

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ADEQUACY OF)
THE WATER SUPPLY OF MAGOFFIN COUNTY) CASE NO. 2008-00443
WATER DISTRICT)

O R D E R

This matter is before the Commission as the result of our investigation into the adequacy of the water supply of the Magoffin County Water District ("Magoffin District"). By this Order, we find that Magoffin District lacks sufficient water supply to furnish adequate, efficient, and reasonable service to its customers.

BACKGROUND

Potable water is supplied to Magoffin County citizens by two principal suppliers: Salyersville Water Works ("SWW"), a municipal utility,¹ and Magoffin District, a water district established pursuant to KRS Chapter 74 and a utility under the Commission's jurisdiction.² SWW supplies water to Magoffin District pursuant to a Water Purchase Agreement dated January 26, 1983. Over the years, the terms of this agreement have been amended, with changes made to the term, the cost, and the amount of water supplied.³ SWW's provision of water to Magoffin District is subject to the Commission's

¹ Salyersville Water Works is a department of the city of Salyersville, Kentucky.

² KRS 278.010(3)(d); KRS 278.015.

³ The substance of those amendments does not affect the Commission's jurisdiction.

jurisdiction.⁴ Magoffin District provides retail water service to approximately 3,466 customers⁵ in Magoffin and Floyd counties, Kentucky.⁶

INITIATION OF CASE

The initiation of this case and the Commission's investigation into the adequacy of the water supply of Magoffin District was precipitated by a series of events, including serious drought conditions that occurred in the Magoffin County area in the fall of 2008. Telephone conference calls on October 8, 2008 and October 9, 2008 between officials from the city of Salyersville ("Salyersville"), SWW, Magoffin District, Magoffin County, and several state agencies,⁷ highlighted many of the challenges and concerns in supplying potable water to customers of SWW and Magoffin District. Those challenges and concerns are addressed throughout this Order.

On October 9, 2008, Mayor Stanley Howard and County Judge/Executive Charles Hardin wrote to Governor Steven L. Beshear advising that Salyersville was experiencing a devastating drought that began on or about August 27, 2008 and that, if it continued, SWW would be unable to supply water to its retail and wholesale customers, including Magoffin District. They further advised that SWW was currently pumping water from the Licking River and two drilled wells, that the quality of water had

⁴ KRS 278.200; Simpson County Water Dist. v. City of Franklin, 872 S.W.2d 460, 465 (Ky. 1994).

⁵ Annual Report of Magoffin County Water District to the Public Service Commission of Kentucky for the Year Ended December 31, 2009, at 27.

⁶ Id. at 5, 27.

⁷ The state agencies participating were the Public Service Commission, Kentucky Department of Military Affairs' Division of Emergency Management, Energy and Environment Cabinet's Division of Water ("DOW"), and Department of Public Health.

continued to deteriorate, and that a boil water advisory had been in effect county-wide for the past 48 hours.⁸

On October 10, 2008, Governor Beshear signed Executive Order 2008-1056 (“Executive Order”), which declared a state of emergency to exist in Magoffin County and included details of the severe rainfall shortages that existed in the Commonwealth in 2007 and 2008 and how these conditions had caused flows to cease in the headwaters of the Licking River, a primary source of public water supply in Magoffin County. It further noted that the public water supply in Magoffin County then relied on two wells that were not capable of meeting the current demand and that these conditions endangered the public health and safety and threatened the public welfare of the citizens of Magoffin County.

Governor Beshear, through the Executive Order, directed the Commission, the Energy and Environment Cabinet, and the Cabinet for Health and Family Services to take every action necessary to prevent a complete loss of public water supply from occurring in Salyersville and Magoffin County. On October 17, 2008, in response to the Executive Order, the Commission initiated this case. In our Order, we found that the limited supply of water available to Salyersville had also resulted in a limited supply of water available to Magoffin District. The Commission noted that, despite the limited supply of potable water from Salyersville, KRS 278.030(2) nonetheless required Magoffin District to “furnish adequate, efficient and reasonable service” to its customers. We further found that there was sufficient cause to commence an investigation pursuant

⁸ Letter from Stanley Howard, Mayor of Salyersville, and Charles Hardin, Judge/Executive of Magoffin County, to Governor Steven L. Beshear (Oct. 9, 2008).

to KRS 278.260 and KRS 278.280 “to investigate the adequacy of the source of water supply to the Magoffin District.”

PROCEDURAL HISTORY

When the Commission initiated this case on October 17, 2008, we directed that Magoffin District, Salyersville, and DOW be made parties to the proceeding. The Attorney General of the Commonwealth of Kentucky filed a motion for intervention on October 28, 2008, and the motion was granted on October 31, 2008. Billy J. Rowe, Sr., a customer of Magoffin District, filed a motion for intervention on October 21, 2008 which was granted on November 12, 2008.⁹ On November 13, 2008, the Paintsville Utilities Commission (“Paintsville”) filed a motion for intervention which was granted on November 26, 2008.¹⁰ On December 24, 2008, Paintsville filed a motion to withdraw as a party.¹¹ The Commission granted this motion on January 30, 2009.

On October 27, 2008, Magoffin District and Salyersville filed their responses to the Commission’s information requests, which were appended to the Commission’s

⁹ Mr. Rowe filed an informal complaint with the Commission’s Division of Consumer Services on October 7, 2008. After this case was initiated, he filed a formal complaint on October 21, 2008 and moved for intervention, based upon his concerns that Magoffin County had been under a boil water advisory for over a month and mud, leaves, and rocks were coming out of faucets at his residence.

¹⁰ Paintsville’s motion to intervene was primarily based on the fact that it was building a water treatment plant that could further extend its water supply services to Magoffin District. The new water treatment plant was designed under a regional concept with the intention of providing safe, potable water to all counties surrounding Johnson County. Since the Commission was investigating the adequacy of water supply of Magoffin District, Paintsville sought to be a possible supplier of water to Magoffin District when its new water treatment plant was completed.

¹¹ Paintsville moved to withdraw as a party after “reviewing the pleadings and testimony filed in this matter and as a result of informal conversations with relevant persons.” Paintsville Utilities Commission’s Motion to Withdraw (filed Dec. 24, 2008).

October 17, 2008 Order. DOW responded to the Commission's information request on October 29, 2008. On November 26, 2008, Commission Staff served its first set of information requests on Magoffin District and Salyersville, and both responded on December 10, 2008.

On October 24, 2008, an evidentiary hearing was scheduled to be held on December 16, 2008. Magoffin District, Salyersville, and DOW were ordered to file testimony by December 10, 2008. On December 12, 2008, the evidentiary hearing was continued until February 10, 2009. DOW moved for an extension of time on December 9, 2008 and filed testimony on December 15, 2008, which was supplemented on February 9, 2009. Magoffin District and Salyersville filed testimony on January 22, 2009.

The scope of the evidentiary hearing, including both procedural and substantive issues, was discussed at an informal teleconference between Commission Staff and all parties on January 8, 2009. In its Order of February 6, 2009, the Commission outlined the procedures that would be followed at the public hearing, which began on February 10, 2009, was continued on February 27, 2009, and was completed by deposition on May 15, 2009.

On March 11, 2009, Magoffin District filed a response to requests for information that had been made at the public hearing. Paintsville's response to Commission Staff's Open Records request was received on March 25, 2009, and the United States Department of Agriculture Rural Development's response to Commission Staff's Freedom of Information Act request was received on March 24, 2009. These responses were filed in the record on April 1, 2009. On April 22, 2009, Magoffin District filed its

response to the Commission's Order of April 6, 2009. On October 12, 2009, a letter was sent to the parties by the Commission's Executive Director requesting information regarding Salyersville's ability to obtain water from Paintsville. Responses were filed by Magoffin District on October 19, 2009, DOW on October 22, 2009, and Salyersville on November 13, 2009. Magoffin District filed a Supplemental Response on April 14, 2010, followed on June 11, 2010 by Commission Staff's Second Information Request, which sought more detail concerning information presented in the Supplemental Response. Magoffin District filed its Response to Commission Staff's Second Information Request on June 25, 2010.

STATUTORY AUTHORITY

The Commission's authority to investigate the adequacy of Magoffin District's water supply derives from KRS 278.260, which confers upon the Commission the authority to conduct an investigation:

The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any . . . regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion.¹²

(Emphasis added.)

KRS.278.030(2) provides that "[e]very utility shall furnish adequate, efficient and reasonable service" KRS 278.010(13) defines "service" as "any practice or requirement in any way relating to the service of any utility, including . . . the purity,

¹² KRS 278.260(1) (emphasis added).

pressure, and quantity of water” KRS 278.010(14) defines “adequate service” as “having sufficient capacity to meet the maximum estimated requirements of the customer to be served . . . and to assure such customers of reasonable continuity of service.”

KRS 278.200 provides the Commission with the power to regulate the rates and service standards fixed by agreement between Magoffin District and Salyersville:

The Commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission

KRS 278.280 provides:

(1) Whenever the commission . . . finds that the rules, regulations, practices, equipment, appliances, facilities or service of any utility subject to its jurisdiction, or the method of manufacture, distribution, transmission, storage or supply employed by such utility, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation.

(2) The commission shall prescribe rules for the performance of any service or the furnishing of any commodity . . . supplied by the utility, and . . . the utility shall furnish the commodity or render the service within the time and upon the conditions provided in the rules.

THE DROUGHT OF 2008

The Commission initiated this action in October 2008 as a result of the serious drought conditions and the shortage of water in Magoffin County. These conditions led to the Joint Letter from Mayor Howard and County Judge/Executive Hardin seeking assistance from the Governor. One of the statements in the Joint Letter was that “[t]his

lack of water has the potential of causing much panic throughout the county resulting in unforeseen consequences.” The Governor was asked for a short-term solution to the current financial situation and financial assistance for a long-term solution. The letter also stated that the city had expended the maximum amount of equipment, time, and personnel that Salyersville was able to provide and that a state of emergency had been declared on September 25, 2008. Attached to the Joint Letter was a summary of the cost of five alternate Salyersville emergency water supply projects.¹³ Because of the concerns raised in the Joint Letter, the Governor issued the Executive Order that declared Magoffin County to be in a state of emergency.

During this period, mandatory water conservation efforts were taken, including water use restrictions, declarations of emergency, and boil water advisories. DOW advised that boil water advisories are given as preventive measures to protect the health of the community from waterborne infectious agents. Specifically, DOW stated that the accumulation of leaves and high levels of manganese, common when water is drawn from the lower depths of supply sources, diminish the quality of the water and that heavy leaf content causes the water to turn dark as organic material deteriorates.¹⁴

¹³ The five projects included the following: (1) Finished Water Augmentation-Emergency Interconnect-Route 40, at a cost of \$264,762.15; (2) Finished Water Augmentation-Long Term Interconnect-Route 40, at a cost of \$917,067.99; (3) Raw Water Supply-Mine Fork Quarry Pump & Line, at a cost of \$3,492,980.96; (4) Raw Water Supply-Well Field Improvements, at a cost of \$884,183.98; and (5) Raw Water Supply-Licking River Dredge/Hook/Snag Project, at a cost of \$52,500.00. No source was given for the listed projects and cost estimates or when the estimates had been prepared. The only date on the documents was October 9, 2008, the date the letter was written.

¹⁴ DOW’s Supplement to Previously Filed Testimony of Julie Roney, Case Chronology, at 2 (filed Feb. 9, 2009).

During the drought of 2008, Magoffin District's Board of Commissioners received minimal information regarding the drought during their meetings; had minimal discussions about the drought, if any; and took no action regarding the drought. The minutes of Magoffin District's Board of Commissioners meetings held on August 8, 2008 and September 12, 2008 make no reference to the drought. On October 10, 2008, Jim Hoskins, Magoffin District's superintendent, told the Board that he had participated in a teleconference call regarding the drought, but the Board did not discuss the substance of the teleconference. On November 14, 2008, the following statement was reported: "We need to look at long-term options to solve our water problems." The discussion then turned to a report about Prestonsburg's plans for a water storage tank near the county line. The minutes of the meeting held on December 12, 2008 contain no discussion of the drought.

A chronology of events that occurred in Magoffin County during the 2008 drought reveals some of the difficulties that customers in Salyersville and Magoffin District faced:

- | | |
|------------|---|
| 8/22/2008: | Salyersville issued water use restrictions. ¹⁵ |
| 8/25/2008: | DOW authorized Salyersville to use groundwater wells. ¹⁶ |
| 8/27/2008: | DOW noted that water was not flowing over the dam on the Licking River. ¹⁷ |

¹⁵ SWW's Response to the Commission's Order of October 17, 2008, Item 3, Exhibit 4 (filed Oct. 27, 2008). Salyersville placed restrictions on car washes and all unnecessary uses of water.

¹⁶ DOW's Supplement to Previously Filed Testimony of Julie Roney, Exhibit 1 (filed Feb. 9, 2009).

¹⁷ Id.

9/8/2008: Salyersville issued water use restrictions.¹⁸

9/22/2008: Magoffin District issued a public notice declaring an emergency water shortage and asked its customers to cut back water usage by 40 percent or more.¹⁹

9/25/2008: A low water intake-boil water advisory was issued by DOW for all Magoffin County until further notice.²⁰

10/2/2008: The boil water advisory was lifted by Salyersville.²¹

10/7/2008: A boil water advisory was again issued due to low water intake.²²

10/8/2008: Magoffin District issued a public notice of a boil water advisory to all of Magoffin County due to poor water quality and low water intake.²³

10/9/2008: The boil water advisory was continued in effect county-wide.²⁴

¹⁸ Id.

¹⁹ Magoffin District's Response to the Commission's Order of October 17, 2008, Item 5 (filed Oct. 27, 2008).

²⁰ SWW's Response to the Commission's Order of October 17, 2008, Item 3, Exhibit 4 (filed Oct. 27, 2008).

²¹ Id.

²² Id.

²³ Magoffin District's Response to the Commission's Order of October 17, 2008, Item 5 (filed Oct. 27, 2008).

²⁴ Salyersville's Response to Commission Staff's First Set of Interrogatories and Request for Production of Documents, Item 19, Exhibit 8 (filed Dec. 10, 2008). All citizens were advised to boil all water used for consumption and that there may be discoloration in the water.

- 10/9/2009: The Mayor and Judge/Executive formally requested assistance from the Governor.²⁵
- 10/10/2008: The Governor declared a state of emergency in Magoffin County.²⁶
- 11/13/2008: DOW issued a boil water advisory.²⁷
- 11/25/2008: DOW lifted the boil water advisory.²⁸

The above chronology presents a snapshot of the inconveniences experienced by the customers of Magoffin District and SWW and the extreme measures that were taken to preserve a very limited supply of water. The Commission's investigation began as a result of this situation, but also examined water supply conditions prior to this time to determine whether the 2008 drought was an anomaly or a problem likely to occur again in the future.

PRE-DROUGHT CONDITIONS

DOW has identified Magoffin District as a surface water purchaser under the Safe Drinking Water Act as implemented in Kentucky because it does not have a water treatment plant and, therefore, does not produce its own potable water. Presently, all drinking water distributed by Magoffin District is purchased from Salyersville. Salyersville has one surface water treatment plant that relies primarily on the Licking River for source water. During emergency situations, Salyersville has two limited-

²⁵ Id., Item 33(a), Exhibit 13.

²⁶ Executive Order No. 2008-1056 (Oct. 10, 2008).

²⁷ DOW's Supplement to Previously Filed Testimony of Julie Roney, Case Chronology, at 2 (filed Feb. 9, 2009).

²⁸ Id.

capacity groundwater wells that can be used, but the wells can supply only 30 percent of the rated one-million-gallon-per-day design flow of Salyersville's treatment plant.²⁹

The shortages and subsequent water supply emergency in Magoffin County resulted from a two-year drought event that began in 2007 and continued in 2008. This drought severely impacted the hydrologic conditions in the upper Licking River watershed. Based on historical climate and hydrologic records, the 2007-2008 drought in Magoffin County ranks as one of the five most severe droughts of the instrumental record, and was the most severe two-year hydrologic drought on record in the area comprising the upper Licking River and the upper Red River basins.³⁰

Hydrologic records and recent events confirm that there is a potential for more extreme hydrologic drought in this area that can result in a loss of nearly all of the available flow in the Licking River. Although this level of drought may be statistically unlikely, the potential consequences of having no options beyond the river and backup wells could be a significant threat to human health and safety when such a drought occurs. Under these conditions, the sources of supply to Magoffin District via SWW will not be adequate to meet demand. Increases in demand by Magoffin District for water, either from population growth or line extensions to unserved areas, will only exacerbate this condition.³¹

²⁹ DOW's Response to the Commission's Order of October 17, 2008, Appendix C, at 1 (filed Oct. 29, 2008).

³⁰ Testimony of William Caldwell, at 2 (filed Dec. 15, 2008); DOW's Response to the Commission's Order of October 17, 2008, at 9 (filed Oct. 29, 2008).

³¹ Testimony of William Caldwell, at 3; DOW's Response to the Commission's Order of October 17, 2008, at 10.

Problems with Magoffin County's water supply had been identified prior to the two-year drought of 2007 and 2008. Big Sandy Regional Water Management Council ("Council")³² commissioned a study to determine improvements needed to insure adequate delivery of water service during emergency conditions of drought, contamination, and breakdown. The study's geographical focus was on the area served by the Big Sandy Area Development District ("Big Sandy ADD"), the easternmost development district in Kentucky, comprised of Floyd, Johnson, Magoffin, Martin and Pike counties. This study resulted in the Regional Emergency Water Supply Interconnection Plan ("Plan"), which was issued by the Big Sandy ADD in May 2005.³³

The Plan stated that Magoffin County had the greatest water supply need in the Big Sandy area, with Salyersville's plant (the only plant presently serving Magoffin County) being of inadequate capacity for future needs. The Plan also noted that the raw water source for the existing plant is susceptible to drought, with the plant's backup wells not adequate to provide for existing demand. The study's authors recommended that a major transmission line from Paintsville be the first priority if Paintsville was successful in constructing a new six-million-gallon-per-day ("MGD") plant. They further

³² The Kentucky Infrastructure Authority was created by the General Assembly of the Commonwealth of Kentucky at its 1988 Regular Session and was charged, pursuant to KRS 224A.300, with coordinating the implementation of infrastructure projects. The Big Sandy Regional Water Management Council is the council designated as the planning body for the Big Sandy area, which includes Magoffin County. It prepares the area water management plan, which identifies current and future water supply, drinking water, and wastewater service needs of the area and approves all project profiles for water and wastewater projects.

³³ Big Sandy Area Development District, Regional Emergency Water Supply Interconnection Plan (May 2005) (filed with the Commission in Magoffin District's Response to the Commission's Order of April 6, 2009, Item 2 (filed Apr. 22, 2009)).

recommended that, if Paintsville was not successful in building the new six-MGD plant and Prestonsburg was successful in constructing a new five-MGD plant, a major transmission line from Prestonsburg Utilities would be recommended.³⁴

The Plan also noted that politics and local turf battles impede inter-utility cooperation. It suggested that aid from the Fifth Congressional District to utilities in the form of grants and loans should promote cooperation rather than exacerbate conflict between utilities.³⁵

Both Salyersville and Magoffin District participated in the preparation of the Plan. Specifically, Stanley Howard, Mayor of Salyersville, Thomas Howard, Superintendent of SWW, and Kevin Howard of Summit Engineering represented Salyersville.³⁶ Magoffin District was represented by William Cantrell, Manager of Magoffin District, and Paul Salyer, Chairman of Magoffin District. Minutes from the December 14, 2004 meeting of the Council reflect that Summit Engineering was selected to complete the Big Sandy ADD's portion of this study. Kevin Howard spoke at that meeting regarding his firm's progress in meeting with most of the systems.³⁷

The drought conditions that existed in 2007-2008 had been preceded by rainfall amounts in the Magoffin County area that had been below normal for at least two years prior to that time. Data from the National Oceanic and Atmospheric Administration's

³⁴ Id., at 1-4.

³⁵ Id.

³⁶ Salyersville's Response to Staff's First Set of Interrogatories and Request for Production of Documents, Item 31 (Dec. 10, 2008).

³⁷ Magoffin District's Response to Commission's Order entered April 6, 2009, No. 2.

National Weather Service shows that the rainfall measured in Breathitt County, adjacent to Magoffin County, is normally 49.38 inches annually. From 2005 to 2008, the amount of rainfall in the area dropped substantially. In 2005, there were 40.34 inches of rainfall, which was 9.04 inches below normal. In 2006, there were 45.63 inches of rainfall, which was 3.75 inches below normal. In 2007, there were 35.46 inches of rainfall, which was 13.92 inches below normal. In 2008, as of October 21, 2008, there were 29.94 inches of rainfall, which was 9.90 inches below normal on that date.³⁸

In 2003, the Salyersville City Council had expressed concern about the adequacy of its water supply. At its February 10, 2003 meeting, it decided to advertise for the procurement of a water supply study.³⁹ On May 14, 2003, Mayor Howard requested authority to enter the right-of-way of the Kentucky Department of Highways to drill test for wells. In seeking this authorization, he stated that “[t]he City of Salyersville is experiencing problems with a shortage of potable water for our citizens. At the present time we are supplying all of the city and about two-thirds of Magoffin County from our meager supply. It is imperative that we seek additional sources of water.”⁴⁰

On October 8, 2007, Kevin Howard, City Engineer, presented the Salyersville City Council with data that had been collected concerning the water shortage and

³⁸ Fax Transmittal Sheet from Jeff Carico, Hydrometeorological Technician, National Weather Service, to Paul Howard (October 22, 2008) (filed with the Commission in SWW’s Response to Commission Staff’s Data Request, Exhibit 3 (filed Oct. 27, 2008)).

³⁹ Salyersville’s Response to Commission Staff’s First Set of Interrogatories and Request for Production of Documents, Exhibit 12 (filed Dec. 10, 2008).

⁴⁰ Letter from Mayor Stanley Howard, Salyersville, to Jason Blackburn, Kentucky Department of Highways (May 14, 2003).

possible options for a solution to the problem. He advised that geological studies had been made by the University of Kentucky which located water sources throughout the county. He stated that they were working closely with SWW and DOW to come up with the most feasible plan for Salyersville and Magoffin County.⁴¹

On August 1, 2003, Magoffin District issued an “official notice” to Salyersville that the city had failed to meet the water needs of the Magoffin District.⁴² On August 27, 2003, Magoffin District officials wrote to the Commission and expressed the belief that Salyersville did not have the water to sell and was not doing anything to upgrade its plant. They also stated that the “USDA/Rural Development has asked us to look for a second source of water.”⁴³

On September 11, 2003, Magoffin District contacted the Morgan County Judge/Executive about purchasing water. “We are buying about all the water we can get from SWW and we are going to need a contract soon to buy more water from another utility.”⁴⁴ On December 16, 2003, Magoffin District contacted Paintsville about purchasing water. “Our water district is going to need more water for the future and the PSC has informed the Water District to seek additional water supply We would be

⁴¹ Salyersville City Council Minutes (August 11, 2003, November 14, 2003, October 8, 2007).

⁴² Magoffin District’s Response to Commission Staff’s Data Request, Exhibit 4 (Dec. 10, 2008); Letter from Paul H. Salyer, Chairman, Magoffin District, to the SWW Commissioners (Aug. 1, 2003); letter from Paul H. Salyer, Chairman, Magoffin District, to the Public Service Commission (Aug. 27, 2003).

⁴³ Letter from Paul H. Salyer, Chairman, to Public Service Commission (Aug. 27, 2003).

⁴⁴ Letter from Bill Cantrell, Manager, Magoffin District, to Tim Conely, Judge/Executive of Morgan County (Sept. 11, 2003).

interested in buying some water from you when you get your plant built.”⁴⁵ This request from Magoffin District to Paintsville was followed by another request on January 10, 2006, which stated the following:

The Magoffin District is in need of potable water. They would like to buy water from Paintsville. They will have an eight inch water line laid from the Johnson County line to the Burning Fork area of Magoffin County by the time you get your water system ready. This area will include over 500 customers and will need about 4,000,000 gallons of water per month. The second phase plan will include all the area south of Salyersville along KY-7 and it runs to the Floyd County line. This area will include over 800 customers and will need 8,000,000 gallons of water per month.⁴⁶

DISCUSSION

The above describes concerns raised about the ongoing water supply problems in Magoffin County. Notwithstanding the concerns that Magoffin District and Salyersville had raised since at least 2003, in addition to the severity of the conditions described in the October 9, 2008 Joint Letter sent to the Governor, on October 28, 2008, Magoffin District and Salyersville denied the existence of any problems with the water supply in Magoffin County. Magoffin District stated that it had a contract with Salyersville for 19,000,000 gallons of water per month and that Salyersville “had never failed to meet this demand.”⁴⁷ All responses to subsequent discovery requests and the

⁴⁵ Letter from Paul H. Salyer, Chairman, Magoffin District, to Larry Herald, General Manager, Paintsville Utilities (December 16, 2003).

⁴⁶ Letter from Bill W. May, Judge/Executive of Magoffin County, to Larry Herald, Paintsville (January 10, 2006).

⁴⁷ Magoffin District’s Response to Staff’s Data Request, Item 1 (filed Oct. 27, 2008).

testimony that was given by the local officials at the hearing in this matter unequivocally declared that Salyersville had always met the water supply needs of Magoffin District.⁴⁸

Given the dire circumstances described in the Joint Letter by the Mayor and Judge/Executive, the subsequent contradictory assertions by these same two officials, as well as other Magoffin District and Salyersville officials, are very problematic. If Salyersville had always provided adequate water to Magoffin District as they claimed, there would have been no need to send the Joint Letter to the Governor. When this issue was raised during the hearing, the witnesses for both Salyersville and Magoffin District testified that the water shortage during this period had been solved by restrictions on the usage of water and the provision of free bottled water delivered by outside vendors. The common opinion expressed by all of these witnesses was that, as long as water from Salyersville continued to “flow,” it was deemed to be “adequate”⁴⁹ and that Salyersville was meeting its obligations under its contract with Magoffin District.⁵⁰ This position persisted despite the fact that the quantity of water available was insufficient and the quality of the water was poor, as evidenced by the numerous boil water advisories that were issued during this period.

⁴⁸ Id. at 1; transcript of February 10, 2009 hearing, at 162, 163, 180; transcript of February 27, 2009 hearing, at 39.

⁴⁹ Transcript of February 10, 2009 hearing, at 61, 85, 102, 103, 162, 163 and 180; transcript of February 27, 2009 hearing, at 89, 102, 104.

⁵⁰ Transcript of February 10, 2009 hearing, at 61, 162, 163, 165, and 177; transcript of February 27, 2009 hearing, at 89, 102, 104; transcript of May 15, 2009 Video Teleconference Deposition of Julie W. Roney, at 40, 50.

MAGOFFIN DISTRICT'S RECENT EFFORTS TO
SECURE ALTERNATE SOURCES OF WATER

On April 14, 2010, Magoffin District submitted four water supply contracts to update the Commission. One contract is a consent and release agreement with Salyersville, and the other three are emergency water supply contracts.⁵¹ These contracts include the following:

1. A *Consent and Release Agreement* between Salyersville and Magoffin District, dated March 26, 2010, "releases Magoffin District from its obligations under its existing Water Purchase Agreement with Salyersville to purchase all its requirements for potable water."⁵² This modification would apply if Salyersville could not deliver sufficient quantities of potable water to meet the needs of Magoffin District, in which case Magoffin District could purchase water on an emergency basis from Prestonsburg.⁵³

2. An *Emergency Water Supply Agreement* between Prestonsburg and Magoffin District dated March 22, 2010 provides that Prestonsburg will furnish emergency water supply service to Magoffin District in quantities not to exceed 200,000 gallons per day and not to exceed 6,000,000 gallons per month. Magoffin District is not required to purchase a minimum amount. The delivery point would be Ky. Highway 114

⁵¹ Magoffin District's Supplemental Response (filed Apr. 14, 2010).

⁵² 7 U.S.C. § 1926(b) restricts Magoffin District's ability to purchase water from a supplier other than Salyersville, as this could compromise Salyersville's ability to meet its federal debt obligations.

⁵³ Consent and Release Agreement between SWW and Magoffin District (entered into Mar. 26, 2010) (filed with the Commission in Magoffin District's Supplemental Response (filed Apr. 14, 2010)).

at the Magoffin/Floyd county line. The area that could be served with water from Prestonsburg includes approximately 700 customers who live in the Burning Fork area and the Ky. Highway 114 area of Magoffin County. This agreement grants Prestonsburg the right of first refusal to acquire all or a portion of Magoffin District's water or sewer systems and related facilities if offered by Magoffin District to any third party. The billing rate under this agreement, should Magoffin District purchase water from Prestonsburg, is \$2.50 per 1,000 gallons.⁵⁴

3. An *Emergency Water Purchase Agreement* between Paintsville and Magoffin District dated March 29, 2010 provides that Paintsville will furnish potable water to Magoffin District in times of emergency and in quantities to be determined and controlled by Paintsville's water availability. A water emergency is defined as "any situation or event, natural or manmade, which impairs Magoffin District's water supply . . . such that there is (1) a disruption of the normal water supply functions to Magoffin District's customers and (2) in order to protect the public health, an immediate supply of water is necessary." The delivery point is U.S. 460 near the Johnson/Magoffin county line. The area that could be provided with water from Paintsville is also the Burning Fork area, Ky. Highway 460 and Ky. Route 114, and water would be provided to the same 700 customers that could be provided water from Prestonsburg. The billing

⁵⁴ Emergency Water Supply Agreement between Prestonsburg and Magoffin District (entered into Mar. 22, 2010) (filed with the Commission in Magoffin District's Supplemental Response (filed Apr. 14, 2010)).

rate under this agreement, should Magoffin District purchase water from Paintsville, is \$2.50 per 1,000 gallons of water.⁵⁵

4. *An Agreement Between Morgan County Water District and Magoffin District* dated April 5, 2010 provides that Morgan County Water District (“Morgan District”) will sell Magoffin District a portion of the water designated by the Cave Run Water Commission through a Water Purchase Agreement enacted on June 8, 2009 in quantities not to exceed 1,200,000 gallons per month. The delivery point is Ky. Highway 134 on Johnson Fork at the Magoffin/Morgan county line. The area that could be served with water from Morgan County includes approximately 300 customers who live west of Salyersville in the Johnson Fork, Grape Creek, and White Oak areas of Magoffin County. The billing rate under this agreement, should Magoffin District purchase water from Morgan District, is \$2.85 per 1,000 gallons of water.⁵⁶

Each of these agreements must be submitted to the Commission.⁵⁷

THE PAINTSVILLE INTERCONNECTION

The Plan issued by the Big Sandy ADD in May 2005 recommended that a major transmission line from Paintsville to Magoffin District was its first priority. Consistent with that recommendation, Magoffin District was the recipient of a \$900,000 grant from the Kentucky General Assembly that was administered by the Kentucky Infrastructure

⁵⁵ Emergency Water Supply Agreement between Paintsville Utilities and Magoffin District (entered into Mar. 29, 2010) (filed with the Commission in Magoffin District’s Supplemental Response (filed Apr. 14, 2010)).

⁵⁶ Emergency Water Supply Agreement between Morgan District and Magoffin District (entered into Apr. 6, 2010) (filed with the Commission in Magoffin District’s Supplemental Response (filed Apr. 14, 2010)).

⁵⁷ 807 KAR 5:011, Section 13.

Authority (“KIA”). This grant was a line item in House Bill 380 and a direct appropriation from the General Assembly for construction of an interconnection between Magoffin District and Paintsville to allow Magoffin District to purchase water directly from Paintsville.⁵⁸ During this investigation, the Commission became aware of actions taken by Magoffin District officials to deliberately terminate this project prior to its completion.

Eddie Brown, a civil engineer with Kenvirons, was Magoffin District’s project engineer for the Paintsville Interconnection. Mr. Brown testified that he had done work for Magoffin District for 10 to 11 years⁵⁹ and had been retained by Magoffin District for this project. He further testified that he had designed the Paintsville Interconnection as an eight-mile, eight-inch transmission main intended for continuous use,⁶⁰ with Magoffin District expected to initially purchase 100,000 gallons of water per day from Paintsville, but this amount could be increased to 250,000 gallons per day.⁶¹ According to Mr. Brown, in July or August of 2007, the Magoffin District Board instructed him to eliminate the final 48 feet of water line from Magoffin District’s construction contract with Music Construction, Inc. (“Music”). These 48 feet were necessary to finish the line for the interconnection and would have allowed the tie-in with Paintsville to be completed. The cost of completing the remaining work on the project would have been less than

⁵⁸ Transcript of February 10, 2009 hearing, at 11; Commission Staff Exhibit 9, Grant Assistance Agreement, Resolution of Magoffin County Fiscal Court, Grant Assumption and Assignment Agreement, Resolution of Assignee.

⁵⁹ Transcript of February 27, 2009 hearing, at 117.

⁶⁰ Id. at 123.

⁶¹ Id. at 125-126.

\$4,000.⁶² The elimination of the final 48 feet in the construction contract with Music resulted in the completion of Music's obligations under the modified construction contract. Because this was considered "an adjustment of quantities" by Mr. Brown, the modification was never reflected in a change order.⁶³ Mr. Brown stated that his certification of "100% percent complete" to KIA only meant that the contract with Music was 100 percent complete.⁶⁴ Mr. Brown acknowledged that he did not know if KIA would have had any way of knowing that the \$900,000 Paintsville Interconnection that it had funded was not finished or connected to a source of water.⁶⁵ Because of this modification, Music's construction contract was certified as completed in July 2007 and Music was paid in full. Music's one-year warranty for its work began at that time and expired one year later, prior to the line ever being connected, sanitized, and tested.⁶⁶

Because the interconnection was not complete in 2007, no as-built plans were prepared or provided, and no certification of completion was filed with KIA. It is likely that KIA did not realize the Paintsville Interconnection Project had not been completed,⁶⁷ as it subsequently approved and disbursed most of the remaining funds that had been allocated for the interconnection. Records reflect that these remaining funds were used to purchase computer software, a backhoe, a utility/service truck, and

⁶² Id. at 141-142.

⁶³ Id. at 143.

⁶⁴ Id.

⁶⁵ Id. at 143-144.

⁶⁶ Id. at 147.

⁶⁷ Id. at 143-144.

a scanner, and to upgrade two pump stations. Magoffin District requested permission to use the rest of the money for new water district headquarters. KIA denied this last request as being inconsistent with the project profile.

The interconnection has now been completed, but there is no meter in place and the pipe has not been sanitized or tested. Therefore, the interconnection is not fully functional and would not be immediately available in the event of an emergency.⁶⁸

A chronology of the Paintsville Interconnection Project is appended to this Order.

Magoffin District's decision to terminate construction of the Paintsville Interconnection prior to its actual completion was examined by the Commission during these proceedings. Testimony at the hearing was that the project had been effectively abandoned in July or August of 2007 because Magoffin District "could not work out a deal with Paintsville."⁶⁹ Randall Hardin, Chairman of Magoffin District, however, testified that, from the time he came on the Magoffin District Board in March 2007 until the 2008 drought, he had no contact with Paintsville.⁷⁰ Hardin further testified that he was not aware of anyone else from Magoffin District having had a conversation with Paintsville about the interconnection prior to October 2008, and that neither he nor the Board authorized anyone to speak to Paintsville on behalf of the water district.⁷¹

It was alleged at the hearing that the cost of purchasing water from Paintsville was "excessive" and could not be afforded. Magoffin District maintained this position

⁶⁸ Testimony at February 27, 2009 hearing, at 59-65.

⁶⁹ Id. at 141.

⁷⁰ Testimony at May 15, 2009 Video Deposition of Randall Hardin, at 18.

⁷¹ Id. at 19.

and claimed to be unaware that an increase in Magoffin District's cost to purchase water could be passed on to its customers through the use of a Purchased Water Adjustment. Magoffin District refused to consider the use of this alternate source of water supply, even though it could have alleviated the hardships resulting from the 2008 drought and provided a supplemental source of supply in the event of future droughts or shortages. Even though the adequacy and safety of the water available to Magoffin District from Salyersville was uncertain, a decision was made that any increase in the cost to provide water to Magoffin District customers was unacceptable, regardless of the consequences.⁷²

The Commission is very concerned that Magoffin District's water supply may again become insufficient, particularly if circumstances similar to those that existed during the fall of 2008 recur. Additional water that Magoffin District could purchase from Paintsville, Prestonsburg, and Morgan District may not be enough to eliminate the water supply problems that exist. Given the restrictions contained in the agreements that have been submitted, the very limited geographical areas involved, and the identical area and customers that could be served by water from Paintsville and Prestonsburg, the additional water that may be purchased under the contracts is limited, even if Magoffin District were to take the maximum amount available.

SUMMARY

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that:

⁷² Transcript of February 10, 2009 hearing, at 59, 81, 162, 163, 180; testimony of May 15, 2009 Video Teleconference Deposition of Randall Hardin, at 43.

1. Magoffin District lacks an adequate source of water to ensure that the total water purchased is sufficient in quality and quantity to furnish adequate, efficient, and reasonable service to its customers in times of drought or heavy demand.

2. The contracts with Salyersville, Prestonsburg, Paintsville, and Morgan District that Magoffin District has submitted will not provide Magoffin District with sufficient additional potable water to meet the reasonable needs of its customers in the event of a drought or severe water shortage.

3. The members of Magoffin District's Board of Commissioners apparently do not understand or appreciate what it means to "furnish adequate, efficient and reasonable" service to its customers, regardless of the circumstances involved, as required by KRS 278.030(2).

4. Magoffin District lacks a valid, objective standard to determine that a water supply emergency exists which will trigger the need for Magoffin District to purchase water from sources other than SWW.

5. Magoffin District's water shortage plan has not been reviewed by the members of its Board of Commissioners.

6. Magoffin District does not have a drought mitigation plan. Not having such a plan is an unreasonable practice, given a limited water supply and a history of water shortage and drought situations.

7. Minutes from Magoffin District's Board meetings during the 2008 drought reflect that the Board of Commissioners received minimal information regarding the drought situation, had minimal discussion, and took no action to solve the critical water needs of its customers during this severe water shortage.

8. The members of Magoffin District's Board of Commissioners have not accepted the significance of their duty to manage the business and affairs of the water district, as has been vested in them by KRS 74.070.

9. The contract between Magoffin District and SWW that has been submitted, which gives Magoffin District the right to purchase water from Prestonsburg on an emergency basis if SWW cannot deliver sufficient quantities of potable water to meet the needs of Magoffin District, is lawful and in the best interest of Magoffin District.

10. The rate and service provisions of the contract between Magoffin District and Prestonsburg that has been submitted and which provides that Prestonsburg will furnish emergency water supply service to Magoffin District are lawful and in the best interest of Magoffin District.

11. Magoffin District should submit to the Commission consent and release agreements from SWW, similar to the one submitted for Prestonsburg, for the contracts that have been submitted between Magoffin District and Paintsville and Magoffin District and Morgan District, as well as for any additional contracts to purchase water from alternate suppliers.

12. Magoffin District accepted approximately \$900,000 that was specifically appropriated by the General Assembly for an interconnection to Paintsville in order for Magoffin District to be able to purchase needed water from Paintsville.

13. Magoffin District stopped the Paintsville Interconnection before it was completed.

14. Magoffin District's action in stopping the Paintsville Interconnection was deliberate.

15. Magoffin District misrepresented the completion status of the Paintsville Interconnection and, knowing that it was not finished, informed KIA both directly and by implication that it had been completed.⁷³

16. Magoffin District petitioned KIA to release money from the \$900,000 appropriation in order for it to purchase vehicles and equipment which it represented would be needed or useful to maintain the Paintsville Interconnection, knowing that the interconnection had not been completed and that there was no intent to complete it.

17. Magoffin District Commissioners have generally failed to act in accordance with their statutory duties as set forth in KRS Chapter 74.

IT IS THEREFORE ORDERED that:

1. Magoffin District shall exercise its best efforts to secure the consent and release from Salyersville to purchase water from Paintsville and Morgan District and for any other water suppliers from whom it obtains an agreement to purchase a supply of water.

2. Magoffin District shall develop an objective standard for the purchase and use of water from alternate sources. Once the standard is met and the need for additional water is triggered, Magoffin District shall purchase and use the water that is needed.

⁷³ Transcript of February 2009 hearing, at 8-11; Commission Staff Exhibit 15, Magoffin County Water District invoice; Commission Staff Exhibit 16, letter from Randall Hardin, Manager, Magoffin District, to Tim Thomas, Executive Director, KIA (January 18, 2008).

3. Magoffin District shall ensure that the total water purchased from Salyersville and any other available source is sufficient in quality and quantity to provide its customers adequate service as defined by KRS 278.010(14).⁷⁴

4. The members of Magoffin District's Board of Commissioners shall review its water shortage response plan by January 14, 2011.

5. Magoffin District shall provide a chronological list of all actions taken since the hearing began on February 10, 2009 to complete the connection with the city of Paintsville.

6. Magoffin District shall file a drought mitigation plan with the Commission no later than January 14, 2011 which:

a. Establishes specific, objective events when the water district must purchase water from alternate source(s);

b. Identifies all alternate sources of water available (connected and ready to use) and submit appropriate contracts, including a release from Salyersville for each, for approval of the Commission;

c. Identifies the number of customers that can be served by each alternate source;

d. Identifies the geographical areas each alternate source can serve and, if the alternate source is expected to serve Magoffin District's entire distribution system, an explanation of how this provision of service will be accomplished;

e. Identifies which alternate sources are redundant; and

⁷⁴ KRS 278.010(14) defines adequate service as "having sufficient capacity to meet the maximum estimated requirements of the customer to be served"

f. Identifies the conditions that will apply to the usage of each alternate source.

7. At the time of its submission of the drought mitigation plan, Magoffin District shall also file with the Commission a copy of the minutes of each meeting of Magoffin District's Board of Commissioners at which the drought mitigation plan and Magoffin District's water shortage plan are discussed or acted upon.

8. Magoffin District shall take all actions necessary to make the Paintsville Interconnection Project functional.

9. Magoffin District and the members of its Board of Commissioners are hereby placed on notice that any failure to provide adequate service to Magoffin District's customers in the future may subject the water district and its commissioners to administrative sanctions to include the assessment of civil penalties pursuant to KRS 278.990(1) and removal from office pursuant to KRS 74.455. In addition, any officer, agent, or employee of the water district, or any other person who procures, aids, or abets a violation by Magoffin District, shall be subject to a civil penalty to be assessed by the Commission.

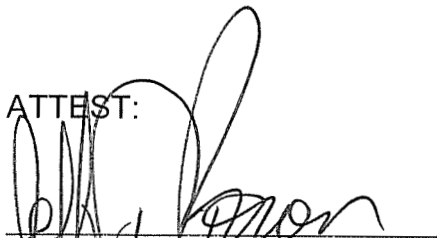
10. This case is closed and removed from the Commission's docket.

11. Any documents filed in the future pursuant to ordering paragraphs 5, 6, or 7 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission

ENTERED *mm*
NOV 30 2010
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2008-00443 DATED **NOV 30 2010**

The following is a general chronology of actions taken by various parties involved in the Paintsville Interconnection Project:

- 2006 General Assembly, House Bill 380 Through a line item grant, the General Assembly authorized \$900,000 for an interconnect between Magoffin District and Paintsville.¹
- October 25, 2006 *Kentucky Water Project Profile.* Magoffin District, as the legal applicant, stated that “[t]his project consists of construction of 8 miles of 8 inch pvc pipe from Mountain Parkway Extension East on U.S. 460 to Paintsville water line. This will be a main source of water for the Magoffin District.” The special impact of the proposed water project was stated as: “New service/improve service to 2000 unserved households.” This project profile was signed by William J. Cantrell, Manager of Magoffin District.²
- November 21, 2006 *Grant Assistance Agreement for WRIS Project No. WX21153022* (\$900,000 grant) between KIA and the Magoffin County Fiscal Court. This Agreement was signed by Bill W. May, Judge/Executive of Magoffin County, and the Magoffin County Fiscal Court.³
- November 28, 2006 *Grant Assumption and Assignment Agreement.* Signed by Bill W. May, Judge/Executive of Magoffin County, Magoffin County Fiscal Court, and Brenda Powers (“Powers”), Project Administrator, Big Sandy ADD. Also, the Resolution of Assignee, Magoffin District, from Magoffin County Fiscal Court, was signed by William J. Cantrell, Manager, Magoffin District.⁴
- December 1, 2006 *Estimated Project Budget: HB 380.* Signed by William J. Cantrell, Manager, Magoffin District.⁵

¹ Transcript of February 27, 2009 hearing, at 11; Commission Staff Exhibit 9.

² Transcript of February 27, 2009 hearing, at 11; Commission Staff Exhibit 9, Project Profile and Estimated Budget.

³ Transcript of February 27, 2009 hearing, at 11; Commission Staff Exhibit 9.

⁴ Id.

⁵ Id.

December 13, 2006 Letter from Powers to KIA, with required documents attached.⁶

April 19, 2007 *Notice of Award* of construction contract by Magoffin District to Music.⁷

May 13, 2007 Music to complete the work by November 9, 2007.⁸

May 17, 2007 William J. Cantrell's letter of resignation as Manager of Magoffin District to Randall Hardin, Chairman, "effective today."⁹

May 24, 2007 *Request for Payment and Project Status Report*, Draw Number 1. Magoffin District requested payment of \$234,937.47, including Project Expenses, Line Item 6, to Kenvirons in the amount of \$37,068.20. Eddie Brown ("Brown"), project engineer, certified that, at the time of this request, the project was 0% complete. Kenvirons' invoice to Magoffin District was attached to the support request for Contract 17A-Johnson County Transmission Line. This request was signed by Hardin and Powers.¹⁰

⁶ Documents attached were the following: (1) Executed Grant Agreement; (2) Exhibit 1 – Project Profile & Estimated Budget; (3) Exhibit 2 – Resolution; (4) Exhibit 3 – Schedule of Current Rates & Charges; (5) Clearinghouse State Applicator Identifier; (6) Application for Electronic Transfer of Funds Form; (7) Executed Assignment & Assumption Agreement; and (8) Fees for Engineering Services Form.

⁷ Transcript of February 29, 2009 hearing, at 13; Commission Staff Exhibit 10, Notice of Award.

⁸ Transcript of February 29, 2009 hearing, at 14; Commission Staff Exhibit 10, Notice to Proceed.

⁹ Magoffin District's Response to the Commission's Order of April 6, 2009, Item 2, Attachment. Magoffin District Board Meeting, minutes of May 17, 2007. William J. Cantrell resignation announced by Randall Hardin; William J. Cantrell had been the Manager of Magoffin District and the person in charge of the Paintsville Interconnection for Magoffin District; see entries above for October 25, 2006, November 28, 2006, and December 1, 2006.

¹⁰ Transcript of February 10, 2009 hearing, at 15-20; Commission Staff Exhibit 11, Attachment D, Request for Payment and Project Status Report, WX/SX Number WX21153022, Draw Number 1: Included is a request for payment of \$37,068.20 to Kenvirons, supported by May 11, 2007 invoice from Kenvirons to Magoffin District regarding Project No. 2006057, Contract 17A-Johnson County Transmission Line.

June 21, 2007 *Request for Payment and Project Status Report*, Draw Number 2, Magoffin District requested payment of \$186,683.04. Brown certified that, at the time of this request, the project was 38.2% complete. This request was also signed by Hardin and Powers.¹¹

July 25, 2007 *Request for Payment and Project Status Report*, Draw Number 3, Magoffin District requested payment of \$299,141.90. Brown certified that the project was 93.1% complete. This request was signed by Hardin and Powers.¹²

August 16, 2007 *Request for Payment and Project Status Report*, Draw Number 4, Magoffin District requested payment of \$5,000. Request was signed by Hardin and Powers.¹³

September 20, 2007 Brown attended Magoffin District Board Meeting and informed Magoffin District Board that "everything is completed on Project #17A" [emphasis added].¹⁴

October 17, 2007 *Request for Payment and Project Status Report*, Draw Number 5, Magoffin District requested payment of \$62,863. Brown certified 100% completion. Request was signed by Hardin and Powers.¹⁵

¹¹ Id. at 19-20; Commission Staff Exhibit 12.

¹² Commission Staff Exhibit 13.

¹³ Commission Staff Exhibit 14.

¹⁴ Magoffin District's Response to Commission's Order entered April 6, 2009, Item 2, Magoffin District Minutes, September 20, 2007 (filed Apr. 22, 2009); Commission Staff Exhibit 11, Attachment D, Request for Payment and Project Status Report, WX/SX Number WX21153022, Draw Number 1: Included is a request for payment of \$37,068.20 to Kenvirons, supported by May 11, 2007 invoice from Kenvirons regarding Project No. 2006057, Contract 17A-Johnson County Transmission Line.

¹⁵ Commission Staff Exhibit 15.

January 17, 2008 *Request for Payment and Project Status Report*, Draw Number 6. Magoffin District requested payment of \$90,479.11. In this request for payment, the expenses listed included \$85,584.50 for equipment, including \$66,000 for a backhoe from Wilson Equipment and \$19,584.50 for Software Solutions. Request was signed by Hardin and Powers.¹⁶

January 18, 2008 Letter from Hardin, as Manager¹⁷ of Magoffin District, to Tim Thomas, Executive Director, KIA, regarding remaining funds. Hardin requested that KIA allow Magoffin District to use remaining funds from two current projects “that have recently been completed.” [Emphasis added.] One of the projects was WX21153022, the Paintsville Interconnection, also referred to as Contract No. 17A, which Hardin stated had \$20,895.48 remaining. The other project was WX21153022, also referred to as Contract No. 17B, for water line extensions, which Hardin stated had remaining funds of \$43,692.51. The reason given for the request was that “[t]he Water District is in great need of a new office building.”¹⁸

February 21, 2008 Kelli B. Rice, KIA, e-mailed Junior Wright, GOLD, and copied Debby Milton of KIA, Tim Thomas of KIA, and Powers to explain that the request made by Hardin for the release of \$66,000 remaining grant funds for the acquisition of an office building to house the water district would not be allowed. Ms. Rice also stated that she had talked to Hardin and advised him that Magoffin District could amend the project profile to use the remaining funds to extend water lines.¹⁹

¹⁶ Transcript of February 10, 2009 hearing, at 21; Commission Staff Exhibit 16.

¹⁷ Although Randall Hardin had previously signed many documents as “Chairman” of Magoffin District, in this request he signed as “Manager” of Magoffin District.

¹⁸ Hardin stated that the remaining funds from both of these projects would be used to purchase property or actually purchase a building to house the water district.

¹⁹ Transcript of February 27, 2009 hearing, at 26; Commission Staff Exhibit 19.

August 28, 2008 E-mail from Powers to Kelli Rice, KIA, copied to Brown at Kenvirons. Powers requested that Magoffin District be allowed to use the remaining funds from both grants (at this time totaling \$53,189.04) “to purchase a utility/service truck to maintain the lines that were constructed with these two grants, to upgrade two pump stations, and to purchase a scanner for billing purposes.” [Emphasis added.]²⁰

August 29, 2008 E-mail from Debby Milton, KIA, to Kelli Rice, KIA, copied to John Covington, KIA. Milton informed Rice that “if they completed the projects for WX21153022 and WX21153022 . . . they can amend the profiles and utilize the remaining funds as requested. If they just wanted to change what the money was intended for then I would say no.”²¹

September 8, 2008 E-mail from Kelli Rice, KIA, to Powers forwarding the August 29, 2008 e-mail from Debby Milton.²²

September 9, 2008 E-mail from Powers to Kelli Rice, KIA, stating, “Thanks so much, I’ll relay this to the Water District.”²³

²⁰ Commission Staff Exhibit 20.

²¹ Id.

²² Id.

²³ Id.

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