

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

MAR 16 2018

In the Matter of:

PUBLIC SERVICE
COMMISSION

DEXTER-ALMO HEIGHTS WATER)	
DISTRICT AND ITS INDIVIDUAL)	CASE NO. 2017-00468
COMMISSIONERS, JOE DAN TAYLOR,)	
CHARLES BOREN, AND PAT PASCHALL)	

MOTION FOR DISMISSAL OF CHARLES BOREN
AS A PARTY TO THIS PROCEEDING

Charles Boren, by counsel, moves for his dismissal as a party to this proceeding based upon the lack of any evidence that he aided and abetted Dexter-Almo Heights Water District’s alleged willful violation of KRS 278.300.

In support of his motion, Commissioner Boren states:

1. On January 11, 2018, the Public Service Commission issued an order in this proceeding in which it alleged that Dexter-Almo Heights Water District willfully violated KRS 278.300 by issuing on or about December 9, 2009 a promissory note in the amount of \$145,988 payable over a 15-year period to Murray Bank of Calloway County, Kentucky (“Promissory Note”).

2. In the same Order, the Public Service Commission found the existence of a *prima facie* case that the present members of Dexter-Almo Heights Water District’s Board of Commissioners had aided and abetted the alleged violation based upon the members’ statutory duty as set forth in KRS 74.020(1) “to control and manage the affairs of the district.”¹

3. The Public Service Commission based its Order of January 11, 2018 upon a report that Commission Staff prepared and filed in the record of Case No. 2017-0191.² In that report, Commission Staff found:

¹ Order at 2.

² *Electronic Application of Dexter-Almo Heights Water District For Alternative Rate Adjustment*, Case No. 2017-00191 (Ky. PSC filed May 15, 2017).

Dexter-Almo provided a copy of the Promissory Note between itself and the Murray Bank of Calloway County, Kentucky, ("Murray Bank") in the principal amount of \$145,988. This Promissory Note has an origination date of December 9, 2009 and a 15-year term. In Case No. 2006-00420 the Commission granted Dexter-Almo a Certificate of Public Convenience and Necessity to construct the "Coles Campground Road Project" and approved the proposed plan of financing, which included a \$47,613 line of credit with the Murray Bank. In its November 23, 2005 letter, the Murray Bank states that Dexter- Almo's total line of credit was for \$150,000 and that the line of credit was renewable on a two-year term.

According to KRS 278.300, no utility shall issue any form of indebtedness unless it has been authorized to do so by an Order of the Commission. Dexter-Almo currently has an outstanding loan that is payable to the Murray Bank for which Dexter-Almo did not obtain Commission approval as required by KRS 278.300. Dexter-Almo has the responsibility to ensure that it follows the Commission's statutes and regulations and that all statutory and regulatory approvals are obtained. Dexter-Almo should be aware that the Commission may initiate a separate proceeding to more thoroughly investigate the possible violations of Commission statutes and regulations. If a determination is made by the Commission 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.³

4. In its report, Commission Staff did not identify the persons who were serving as members of Dexter-Almo Heights Water District's Board of Commissioners on December 9, 2009 or state the relationship between the Promissory Note's issuance and the present members of the Dexter-Almo Heights Water District's Board of Commissioners.

5. At the time of the alleged issuance of the promissory note in question, Mr. Boren was not a member of Dexter-Almo Heights Water District's Board of Commissioners. Mr. Boren's appointment to the Dexter-Almo Heights Water District's Board of Commissioners did not occur until November 16, 2010. A copy of the minutes of the Calloway County Fiscal Court's Meeting of November 16, 2010 in which this approval occurred are attached as **Exhibit A** to this Motion.

³ Staff Report on Dexter-Almo Heights Water District (filed Sept. 27, 2017) at 4-6 (footnotes omitted).

6. Mr. Boren is not listed as a member of Dexter-Almo Heights Water District's Board of Commissioners in the financial and statistical report⁴ that the water district filed with the Public Service Commission for the year ending December 31, 2009. The relevant pages of this report are attached as **Exhibit B** to this Motion.

7. The minutes of the November 2, 2009 meeting of Dexter-Almo Heights Water District's Board of Commissioners at which the Board of Commissioners voted on the question of issuing the promissory note in question does not indicate that Mr. Boren was a member of the Board or that he was present. A copy of these minutes is attached as **Exhibit C** to this Motion. to the Commission, members of Dexter-Almo Heights Water District's Board of Commissioners.

8. There is no evidence that after Mr. Boren's appointment to Dexter-Almo Heights Water District's Board of Commissioners, Mr. Boren or any other commissioner attempted to conceal from the Public Service Commission the existence of the promissory note in question. To the contrary, Dexter-Almo Heights has repeatedly reported the existence of the promissory note in question to the Public Service Commission.

a. In each of its financial and statistical reports submitted to the Public Service Commission since December 31, 2009, Dexter-Almo Heights Water District has reported the existence of the promissory note and its terms. These reports are incorporated by reference into this Motion.

b. In each of its financial audit reports that Dexter-Almo Heights Water District has filed with the Public Service Commission since December 31, 2013,⁵ the audit report has expressly noted the existence of the promissory note in question and the circumstances surrounding its issuance. These financial audit reports are incorporated by reference into this Motion.

⁴ 807 KAR 5:006, Section 4(2) requires a utility to submit a financial and statistical report with the Public Service Commission for the previous year's operations no later than March 31 of each year.

⁵ 807 KAR 5:006, Section 4(3) requires a utility to submit no later than September 30 of each year any financial statement audit report that was performed during the previous year.

c. In Case No. 2012-00489,⁶ Dexter-Almo Heights Water District again reported the existence of the promissory note in its Application to the Public Service Commission when requesting a certificate of public convenience and necessity for the construction of a water main extension. Dexter-Almo Heights Water District's application and the exhibits thereto from that proceeding are incorporated by reference into this motion.

d. In Case No. 2017-00191, when applying for a rate adjustment, Dexter-Almo Heights Water District reported the promissory note in question in its Application and included a copy of that promissory note with that Application.

9. At no time was Mr. Boren aware of any irregularities with the promissory note in question or its alleged lack of prior Public Service Commission authorization. However, even if Mr. Boren had discovered these alleged irregularities, he could not take any action to remedy the promissory note's alleged legal defects. The Public Service Commission has previously held that KRS 278.300 does not authorize retroactive authorization of any evidence of indebtedness.⁷

10. In the absence of any evidence to establish a prima facie case that Mr. Boren aided and abetted a willful violation of KRS 278.300 or had any involvement with the alleged wrongful conduct, he should be dismissed as a party to this proceeding and should be spared the expense of appearing at any hearing in this matter.

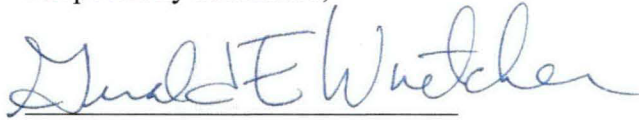
⁶ *Application of Dexter-Almo Heights Water District for a Certificate of Public Convenience and Necessity to Construct and Finance a Waterworks Improvements Project Pursuant to KRS 278.020 and 278.300*, Case No. 2012-00489 (Ky. PSC filed Nov. 9, 2012).

⁷ *Kentucky Infrastructure Authority's Joint Application on Behalf of Certain Water District's To Borrow Funds To Refinance Certain Indebtedness to The Kentucky Infrastructure Authority*, Case No. 2005-00058 (Ky. PSC Aug. 26, 2005) at 4 ("KRS 278.300 makes no provision for the Commission to retroactively approve a utility's issuance of evidences of indebtedness."); *Application and Notice of Kenton County Water District No. 1: (A) To Issue Revenue Bonds In the Approximate Principal Amount of \$16,160,000 (A Portion For Refunding of Bond Anticipation Notes); (B) To Construct Additional Plant Facilities of Approximately \$8,317,000; (C) Notice of Adjustment of Rates Effective May 1, 1991; and (D) Approval, If Necessary, of Continuing Miscellaneous Long-Term Indebtedness*, Case No. 91-046 (Ky. PSC Nov. 8, 1991) at 4 ("As no purpose will be served by the post-execution approval of these documents, the Commission will not stamp its imprimatur upon these documents.").

WHEREFORE, Charles Boren requests that the Public Service Commission dismiss him as a party to this proceeding and release him from any obligation to appear at any hearing in this matter.

Dated: March 16, 2018

Respectfully submitted,



Gerald E. Wuetcher
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Fax: (859) 259-3597
gerald.wuetcher@skofirm.com

Counsel for Charles Boren

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 4(8), I certify that a true and accurate copy of this Motion was sent by U.S. Mail to the parties listed below on March 16, 2018:

Joe Dan Taylor
97 Cecil Taylor Lane
Almo, Kentucky 42020

Pat Paschall
75 Lindsay Lane
Almo, Kentucky 42020

Dexter-Almo Heights Water District
351 Almo Road
Almo, Kentucky 42020



Counsel for Charles Boren

**CALLOWAY COUNTY
FISCAL COURT REGULAR MEETING**

Tuesday, November 16, 2010

5:00 P.M.

*Judicial Building
312 North 4th Street
District Court Room*

1. Call to order
2. Minutes from October 19th, 2010 Regular Session County Clerk
3. Minutes from November 5th, 2010 Special Session County Clerk
4. Treasurer's Report Anita Gallimore
5. 1st Reading Budget Amendment #1 #10-1116-A
6. Public Hearing and 2nd Reading Bond Ordinance for R.T. Vanderbilt Chemical #10-1105-A
7. Consider petition to close Lynch Lane .42
8. Resolution approving refinance for lease on John Deere Road Graders #10-1116-A
9. Resolution Authorizing West Kentucky Rural Telephone right of way use of Calloway County Property for when constructing fiber optic network.
10. Board Appointments
11. Staff/Official Report
12. Public Comment
13. Adjournment

Hale
Morgan
Stubblefield
Gingles
Judge Elkins

Calloway County Fiscal Court

November 16th, 2010 – Regular Meeting Minutes

EXHIBIT A
PAGE 2 of 2

An adjourned regular meeting of the Calloway County Fiscal Court was held at 5:00pm on Tuesday, November 16th, 2010, in the Calloway County Judicial Building. Judge Larry Elkins called the meeting to order. The following duly qualified members of the Court were present: Squire Eddie Clyde Hale, Squire Connie Morgan, Squire Bobby Stubblefield, and Squire Johnny Gingles. Also present were: Assistant Judge Michelle Corum, County Attorney David Harrington, County Treasurer Anita Gallimore, Deputy Clerk Antonia Faulkner, and County Clerk Ray Coursey, Jr.

The Court reviewed the minutes from the October 19th Regular Meeting. Motion made by Squire Morgan, seconded by Squire Stubblefield, to waive the formal reading and approve the minutes as presented. All voted aye and it was so ordered. Antonia Faulkner read the minutes of the November 5th Special Meeting. Motion made by Squire Gingles, seconded by Squire Hale, to approve the minutes as read. All voted aye and it was so ordered.

Anita Gallimore presented the treasurer's report. Motion made by Squire Morgan, seconded by Squire Hale, to approve the finance statement. All voted aye and it was so ordered. Motion made by Squire Stubblefield, seconded by Squire Gingles, to pay the bills. All voted aye and it was so ordered. Motion made by Squire Hale, seconded by Squire Morgan, to approve the transfers. All voted aye and it was so ordered.

Ms. Gallimore then presented the first reading of an Ordinance regarding Budget Amendment #1 to the 2010-2011 Budget. Following a discussion, motion made by Squire Gingles, seconded by Squire Stubblefield, to approve the first reading. All voted aye and it was so ordered. (10-1116-A)

Judge Elkins then recessed the meeting and called to order a public hearing concerning Ordinance #10-1105-A (bonds for the R.T. Vanderbilt expansion). No comments were made and Judge Elkins closed the public hearing and called the Regular Meeting back to order.

The Court then considered the second reading of Ordinance #10-1105-A concerning the R.T. Vanderbilt bonds. Attorney Mike Harrington explained that the County would bear no responsibility for the bonds' repayment. Following a discussion, motion made by Squire Hale, seconded by Squire Morgan, to approve the Ordinance. All voted aye on a roll call vote and the Ordinance was approved.

Judge Elkins stated that action on the closing of Lynch Lane would be considered at a later time because the viewers had not had time to present their findings.

The Court then considered a Resolution allowing for the extension of a lease for two John Deere road graders. Following a discussion, motion made by Squire Gingles, seconded by Squire Hale, to approve the Resolution. All voted aye and it was so ordered. (#10-1116-A)

Judge Elkins stated that the matter concerning West Kentucky Rural Telephone's right-of-way usage would be brought up at a later time.

The Court then considered Board Appointments. Motion made by Judge Elkins, seconded by Squire Morgan, to appoint Charles Boren to the Almo-Dexter Water District Board. All voted aye and it was so ordered. Motion made by Judge Elkins, seconded by Squire Stubblefield, to appoint Ken Cromwell to the Transit Authority Board. All voted aye and it was so ordered. Motion made by Judge Elkins, seconded by Squire Gingles, to appoint Greg Anderson to the Transit Authority Board. All voted aye and it was so ordered.

Judge Elkins then asked for Staff/Official Reports. Sheriff Bill Marcum stated that over \$2 million in tax collections had been received. Squire Morgan said he looked forward to another four years of serving on the Court. County Attorney David Harrington congratulated the County Clerk's Office for their work on the recent election. Judge Elkins asked the Court's approval of a resolution honoring Stan Key. Motion made by Squire Hale, seconded by Squire Stubblefield, to approve the Resolution. All voted aye and it was so ordered.

The floor was then opened for public comment. None was heard.

There being no further business before the Court, motion made by Squire Stubblefield, seconded by Squire Morgan, to adjourn. All voted aye and it was so ordered.

Larry Elkins – Judge/Executive
Approved and entered _____

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

Title Page

	Name of Respondent	Addr Line 1	Addr Line 2	City	State	Zip
Water Districts/Associations Annual Report of						
Respondent	DEXTER-ALMO HEIGHTS WATER DISTRICT	351 ALMO ROAD		ALMO	KY	42020

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

Principal Payment and Interest Information

	Amount	Yes/No	PSC Case No.
Amount of Principal Payment During Calendar Year	\$2,900.00		
Is Principal Current?		Y	
Is Interest Current?		Y	
Has all long-term debt been approved by the Public Service Commission?		Y	

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

Services Performed by Independent CPA

	Yes/No	A/C/R
Are your financial statements examined by a Certified Public Accountant?		
Enter Y for Yes or N for No	Y	
If yes, which service is performed?		
Enter an X on each appropriate line		
Audit		X
Compilation		
Review		

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

Additional Requested Information

	Name	Electronic Info
Name of Utility and Web Address	DEXTER-ALMO HEIGHTS WATER DISTRICT	
Contact Name and Email Address	KATHY WYATT, OFFICE MANAGER	DAWD351@NETZERO.NET
	JULIE HOFFMAN, CPA-PIERCE & ASSOCIATES, PLLC	JULIE@PIERCECPA.COM

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

Additional Information Required

Case Num	Date	Explain
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Major Water Projects

Provide details about each major water project which is planned but has not yet been submitted for approval to the Public Service commission.

For the limited purpose of this report, a "Major Project" is defined as one which is not in the ordinary course of business, and will increase your current utilityplant by at least 20 percent.

Brief Project Description: (improvement, replacement, building construction, expansion. If expansion, provide the estimated number of new customers):

Projected Costs and Funding Sources/Amounts:

Approval Status: (Application for financial assistance filed, but not approved; or application approved, but have not advertised for construction bids)

Location: (community, area or nearby roads)

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

History-Legal Name (Ref Page: 4)



1. Exact name of utility making this report.

(Use the words "The", "Company" or "Incorporated" only when part of the corporate name.)



DEXTER-ALMO HEIGHTS WATER DISTRICT

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

History-Location (Ref Page: 4)

	Name	Address	City	State	Zip	Phone
Give the location, including street and number, and TELEPHONE NUMBER of the principal office in KY.						
principal office in KY	DEXTER-ALMO HEIGHTS WATER DISTRICT	351 ALMO ROAD	ALMO	KY	42020	2707539101
Give name, title, address and TELEPHONE NUMBER of the officer to whom correspondence concerning this report should be addressed.						
	JOE DAN TAYLOR, COMMISSIONER	351 ALMO ROAD	ALMO	KY	42020	2707539101
Location where books are located	DEXTER-ALMO HEIGHTS WATER DISTRICT	351 ALMO ROAD	ALMO	KY		2707539101

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

History-Date Organized (Ref Page: 4)

	Date
Date of Organization	04/24/1964

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

History-Laws of Organization (Ref Page: 4)

List

If a consolidated or merger company, name all contigent and all merged companies. Give reference to charters or general laws governing each, and all amendments of same

Date and Authority for each consolidation and each merger.

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

History-Departments (Ref Page: 4)

		List
State whether respondent is a water district or association	WATER DISTRICT	
Name all operating departments other than water	NONE	

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

Hlstory - Countles (Ref Page: 5)

Calloway

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

History - Number of Employees (Ref Page: 5)

	Count
Number of Full-time employees	
Number of Part-time employees	3

20600 Dexter-Almo Heights Water District 01/01/2009 - 12/31/2009

Contacts (Ref Page: 6)

	Title	Last Name	First Name	Bus. Addr.	Salary	Term Expires
Person to send correspondence:	OFFICE MANAGER	WYATT	KATHY	351 ALMO ROAD, ALMO, KY 42020		
Person who prepared this report	CPA	HOFFMAN	JULIE	310 MAIN STREET, MURRAY, KY 42071		
Officers and Managers						
	COMMISSIONER	TAYLOR	JOE DAN	351 ALMO ROAD, ALMO, KY 42020	\$1,800.00	2010
	COMMISSIONER	OUTLAND	GENE	351 ALMO ROAD, ALMO, KY 42020	\$1,800.00	2010
	COMMISSIONER	PASCHALL	PAT	351 ALMO ROAD, ALMO, KY 42020	\$1,800.00	2010

DEXTER-ALMO WATER DISTRICT
November 2, 2009 6:00PM

The Dexter-Almo Water Dist. met 11-02-09 at 6pm with following present, Joe Dan Taylor, Gene Outland, and Pat Paschall, Commissioners, Kathy Wyatt & Jay Wyatt, employees of the the Dist.

The board approved the November's Treasurer's Report and the minutes from the October meeting.

The board also approved to pay the following bills:

1. FICA Card	204.87
2. Howard D Happy	13.60
3. Printing Services	89.00
4. West KY RECC	71.15
5. Freddie O'Bryan	100.00
6. Calloway Co, Tax	429.79
7. Murray Bank (payroll)	600.48
8. G&C	165.08
9. Murray Bank (interest)	681.71
10. Dialog	102.00
11. Micobac	64.50
12. KWRA (dues)	300.00

Jay Wyatt told the board he would need a 10" coupling to be able to repair the waterline incase of a break. The board approved the purchase. Jay also needs a small vise to be able to cinch small water lines incase of a break or meter changeouts. The board said to get quotes from 3 different places and go with the best price and purchase the vise. The board voted to allow Jay to purchase needed items for the district within reason. Any major purchase will need the board's approval.

Jay also reported that the truck will need servicing and prep work fro winter. The board said to get done to the truck what needed to be done.

The board discussed the line of credit note at The Murray Bank that is set to mature December 9, 2009. The board discussed several options as to how long to go on the note. The board chose to go for a longer time frame so the district can build up funds in case of a major break, a hard to find leak or a major purchase should arise. The board also discussed that when possible we would make extra payments and pay the loan off quicker. Gene Outland made a motion that the district set the note up for 15years making semi-annual payments. Pat Paschall seconded, the motion passed.

Pat Paschall made a motion to authorize Joe Dan Taylor, Chairman to sign any documents concerning the loan. Gene Outland seconded, motion carried.

The board voted to write-off the following accounts due to non-payment

1. Keith Bass	37.07
2. Tammy Merrell	38.38
3. Jill Patterson	13.71

The meeting adjourned at 8:00p.m.

Pat Paschall
Secretary