

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WESTERN FLEMING COUNTY WATER	)	
DISTRICT AND ITS INDIVIDUAL	)	
COMMISSIONERS, VERNON BARTON, JAMES	)	CASE NO.
HUSTON; LARRY INGRAM; BILLY MCINTYRE,	)	2014-00400
ANTHONY OVERBY, AND FRED ROSE	)	
ALLEGED FAILURE TO COMPLY WITH KRS	)	
278.020(1) AND KRS 278.300(1)	)	

ORDER

By Order dated December 16, 2014, the Commission initiated this proceeding to determine whether Western Fleming County Water District (“Western Fleming District”), Vernon Barton, James Huston, Larry Ingram, Billy McIntyre, Anthony Overby, and Fred Rose (collectively, “Named Commissioners”) should be subject to the penalties prescribed in KRS 278.990(1) due to their failure to obtain a Certificate of Public Convenience and Necessity (“CPCN”) prior to beginning construction of a major project at Western Fleming District’s water treatment facilities and for failing to request an order from the Public Service Commission authorizing Western Fleming to enter into a Kentucky Infrastructure Authority (“KIA”) loan to finance this project.

ALLEGED VIOLATIONS

KRS 278.020(1) requires a utility to obtain from the Commission a CPCN prior to beginning the construction of any facilities that are not an ordinary extension constructed in the usual course of business. KRS 278.300(1) states that no utility shall

issue any form of indebtedness until it has been authorized to do so by an order of the Commission.

### PROCEDURAL HISTORY

The violations cited in the Public Service Commission's December 16, 2014 Order arise from Commission Staff's discovery during its field review in Case No. 2014-00048 that Western Fleming District completed a major construction project at its water treatment facilities that was funded with a \$2,518,000 loan for a term of 30 years from the KIA<sup>1</sup> and a House Bill 380 grant of \$50,000. Western Fleming District was not able to produce any indication that it applied to the Public Service Commission for a CPCN for the construction, nor was there any evidence that Western Fleming District requested an order from the Public Service Commission authorizing Western Fleming District to enter into the KIA loan.

Western Fleming District continued to take draws on the loan up to and including 2013. The construction project was completed in phases. The Division of Water approved the plans and specification for one phase of the construction project on October 6, 2011.<sup>2</sup>

On January 13, 2015, Western Fleming District filed a response to the Public Service Commission's December 16, 2014 show cause Order. An informal conference was held at the Public Service Commission's offices on January 26, 2015. Discussions in the course of the informal conference led to the filing of the Stipulation of Facts and Settlement Agreement ("Stipulation") on March 3, 2015. The Stipulation, attached as an

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<sup>1</sup> October 1, 2009, KIA Assistance Agreement, Fund F, Project Number F08-01, Western Fleming District, Exhibit A, Project Specifics.

<sup>2</sup> Letter from Greg Goode, P.E., Acting Supervisor, Engineering Section, Water Infrastructure Branch, Division of Water, to Vernon Barton, Chairman, Western Fleming District (Oct. 6, 2011).

Appendix, sets forth an agreed-upon summary of the facts and provides for individual penalties for each Commissioner, in full settlement of this proceeding.

### STIPULATION

In determining whether the terms of the Stipulation are in the public interest and are reasonable, the Public Service Commission has taken into consideration the comprehensive nature of the Stipulation, along with the statements of Western Fleming District and each of the Named Commissioners, except for Commissioner Overby, that they will be careful in the future to obtain necessary certificates and approvals for upcoming construction projects. The Public Service Commission also considered Commissioner Overby's statement that he understood that "final responsibility rests with the commissioners of Western Fleming."

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Stipulation is in accordance with the law and does not violate any regulatory principal. The Stipulation is a product of arm's-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

IT IS THEREFORE ORDERED that:

1. The Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.
2. Each Named Commissioner is individually assessed a civil penalty of two hundred and fifty (\$250) dollars. This payment shall be in the form of a cashier's check made payable to the Kentucky State Treasurer.

3. The payment of \$250 by Vernon Barton shall be held in abeyance for the remainder of his current term as a Commissioner upon the condition that he completes a Public Service Commission-sponsored Water District Commissioner training each calendar year for the remainder of his current term as a Western Fleming District Commissioner. If the required training is completed, Mr. Barton's payment will be abated; otherwise the payment shall be due and payable within 30 days of his failing to complete the required training.

4. The payment of \$250 by Larry Ingram shall be held abeyance for the remainder of his current term as a Commissioner upon the condition that he completes a Public Service Commission-sponsored Water District Commissioner training each calendar year for the remainder of his current term as a Western Fleming District Commissioner. If the required training is completed, Mr. Ingram's payment will be abated; otherwise the payment shall be due and payable within 30 days of his failing to complete the required training.

5. The payment of \$250 by Billy McIntyre shall be held in abeyance for the remainder of his current term as a Commissioner upon the condition that he completes a Public Service Commission-sponsored Water District Commissioner training each calendar year for the remainder of his current term as a Western Fleming District Commissioner. If the required training is completed, Mr. McIntyre's payment will be abated; otherwise the payment shall be due and payable within 30 days of his failing to complete the required training.

6. The payment of \$250 by Anthony Overby shall be held in abeyance for the remainder of his current term as a Commissioner upon the condition that he

completes a Public Service Commission-sponsored Water District Commissioner training each calendar year for the remainder of his current term as a Western Fleming District Commissioner. If the required training is completed, Mr. Overby's payment will be abated; otherwise the payment shall be due and payable within 30 days of his failing to complete the required training.

7. The payment of \$250 by James Huston, who is not currently serving on Western Fleming District's Board of Commissioners, shall be held in abeyance if he completes one Public Service Commission-sponsored Water District New Commissioner training within 12 months of his reappointment if he is reappointed during the 12 months after issuance of the Final Order in this case.

8. The payment of \$250 by Fred Rose, who is not currently serving on Western Fleming District's Board of Commissioners, shall be held in abeyance if he completes one Public Service Commission-sponsored Water District New Commissioner training within 12 months of his reappointment if he is reappointed during the 12 months after issuance of the Final Order in this case.

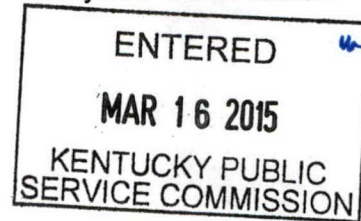
9. If a Named Commissioner currently serving on Western Fleming District's Board of Commissioners is unable to complete his current term, the terms of his agreement shall be fulfilled and his payment of \$250 shall be abated at the time of his resignation, contingent on his not being reappointed within 12 months following his resignation.

10. Upon the fulfillment of the conditions set forth above, the terms of this agreement shall be fulfilled and the suspended sentences of \$250 for the individual Named Commissioners who has completed his specific required training shall be

absolved, and this case shall be closed and removed from the Commission's docket without further Order of the Commission.

11. The hearing in this matter, currently scheduled for March 26, 2015, is hereby cancelled.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2014-00400 DATED **MAR 16 2015**



Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Daniel E. Logsdon Jr.  
Commissioner

March 3, 2015

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

Re: Case No. 2014-00400  
Western Fleming County Water District and Its Individual Commissioners,  
Vernon Barton, James Huston; Larry Ingram; Billy McIntyre, Anthony  
Overby, and Fred Rose Alleged Failure to Comply with KRS 278.020(1)  
and KRS 278.300(1)

Dear Mr. Derouen:

Enclosed for filing is the Stipulation of Facts and Settlement Agreement entered into by Western Fleming County Water District, Vernon Barton, James Huston, Larry Ingram, Billy McIntyre, Anthony Overby, Fred Rose and Commission Staff. Please bring this document to the Commission's attention for its review and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "AAC", written over a white background.

Aaron Ann Cole  
Staff Attorney

Enclosure

cc: Parties of Record



SUIT, PRICE, PRICE & RUARK, PLLC  
Attorneys at Law

Marvin W. Suit

Patrick E. Price

John C. Price

Darrell K. Ruark

207 Court Square  
Flemingsburg, KY 41041

Phone (606) 849-2338  
Fax (606) 845-8701

February 26, 2015

RECEIVED

MAR 1 2015

PUBLIC SERVICE  
COMMISSION

Mr. Jeff Deroucn, Executive Director  
Kentucky Public Service Commission  
**ATTN: ANN RAMSER**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40602-0645

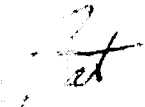
**RE: WESTERN FLEMING WATER DISTRICT  
PSC #2014-00400**

Dear Ann:

Enclosed is the original Stipulation Agreement with original signatures. I will mail you the page with Anthony Overbey's original signature as soon as I receive it from him.

Thank you very much for your help with this matter.

Sincerely,



Patrick E. Price

PEP:tir

Enclosures

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
MAR 2 2015  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

WESTERN FLEMING COUNTY WATER )  
DISTRICT AND ITS INDIVIDUAL )  
COMMISSIONERS, VERNON BARTON, ) CASE NO. 2014-00400  
JAMES HUSTON; LARRY INGRAM; )  
BILLY MCINTYRE, ANTHONY OVERBY, )  
AND FRED ROSE ALLEGED FAILURE )  
TO COMPLY WITH KRS 278.020(1) )  
AND KRS 278.300(1) )

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated December 16, 2014, the Public Service Commission initiated this proceeding to determine whether Western Fleming County Water District ("Western Fleming District"), should be subject to the penalties prescribed in KRS 278.990(1) due to its failure to: (1) obtain a Certificate of Public Convenience and Necessity ("CPCN") prior to beginning construction of a major project at Western Fleming District's water treatment facilities; and (2) request an order from the Public Service Commission authorizing Western Fleming District to enter into a Kentucky Infrastructure Authority ("KIA") loan to finance this project. In addition, pursuant to the December 16, 2014 Order, this proceeding is to determine whether Vernon Barton, James Huston, Larry Ingram, Billy McIntyre, Anthony Overby, and Fred Rose (collectively, "Named Commissioners") acting in their respective individual capacities as current and former members of Western Fleming District's Board of Commissioners, willfully aided and abetted the above violations.

The Public Service Commission's Order arose out of Commission Staff's discovery during its field review in Case No. 2014-00048<sup>1</sup> that Western Fleming District completed a major construction project at its water treatment facilities that was funded with a \$2,518,000 loan for a term of 30 years from the KIA<sup>2</sup> and a House Bill 380 grant of \$50,000. Western Fleming District was not able to produce any documentation that it applied to the Public Service Commission for a CPCN for the construction or that it requested an order from the Public Service Commission authorizing Western Fleming District to enter into the KIA loan.

Western Fleming District continued to take draws on the loan up to and including 2013. The construction project was completed in phases. The Division of Water approved the plans and specification for one phase of the construction project on October 6, 2011.<sup>3</sup>

KRS 278.020(1) requires a utility to obtain from the Public Service Commission a CPCN prior to beginning the construction of any facilities that are not an ordinary extension constructed in the usual course of business. KRS 278.300(1) states that no utility shall issue any form of indebtedness unless it has been authorized to do so by an order of the Public Service Commission.

<sup>1</sup> Case No 2014-00048, *Application of Western Fleming County Water District for Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076* (filed Apr. 28, 2014).

<sup>2</sup> October 1, 2009, KIA Assistance Agreement, Fund F, Project Number F08-01, Western Fleming District, Exhibit A, Project Specifics.

<sup>3</sup> Letter from Greg Goode, P.E., Acting Supervisor, Engineering Section, Water Infrastructure Branch, Division of Water, to Vernon Barton, Chairman, Western Fleming District (Oct. 6, 2011).

On January 5, 2015, Western Fleming District requested an informal conference with Commission Staff to discuss this matter.

On January 13, 2015, Western Fleming District filed a Response to the Public Service Commission's Order. This Response contained individual responses setting forth defenses from each of the Named Commissioners in this proceeding.

At an informal conference held on January 26, 2015, Commission Staff stated that responses from each Named Commissioner had been received and reviewed, and that Commission Staff was concerned about the Named Commissioners' reliance on the Western Fleming District's consulting engineer to obtain the necessary certificates, permits and approvals. Commission Staff emphasized that it is the responsibility of Western Fleming District's Board of Commissioners, not the consulting engineers or architects, to ensure that appropriate certificates, permits and other requisite approvals are obtained for a particular construction project.

As a result of information provided at the informal conference and negotiations between Commission Staff and Western Fleming District and the Named Commissioners during the course of that conference, Western Fleming District, the Named Commissioners and the Commission Staff submit the following Stipulation of Facts and Settlement Agreement ("Stipulation") for the Public Service Commission's consideration in rendering its decision in this proceeding:

1. Western Fleming District and the Named Commissioners agree that Western Fleming District did not comply with KRS 278.020(1) and KRS 278.300(1), and that its Board of Commissioners willfully aided and abetted this non-compliance, by the failure to obtain a CPCN for the major construction project at the water treatment

facilities and by the failure to request an order from the Public Service Commission authorizing Western Fleming District to enter into the KIA loan

2. Each Named Commissioner is individually assessed a civil penalty of two hundred and fifty (\$250) Dollars. This payment shall be in the form of a cashier's check made payable to the Kentucky State Treasurer.

3. Neither the payment of \$250.00, nor any agreement contained in this Stipulation, shall be construed as an admission by the Named Commissioners of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the December 16, 2014 Order, nor shall the Public Service Commission's acceptance of this Stipulation be construed as a finding of a willful violation of any statute or Public Service Commission regulation.

4. The payment of \$250.00 by Vernon Barton shall be held in abeyance for the remainder of his current term as a Commissioner upon the condition that he completes a Public Service Commission-sponsored Water District Commissioner training each calendar year for the remainder of his current term. If the required training is completed, Mr. Barton's payment will be discharged; otherwise the payment shall be due and payable within 30 days of failing to complete the required training.

5. The payment of \$250.00 by Larry Ingram shall be held in abeyance if he completes a Public Service Commission-sponsored Water District Commissioner training each calendar year for the remainder of his current term as a Western Fleming District Commissioner. If the required training is completed, Mr. Ingram's payment will be discharged; otherwise the payment shall be due and payable within 30 days of failing to complete the required training.

6. The payment of \$250.00 by Bill McIntyre shall be held in abeyance if he completes a Public Service Commission-sponsored Water District Commissioner training each calendar year for the remainder of his current term as a Western Fleming District Commissioner. If the required training is completed, Mr. McIntyre's payment will be discharged; otherwise the payment shall be due and payable within 30 days of failing to complete the required training.

7. The payment of \$250.00 by Anthony Overby shall be held in abeyance if he completes a Public Service Commission-sponsored Water District Commissioner training each calendar year for the remainder of his current term as a Western Fleming District Commissioner. If the required training is completed, Mr. Overby's payment will be discharged; otherwise the payment shall be due and payable within 30 days of failing to complete the required training.

8. The payment of \$250.00 by James Huston, who is not currently serving on Western Fleming District's Board of Commissioners, shall be held in abeyance if he completes one Public Service Commission-sponsored Water District New Commissioner training within twelve months of his reappointment if he is reappointed during the twelve months after issuance of a final order in this case.

9. The payment of \$250.00 by Fred Rose, who is not currently serving on Western Fleming District's Board of Commissioners, shall be held in abeyance if he completes one Public Service Commission-sponsored Water District New Commissioner training within twelve months of his reappointment if he is reappointed during the twelve months after issuance of a final order in this case.

10. If a Named Commissioner currently serving on Western Fleming District's Board of Commissioners is unable to complete his current term, the terms of his agreement shall be fulfilled and his payment of \$250.00 shall be abated at the time of his resignation, contingent on his not being reappointed within twelve months following his resignation.

11. In the event that the Public Service Commission does not accept this Stipulation in its entirety, Western Fleming District and the Named Commissioners reserve the right to withdraw therefrom and require that a hearing be held on any and all issues herein, and that none of the provisions contained herein shall be binding upon the parties hereto, used as an admission by Western Fleming District or the Named Commissioners of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the December 16, 2014 Order, or otherwise used as an admission by either party.

12. This Stipulation is for use in Public Service Commission Case No. 2014-00400. None of the provisions in this Stipulation establishes any precedent for any other case and neither Western Fleming District, the Named Commissioners nor Commission Staff shall be bound by any part of this Stipulation in any other proceeding, except that this Stipulation may be used in any proceeding by the Public Service Commission to enforce the terms of this Stipulation.

13. Upon the fulfillment by each individual Named Commissioner of his respective condition set forth above, the terms of this agreement shall be fulfilled and the abated payments of \$250.00 by each individual Named Commissioner who has completed his specific required training shall be absolved.

14. Western Fleming District, the Named Commissioners and Commission Staff agree that the foregoing Stipulation is reasonable, is in the public interest, and should be adopted in its entirety by the Public Service Commission. If so adopted by the Public Service Commission, Western Fleming District and the Named Commissioners agree to waive their right to a hearing and will not file any petition for rehearing or seek judicial appeal.



**Western Fleming County Water District**

By Vernon Barts

Title Chairman

Date 2/25/15

**Vernon Barton**

By Vernon Barton

Title Chairman

Date 2/25/15

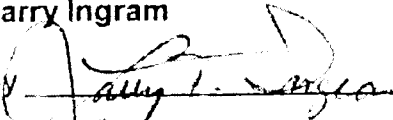
**James Huston**

By James Huston

Title Treasurer

Date 2-25-15

Larry Ingram

By 

Title Commissioner - Western Kentucky Water Dist.

Date 24 February 2015

**Billy McIntyre**

By Billy McIntyre  
Title Commissioner  
Date 2/25/15

Anthony Overby

By



Title

Western Fleming Co. Water Co. Commissioner

Date

2-23-15

Fred Rose

By Wm. Fred Rose J.

Title FARMER

Date 2/24/15

**Staff of the Kentucky Public Service Commission**

By AAJ

Title Staff Attorney

Date 3-3-2015



\*Vernon Barton  
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