

4. In its Order of January 11, 2017 in which it established this proceeding, the Commission incorporated by reference the record of Case No. 2017-00176 into the record of the current proceeding.

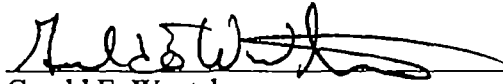
5. Estill District and the Respondents have submitted responses to the allegations contained in the Commission's Order of January 11, 2018. None have disputed the allegations. Each has waived his right to an evidentiary hearing in this matter

6. In light of the lengthy evidentiary hearing conducted in Case No. 2017-00176 and the responses of Estill District and the Respondents to the Order of January 11, 2018, the record in this matter is already complete. There is no need for an additional hearing to address the same areas extensively addressed at the earlier hearing.

WHEREFORE, Estill District and the Respondents respectfully request the Commission dispense with any the hearing in this matter, cancel the hearing scheduled in this matter for February 27, 2018, and consider this case submitted for decision.

Dated: January 31, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gerald E. Wuetcher', written over a horizontal line.

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Greg Wright, William Beard, and Jerry Arnold*