

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO)
LEDBETTER WATER DISTRICT CHARGING) CASE NO. 2021-00311
UNAUTHORIZED RATES PURSUANT TO 807)
KAR 5:068)

MOTION FOR INTERVENTION

Pursuant to 807 KAR 5:001, Section 4(11), Alan Fox, Arne Puckett, William Gillahan, James Schade, Terry Teitloff and Micah Joiner (collectively “Intervening Petitioners”) move for leave to intervene in this proceeding.

In support of their Motion, Intervening Petitioners state:

1. Alan Fox is General Manager of Ledbetter Water District (“Ledbetter District”) and has served as General Manager since on or about August 1, 2019.
2. Arne Puckett is a member of Ledbetter District’s Board of Commissioners and has been a member since on or before August 1, 2019.
3. William Gillahan is a member of Ledbetter District’s Board of Commissioners and has been a member since on or before August 1, 2019.
4. James Schade is a member of Ledbetter District’s Board of Commissioners and has been a member of that Board since on or before August 1, 2019.
5. Terry Teitloff is a member of Ledbetter District’s Board of Commissioners and has been a member since on or before August 1, 2019.
6. Micah Joiner is a member of Ledbetter District’s Board of Commissioners and has been a member of that Board since March 16, 2021.

7. On May 13, 2022, the Public Service Commission (“Commission”) issued an Order in this proceeding ordering “Ledbetter District’s commissioners and manager” each to pay a civil penalty of \$250 for alleged violations of KRS 278.160 and 807 KAR 5:068 and to attend six hours of certified water management training by March 31, 2023. The Order of May 13, 2022 does not expressly identify “Ledbetter District’s commissioners and manager.”¹ Intervening Petitioners believe that the references in the Order of May 13, 2022 to “Ledbetter District’s commissioners and manager” are to the Intervening Petitioners.

8. In its only other Order in this proceeding, issued on August 5, 2021, the Commission initiated this proceeding, but made no Intervening Petitioner a party to this proceeding or identify any Intervening Petitioner as a subject of the Commission’s investigation or as potentially subject to civil penalties. Only Ledbetter District is identified as a subject of the Commission’s investigation and subject to possible assessment of a civil penalty.² No Intervening Petitioner was served in his individual capacity with a copy of Order of the August 5, 2021 or afforded an opportunity to present his version of events or explain his role in the events that led to the assessment of unauthorized rates.³

9. 807 KAR 5:001, Section 4(11)(b), which establishes the regulatory requirements for intervention in a Commission proceeding, provides:

The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist

¹ No member of Ledbetter District’s Board of Commissioners was served with of the Order of May 13, 2022.

² See Order of August 5, 2021 at page 3 (“If the Commission determines that Ledbetter District violated a statute or regulation enforced by the Commission, or an Order entered by the Commission, Ledbetter District may be subject to the assessment of civil penalties in accordance with KRS 278.990.”). Despite finding a violation of KRS Chapter 278.160, no penalty was assessed against Ledbetter District.

³ Mr. Fox as Ledbetter District’s general manager verified the contents of Ledbetter District’s Response to the Order of August 5, 2021.

the commission in fully considering the matter without unduly complicating or disrupting the proceedings

10. Each Intervening Petitioner meets the regulatory requirements for intervention.

a. Each Intervening Petitioner has a special interest in this matter as the Order of May 13, 2022 assesses a civil penalty against him and further requires that he attend six hours of certified water management training. Not only does the Order impose a financial liability upon each Intervening Petitioner and a requirement to attend water management training, it casts a stigma on each Intervening Petitioner's reputation and public standing by implying that each Intervening Petitioner knowingly and willfully aided and abetted a willful violation of KRS Chapter 278.

b. No other party to this proceeding represents the interests of any Intervening Petitioner. The only party to this proceeding currently is Ledbetter District. The Order of May 13, 2022 does not impose a civil penalty on Ledbetter District nor is Ledbetter required to indemnify any Intervening Petitioner for the assessed civil penalties. Ledbetter District has no interest in the assessed civil penalties.

c. The Intervening Petitioners' Motion is timely. Prior to May 13, 2022, the Commission provided no notice to any Intervening Petitioner that he was considered a party to Case No. 2021-00311 or a potential violator of KRS 278.160 or 807 KAR 5:068 or a person who had potentially aiding or abetting a utility in violating KRS 278.160 or 807 KAR 5:068. Without such notice, no Intervening Petitioner could have been aware that he had a direct, immediate and special interest in this proceeding. Only with the issuance of the Order of May 13, 2022, when the Commission announced its assessment of civil penalties did each Intervening Petitioner become aware of that interest. Each has promptly responded to that Order.

d. The Intervening Petitioners' intervention will not unduly disrupt or complicate this proceeding. Intervening Petitioners seek to join with Ledbetter District in


petitioning for rehearing of the Order of May 13, 2022. While the Intervening Petitioners respectfully disagree with the Commission’s determination that Ledbetter District **willfully violated** KRS 278.160 and with the implication that they **aided or abetted a willful violation** of KRS Chapter 278 or Commission regulations, they do not seek to relitigate the findings related to Ledbetter District’s conduct. The focus of the Petition for Rehearing is on the assessed penalty and the other requirements the Order imposes.

11. The Fourteenth Amendment of the Federal Constitution requires that the Intervening Petitioners be afforded due process of law. Due process requires that “persons forced to settle their claims of right and duty through the judicial process be given a meaningful opportunity to be heard.” *Utility Regulatory Commission v. Kentucky Water Service*, 642 S.W.2d 591, 593 (Ky. Ct. App. 1982). The Intervening Petitioners have yet to be afforded an opportunity to present evidence or argument regarding the assessment of a civil penalty against them. They should be permitted the opportunity to present their arguments and questions related the assessed penalties and other requirements imposed by the Order May 13, 2022.

WHEREFORE, Intervening Petitioners request that this Motion for Intervention be granted and that they be permitted to join with Ledbetter District in its Petition for Rehearing.

Dated: June 3, 2022

Respectfully submitted,

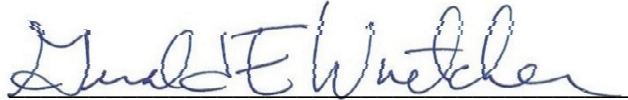


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Counsel for Intervening Petitioners

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on June 3, 2022 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.

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

Gerald E. Wuetcher