

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)

PETITION FOR REHEARING

Pursuant to KRS 278.400, Alan Fox, Arne Puckett, William Gillahan, James Schade, Terry Teitloff and Micah Joiner¹ (“Intervening Petitioners”) and Ledbetter Water District (“Ledbetter District”) petition for rehearing of the Public Service Commission’s (“Commission”) Order of May 13, 2022 in this matter.

Neither Ledbetter Water District nor Intervening Petitioners are contesting the civil penalties assessed or the refund directed by the Order of May 13, 2022. While Ledbetter District and the Intervening Petitioners respectfully disagree with the Commission’s determination that Ledbetter District **willfully violated** KRS 278.160, they acknowledge that a violation of KRS 278.160 occurred, that this violation was directly related to a lack of knowledge and understanding on the part of Ledbetter District officials of the laws critical to Ledbetter District’s operation as a public utility, and that this lack of knowledge represents a significant departure from acceptable standards and a failure on the part of these officials to meet their legal and moral responsibilities to the Ledbetter District.

¹ Intervening Petitioners have with the filing of this Petition simultaneously filed a motion for intervention in this proceeding.

Ledbetter District and the Intervening Petitioners respectfully submit that modifications to the Order of May 13, 2022 are required to correct ambiguities in the Order, to protect persons who were not involved in the decisions related to the assessment of unauthorized rates, and to ensure a more efficient and effective refund of improperly collected monies. More specifically, they request that the Order of May 13, 2022 be amended (1) to identify by name the persons who are subject to a penalty for Ledbetter District's failure to comply with KRS 278.160 and to expressly exclude Micah Joiner from the assessment of any civil penalty; (2) to clarify that the assessed penalty is suspended until March 31, 2023 and will be vacated if the assessed person, completes six hours of certified water management training by March 31, 2023; (3) to remove or otherwise clarify the requirements set forth in ordering paragraphs 2 and 3 of the Order of May 13, 2022; and (4) to base the required refund credit upon Ledbetter District's current number of customers (1,268) rather than the number of customers that existed on December 31, 2020.

Identity of Penalized Officials. The Order of May 13, 2022 does not identify by name the Ledbetter District officials assessed the penalty of \$250. Similarly, Order of August 5, 2021, which initiating this matter, does not identify any Ledbetter District official by name against whom the assessment of a penalty was being considered. As a result, it is unclear who has been assessed a penalty – those who are currently on Ledbetter District's Board of Commissioners or those members of the Board of Commissioners who approved the assessment of unauthorized rates.

Micah Joiner, a current member of Ledbetter District's Board of Commissioners, became a member of the Board of Commissioners on March 16, 2021 when the term of his predecessor Phillip Dae expired. There is no evidence in the record to support a finding that Mr. Joiner aided or abetted the assessment of unauthorized rates or that he had any knowledge of the general manager's lack of knowledge of utility law and Commission procedures. He was not a

commissioner on May 19, 2020 when the Board of Commissioners authorized an increase to Ledbetter District's rates to passthrough an increase in the rates of the water district's water supplier. He did not begin attending Board meetings until March 2021, just shortly before Ledbetter District ceased assessing the unauthorized rates. While he briefly served on the Board of Commissioners when Ledbetter District charged unauthorized rates, Mr. Joiner was never in a position to prevent the initial assessment of the unauthorized rates, to supervise or oversee the general manager's attempts to prepare and submit the May 2020 application for rate adjustment or to affect the general manager's training prior to March 2021.²

Clarification of the Penalty's Effective Date. The Order of May 13, 2022 provides that the assessed penalties are "suspended for one year *conditioned upon* Ledbetter District's commissioners and manager attending six hours of certified water management training by March 31, 2023."³ Based upon a literal reading of the Order, the assessed penalties are currently in effect and can be enforced at any time against any Intervening Petitioner until he completes the required training. Upon completion of that training, the penalties are then suspended for one year. The penalties are not vacated, only suspending. The obligation to pay the assessed penalty continues and can be enforced at the end of the one-year suspension period.

The Order of May 13, 2022 departs from the previous Commission practice that was intended to encourage remedial actions by utilities or utility officials assessed civil penalties for violations of KRS Chapter 278. Previously, the Commission in an order assessing a civil penalty

² On February 23, 2021, Livingston County Fiscal Court approved the appointment of Mr. Joiner as a commissioner to Ledbetter District to succeed Mr. Dae. The minutes of that meeting are attached to this Petition as Exhibit 1. Furthermore, Mr. Joiner has recently attended 12 hours of certified water management training. He participated in the Commission's Water Training Seminar conducted on July 13-14, 2021. A copy of his Certificate of Attendance is attached to this Petition as Exhibit 2.

³ Order at page 7. See also Order at page 5 ("the Commission will suspend the civil penalty *conditioned upon* Ledbetter District's commissioners and manager attending certified water management training approved by the Commission no later than March 31, 2023 and providing documentation of that training no later than May 1, 2023") (italics added).

against a utility official would suspended the penalty's effective date to allow the offending official time to perform the remedial action and would provide for the penalty to be vacated without further order if the remedial training was timely completed and of evidence of that completion was presented.⁴⁴

Ledbetter District and Intervening Petitioners respectfully submit that the Order be amended to state that the penalties are suspended as of May 13, 2022 for a period of one year and, if the required training is performed by March 31, 2023, vacated without further order. Neither Ledbetter District nor Intervening Petitioners object to the assessed penalty for any Intervening Petitioner becoming immediately due and payable if the Intervening Petitioner fails to comply with the provisions of the Order of May 13, 2022.

Ordering Paragraph 2. The Order of May 13, 2022 directs that “Ledbetter District’s commissioners and manager shall attend six hours of certified water management training by March 31, 2023.” This provision is separate from and in addition to the first ordering paragraph that assesses a penalty against Ledbetter District’s general manager and commissioners. Read together, these paragraphs suggest that penalty assessed against the general manager and commissioners is a \$250 penalty **and mandatory attendance at six hours of certified water management training.**

While the first ordering paragraph states attendance at certified water management training will substitute for the penalty of \$250 and offers an incentive to Ledbetter District’s general manager and commissioners to voluntarily attend certified water management training, the second ordering paragraph imposes a mandatory duty to attend six hours without regard to payment of any penalty or attendance at certified water management training. Hence, if the general manager

⁴⁴ See, e.g., *Dexter-Almo Heights Water District and Its Individual Commissioners, Joe Dan Taylor, Charles Boren, and Pat Paschall: Alleged Failure To Comply With KRS 278.300*, Case No. 2017-00468 (Ky. PSC June 19, 2019).

or a commissioner wishes to avoid any penalty, they must attend **twelve hours** of certified management training. This interpretation is supported by the third ordering paragraph, which requires Ledbetter District’s “commissioners and manager . . . file written notice no later than May 1, 2023, that they attended six hours of certified water management training by March 31, 2023.” This paragraph also is not expressly conditioned upon the general manager or a commissioner electing not to pay the assessed penalty.

Intervening Petitioners request the Commission address the ambiguities presented by the second and third ordering paragraphs and expressly state whether the second ordering paragraph imposes a separate duty, in addition to the payment of a penalty, to attend certified water management training, or is intended merely to implement the alternative sanction imposed by the first ordering paragraph.

Amount of the Refund Credit. The Order of May 13, 2022 requires all excess monies be refunded over a six-month period and specifies a monthly refund credit of \$1.11. The monthly credit amount was derived by dividing the total amount of excess monies by the number of Ledbetter District customers as of December 31, 2020.⁵ As of December 31, 2020, Ledbetter District had 1,200 customers. It currently has 1,268 customers.⁶ Ledbetter District respectfully requests that a monthly credit amount be based upon the current number of customers rather than the number of customers on December 31, 2020 and that a monthly refund credit of \$1.05 be authorized instead. A credit of \$1.05 will result in a more precise refund of funds and significantly reduce the need for any billing adjustments at the end of the refund period.

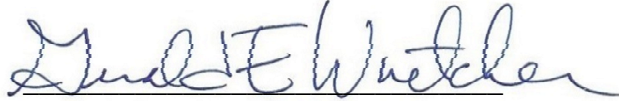
⁵ Order at 6, footnote 15.

⁶ *Annual Report of Ledbetter Water District to the Kentucky Public Service Commission for the Year Ending December 31, 2021*, at Ref Page 27 (Page 49 of 67).

WHEREFORE, Ledbetter District and Intervening Petitioners respectfully request that the Public Service Commission grant their Petition for Rehearing and modify the Order of May 13, 2022 to (1) identify by name the persons who are subject to a penalty for Ledbetter District's failure to comply with KRS 278.160 and expressly exclude Micah Joiner from the assessment of any civil penalty; (2) clarify that the assessed penalty is suspended until March 31, 2023 and will be vacated without further order of the Public Service Commission if the assessed person, completes six hours of certified water management training by March 31, 2023; (3) remove or otherwise clarify the requirements set forth in ordering paragraphs 2 and 3 of the Order of May 13, 2022; and (4) base the required refund credit upon Ledbetter District's current number of customers (1,268) rather than the number of customers that existed on December 31, 2020.

Dated: June 3, 2022

Respectfully submitted,

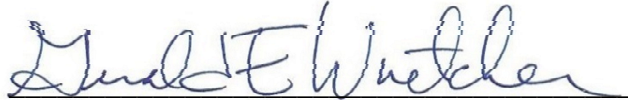


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*Counsel for Ledbetter Water District and
Intervening Petitioners*

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

EXHIBIT 1

**SPECIAL MEETING OF THE LIVINGSTON COUNTY FISCAL COURT ON THIS THE
23rd DAY OF FEBRUARY 2021 AT 10:00 A.M. JUDICIAL CENTER COURTROOM**

I. Pledge of Allegiance

Pledge of Allegiance was led by Klay Southern.

II. Invocation

Prayer by Brad Hunter.

III. Call to Order

Garrett Gruber, Judge/Executive called to order this special meeting of the Livingston County Fiscal Court at 10:00 a.m. on February 23, 2021 in the Judicial Center Courtroom located in Smithland, Kentucky.

IV. Roll call

Roll call was held with the following Magistrates present: Franklin Walker, Brad Hunter, Klay Southern, and Dennis Jones arrived late.

V. Approval of Minutes

On a motion by Klay Southern, second by Brad Hunter with all members present voting in the affirmative, the Fiscal Court voted to approve the minutes as presented to them from January 27, 2021.

VI. Citizens' Concerns

There were citizens concerns at this time.

VII. Old Business

There was no old business to discuss at this time.

VIII. New Business

A. Treasurer's Report

On a motion by Franklin Walker, second by Klay Southern with all members present below voting in the affirmative, the Fiscal Court voted to approve the following Treasurer's Report.

H. American Legion Roof/Memorial Name Fund Receipts

On a motion from Klay Southern, second by Franklin Walker with all members attending voting as shown below, the Court voted to approved \$4,000 for roof repairs to the American Legion.

Klay Southern – Yes	Brad Hunter – Yes	Franklin Walker – Yes
Garrett Gruber – Abstain	Dennis Jones - Yes	

I. Part Time (Saturdays) Convenience Center Hire – Jim Mattheu

On a motion from Dennis Jones, second by Klay Southern with all members attending voting in the affirmative, the Court voted to hire Jim Mattheu as a part-time employee to the Convenience Center for \$9 hour.

J. Ledbetter Water District Board Appointment – Micah Joiner

On a motion from Klay Southern, second by Brad Hunter with all members attending voting in the affirmative, the Court voted to approve the appointment of Micah Joiner to the Ledbetter Water District Board.

K. Crittenden-Livingston Water District Appointment – Glenn Hughes

On a motion from Brad Hunter, second by Franklin Walker with all members attending voting in the affirmative, the Court voted to approve the appointment of Glenn Hughes to the Crittenden-Livingston Water District Board.

L. Industrial Development Authority Appointment – Tyler Coleman

On a motion from Franklin Walker, second by Brad Hunter with all members attending voting in the affirmative, the Court voted to approve the appointment of Tyler Coleman to the Industrial Development Authority.

M. Elected Officials

There was nothing at this time from elected officials.

IX. Adjourn

On a motion from Dennis Jones second by Klay Southern with all members present voting in the affirmative, this special meeting of the Livingston County Fiscal Court is adjourned.

Minutes submitted by: Kristine Quertermous



Garrett Gruber, Judge/Executive

EXHIBIT 2

*This Certificate of Attendance
is Being Presented to
Micah Joiner
Upon Completion of*

12 Hours

of Water Training Instruction at the

*Kentucky Public Service Commission
2021 Water Training Seminar*

July 13-14, 2021

Kentucky Public Service Commission

Signed this 10th day of February, 2022



Kent Chandler, Chairman

Kentucky Public Service Commission