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January 31, 2017

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JAN 31 2018

PUBLIC SERVICE  
COMMISSION

Ms. Gwen R. Pinson, Esq.  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602-0615

**Re: *Estill County Water District No. 1 and Its Individual Commissioners Greg Wright, William Beard, and Jerry Arnold – Alleged Failure to Comply with KRS 278.300 Case No. 2017-00467***

Dear Ms. Pinson:

Enclosed for filing in the above-referenced matter are the original and ten copies of the following documents:

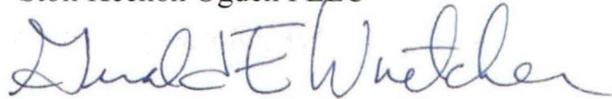
- Estill County Water District No. 1's Response to The Commission's Order of January 11, 2018 and Waiver of Right to Hearing
- Commissioner Greg Wright's Response to The Commission's Order of January 11, 2018 and Waiver of Right to Hearing
- Commissioner William Beard's Response to The Commission's Order of January 11, 2018 and Waiver of Right to Hearing
- Commissioner Jerry Arnold's Response to The Commission's Order of January 11, 2018 and Waiver of Right to Hearing
- Motion to Dismiss Respondent Commissioners As Parties to Proceeding
- Motion to Dispense with Evidentiary Hearing and Submit Case for Decision
- Witness and Exhibit List

Gwen R. Pinson, Esq.  
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If Commission Staff has any questions regarding these documents, please contact me.

Very truly yours,

Stoll Keenon Ogden PLLC



Gerald Wuetcher

GEW  
Enclosures

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**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. 2017-00176<sup>1</sup> and directed its Staff to prepare a written report containing its findings and recommendations regarding the proposed rate adjustment.

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<sup>1</sup> *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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>**

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

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<sup>2</sup> 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.

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

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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."

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<sup>5</sup> 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.

<sup>6</sup> 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

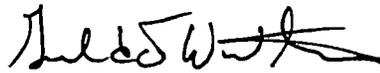
12. As Respondents were compelled by Commission Order to testify at the November 1, 2017 hearing about the issuance of the three promissory notes that are the subject of the current proceeding, KRS 278.350 prohibits the assessment of any penalties against them

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")*