

RECEIVED

MAR 4 2 34 PM '92

PUBLIC SERVICE COMMISSION PETITIONER

92-084

BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY

CITY OF FRANKLIN

vs.

PETITION AND COMPLAINT AGAINST
SIMPSON COUNTY WATER DISTRICT

SIMPSON COUNTY WATER DISTRICT

RESPONDENT

* * * * *

The Petitioner, City of Franklin (hereinafter "Franklin") files this Petition before the Kentucky Public Service Commission and this Complaint against the Simpson County Water District (hereinafter "Simpson District") seeking an Order:

(1) declaring that Franklin had the right and authority to increase its wholesale water rates to Simpson District from the former rate being paid by Simpson District (i.e., 84.78¢ per 1000 gallons) to the rates imposed by Franklin City Ordinance No. 610.5C-6-90 on June 25, 1990 (i.e., \$1.3478 per 1000 gallons) and again by Franklin City Ordinance No. 610.5D-5-91 on May 13, 1991 (i.e., \$1.68 per 1000 gallons);

(2) declaring and imposing on the Simpson District a purchase water adjustment authorized pursuant to 807 KAR 5:068 directing and permitting Simpson District to recover prospectively through retail rates the increased wholesale water costs from Franklin (the same being \$1.68 per 1000 gallons); and

(3) declaring and imposing on Simpson District's retail water rates a surcharge to recover and pay for the increased

retail water costs incurred by Simpson District from the date of Franklin's Ordinances to the date of the Commission's Order in this Petition and Complaint proceeding (plus interest), and directing Simpson District to pay such surcharge revenues to Franklin.

Alternatively, if this Commission has jurisdiction over the wholesale water rates to be charged Simpson District by Franklin, Franklin seeks an Order (i) increasing said wholesale water rate from the rate currently being paid by Simpson District (84.78¢ per 1000 gallons) to \$1.68 per 1000 gallons, and (ii) imposing a surcharge on Simpson District's retail water rates sufficient in amount to compensate Franklin for the lost wholesale revenues due to Simpson District's failure to pay the rates set forth and prescribed in the above-referenced Ordinances. In support of this Petition and Complaint Franklin alleges as follows:

PARTIES

(1) Franklin is an incorporated city located in Simpson County, Kentucky. Pursuant to KRS 96.350, Franklin has established and currently operates a municipal water treatment plant located at Highway 100 East, Franklin, Kentucky. Franklin supplies water at wholesale to Simpson District.

(2) Simpson District is a water district created pursuant to Chapter 74 of the Kentucky Revised Statutes which is engaged in the business of selling water at retail to customers located in Simpson County but otherwise not served by Franklin. Simpson District is subject to the jurisdiction of the Kentucky Public

Service Commission pursuant to Chapter 278 of the Kentucky Revised Statutes.

NOTICE

(3) Pursuant to KRS Chapter 224, Franklin informed Simpson District of its intent to increase its wholesale water rates at the time the above-referenced Ordinances were passed; Franklin hereby informs and notifies Simpson District of this action to compel Simpson District to recover the increase in Franklin's wholesale water costs through Simpson District's retail water rates.

BASIS FOR PETITION AND COMPLAINT

(4) Since April 1967, Franklin has had a wholesale water supply contract with Simpson District to supply water for Simpson District's subsequent resale to its retail water customers.

(5) Since April 1967, Franklin and Simpson District have at various times renegotiated the terms of their water supply contract. Insofar as this Petition and Complaint are concerned, these changes have resulted in the following wholesale water rates being charged by Franklin to Simpson District:

April 1967	21.5¢	per 1000 gallons
August 1982	54.0¢	per 1000 gallons
April 1986	84.78¢	per 1000 gallons

These adjustments have been necessary because of increases in the cost of producing water necessary to fulfill both the needs of Franklin's retail customers and the water needs of Simpson District.

(6) Under these various water supply contracts, the amount of water purchased by Simpson District has increased so that in the period July 19, 1990 through December 19, 1991, Franklin sold 362,908,000 gallons to Simpson District.

(7) Since the most recent contractual revision of the wholesale water rate under the wholesale water supply contract between Franklin and Simpson District, water production costs have continued to increase for Franklin. Simpson District has refused to negotiate with Franklin for a further increase in the wholesale water rates charged by Franklin to Simpson District.

(8) On July 1, 1990, Franklin enacted an ordinance which increased the wholesale water rate to Simpson District from 84.78 per 1000 gallons to \$1.3478 per 1000 gallons.

(9) Simpson District continued to accept water from Franklin after July 1, 1990, but has refused to pay the increased rate of \$1.3478; instead Simpson District continued to pay Franklin the April 1986 rate of 84.78¢ per 1000 gallons.

(10) On May 13, 1991, Franklin enacted an ordinance which increased the wholesale water rates to Simpson District from \$1.3478 per 1000 gallons to \$1.68 per 1000 gallons.

(11) Simpson District continued to accept water from Franklin after May 13, 1991, but has refused to pay the increased rate of \$1.68; instead Simpson District has continued to pay Franklin the April 1986 rate of 84.78¢ per 1000 gallons.

(12) As of January 6, 1992 Simpson District owes Franklin \$265,648.89 (including penalties) for wholesale water purchased

under the rate of \$1.3478 per 1000 gallons for the period July 1, 1990 to May 12, 1991, and for wholesale water purchased under the rate of \$1.68 per 1000 gallons for the period May 13, 1991 through January 6, 1992.

(13) On August 26, 1991, Franklin filed an action in the Simpson Circuit Court seeking a money judgment against Simpson District for the balance due on its water purchases on and after July 1, 1990 -- the date of the first Franklin ordinance increasing Simpson District's rates from 84.78¢ per 1000 gallons to \$1.3478 per 1000 gallons. Recovery was sought in the total amount of \$144,502.66, plus interest.

(14) On November 12, 1991, upon Motion to Dismiss by Simpson District for lack of subject matter jurisdiction, the Simpson Circuit Court dismissed the Complaint of Franklin on the ground that, pursuant to KRS 278.040(2) and 278.200, the Kentucky Public Service Commission has exclusive jurisdiction over the wholesale water rates to be charged by a City to a regulated water district. (See Appendix 1).

(15) Franklin filed a Notice of Appeal to the Kentucky Court of Appeals seeking review of the Simpson Circuit Court opinion on November 22, 1991.

(16) Franklin was not and is not restricted by Commission jurisdiction as to the wholesale water rates it charged to Simpson District, and insofar as Commission jurisdiction is concerned, Franklin had the authority to charge a wholesale water

rate of \$1.3478 on July 1, 1990, and a wholesale water rate of \$1.68 on May 13, 1991.

(17) The failure of Simpson District to pay Franklin's wholesale water rate of \$1.3478 per 1000 gallons for the period July 1, 1990 to May 12, 1991 is unlawful and arbitrary.

(18) The failure of Simpson District to pay Franklin's wholesale water rate of \$1.68 per 1000 gallons for the period May 13, 1991 to date is unlawful and arbitrary.

(19) Simpson District should be directed by this Commission, prospectively only, to increase its retail water rates, through a purchase water adjustment under 807 KAR 5:068, in order to allow Simpson District to recover from their retail customers revenues sufficient in amount to pay Franklin at Franklin's current wholesale water rate of \$1.68 per 1000 gallons.

(20) This Commission should impose a surcharge on the retail rates of Simpson District sufficient in amount to allow Simpson District to receive the amount owed Franklin for past water purchases (\$265,648.89 through January 6, 1992), said surcharge to be in place for a period of time deemed appropriate by the Commission, but not greater than five years. Simpson District should further be directed to timely remit said surcharge revenues to Franklin.

(21) Alternatively, if this Commission has jurisdiction over the wholesale water rates to be charged by Franklin to Simpson District, Franklin seeks an Order from this Commission

(a) increasing its wholesale water rates to Simpson District to a

rate of \$1.68 per 1000 gallons, (b) increasing Simpson District's retail rates to allow Simpson District to recover the costs of wholesale water from Franklin, (c) directing Simpson District to pay Franklin at a rate of \$1.68 per 1000 gallons for all water purchased at wholesale prospectively from the date of the Commission's Order, and (d) imposing on Simpson District's retail water rates a surcharge sufficient in amount to allow Simpson District to pay Franklin for the past wholesale water charges (including penalties) remaining unpaid by Simpson District.

(22) The failure of Simpson District to act promptly and responsibly in seeking retail rate relief from this Commission to recover the lawful wholesale water charges of Franklin is a violation of Simpson District's statutory obligations under Chapters 74 and 278 of the Kentucky Revised Statutes and results in an unlawful and improper subsidy by Franklin to Simpson District's ratepayers which must not be sanctioned by the Public Service Commission. Simpson District should be directed to give Notice of the prospective purchased water adjustment pursuant to the provisions of 807 KAR 5:068, Section 5.

(23) Simpson District should be directed to give timely publication and notice to Simpson District's retail customers of this action seeking to impose a surcharge on Simpson District's retail water rates.

(24) While Franklin has the lawful right to terminate service to Simpson District it has not done so out of its sense of civic responsibility to Simpson District's retail customers.

Wherefore, Franklin prays for an Order from the Commission:

(1) Declaring and adjudging that it does not have jurisdiction over the wholesale water rates charged by Franklin to Simpson District;

(2) Directing Simpson District to give Notice pursuant to 807 KAR 5:068, Section 5 (as to the purchased water adjustment) and 807 KAR 5:011, Section 8 (as to the proposed surcharge);

(3) Granting to Simpson District, prospectively only, an increase in its retail water rates, through a purchase water adjustment under 807 KAR 5:068, to allow Simpson District to recover from their retail customers sufficient revenues to pay Franklin its wholesale water rate of \$1.68 per 1000 gallons;

(4) Directing Simpson District to pay Franklin for Simpson District's future wholesale water purchases at Franklin's current rate of \$1.68 per 1000 gallons.

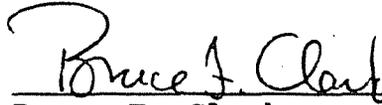
(5) Imposing a surcharge on the retail rates of Simpson District sufficient in amount to allow Simpson District to receive the amount owed Franklin for past water purchases (including penalties) (\$265,648.89 through January 6, 1992), said surcharge to be in place for a period of time deemed appropriate by the Commission, but not greater than five years.

(6) Directing Simpson District to timely remit any surcharge revenues to Franklin;

(7) Alternatively, if this Commission has jurisdiction over the wholesale water rates to be charged by Franklin to Simpson District, Franklin seeks an Order from this Commission

(i) increasing its wholesale water rates to Simpson District to a rate of \$1.68 per 1000 gallons; (ii) increasing Simpson District's retail rates to allow Simpson District to recover the costs of wholesale water from Franklin; (iii) directing Simpson District to pay Franklin at a rate of \$1.68 per 1000 gallons for all water purchased at wholesale prospectively from the date of the Commission's Order; and (iv) imposing on Simpson District's retail water rates a surcharge sufficient in amount to allow Simpson District to pay Franklin, within at least a five-year period, for the past wholesale water charges (including penalties) remaining unpaid by Simpson District; and

(8) Granting such other relief as the Commission might find appropriate.



Bruce F. Clark
Thomas A. Marshall
STITES & HARBISON
421 West Main Street
Frankfort, Kentucky 40601
Telephone: (502) 223-3477
Fax: (502) 223-4124



Timothy J. Crocker *BFC*
CROCKER & WILKEY
126 West Kentucky Street
P.O. Box 305
Franklin, Kentucky 42134-0305
Telephone: (502) 589-5900
Fax: (502) 586-3632

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition and Complaint against Simpson County Water District was served by mailing same, postage prepaid to James Snider, Chairman, and Joe Liles, Manager, Simpson County Water District, 951 Fairview Avenue, P. O. Box 1118, Bowling Green, Kentucky 42102 on this the 4th day of March, 1992.



Counsel for Petitioner

THIS IS THE GENUINE CONTRACT

Record in Minute Book
10-Page 276

Exhibit A

WATER PURCHASE AGREEMENT

THIS CONTRACT for the sale and purchase of water is entered into as of the 5th day of April, 1967 between the City of Franklin, Kentucky, hereinafter referred to as the "City" and Simpson County Water District, hereinafter referred to as the "District".

WITNESSETH

Whereas, the District has been organized and established under the provisions of Chapter 74 of the Kentucky Revised Statutes for the purpose of constructing and operating a water supply distribution system serving water users within the area described in plans now on file in the office of the District and to accomplish this purpose, the District will require a supply of treated water, and

Whereas, the City owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the City system and the estimated number of water users to be served by the said District as shown in the plans of the system now on file in the office of the District and

Whereas, by Resolution enacted on the 6th day of June 1966 by the Council of the City, the sale of water to the District in accordance with the provisions of the said Resolution was approved, and the execution of this contract carrying out the said Resolution by the Mayor, attested by the Secretary, was duly authorized, and

Whereas, by Resolution of the Board of Commissioners enacted on the 5th day of April, 1967, the purchase of water from the City in accordance with the terms set forth in the said Resolution was approved, and the execution of this contract by the Chairman, and attested by the Secretary, was duly authorized;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. The City agrees:

1. To furnish the District, at the points of delivery hereinafter

specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the State Board of Health in such quantity as may be required by the District (not to exceed 20,000,000 gallons per month).

2. That water will be furnished at a reasonably constant normal pressure as follows:

- (a) To furnish water at the Kentucky Highway No. 100 west connection off a 6 inch cast iron pipe with a minimum discharge of 600 gallons per minute with a 50 pound static head.
- (b) To furnish water at the Kentucky Highway No. 100 east connection off a 12 inch cast iron pipe with a minimum discharge of 1500 gallons per minute with a 50 pound static head.
- (c) To furnish water at the U. S. Highway 31-W north connection off a 8 inch iron pipe with a minimum discharge of 1000 gallons per minute with a 50 pound static head.
- (d) To furnish water at the U. S. Highway 31-W south connection off a 8 inch cast iron pipe with a minimum discharge of 1000 gallons per minute with a 50 pound static head.

If a greater pressure than that normally available at the point of delivery is required by the District, the cost of providing such greater pressure shall be borne by the District. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the City from this provision for such reasonable period of time as may be necessary to restore service.

3. To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the District and to calibrate such metering equipment whenever requested by the District but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The

previous readings of any meter disclosed by test to be inaccurate shall be corrected for the 2 months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless City and District shall agree upon a different amount. The metering equipment shall be read on the first day of every month.

4. To furnish the Secretary of the District, at Franklin, Kentucky not later than the 7th day of each month, with an itemized statement of the amount of water furnished the District during the preceding month.

B. The District agrees:

1. To pay the City, not later than the 14th day of each month, for water delivered, at the rate of $21\frac{1}{2}$ cents per 1000 gallons per month.

2. To pay as an agreed cost, a connection fee to connect the City system with the system of the District, the sum of _____ dollars which shall cover any and all costs of the City for installation of the metering equipment and appuntenances.

C. It is further mutually agreed between the City and the District as follows:

1. That this contract shall extend for a term of forty-five years from the date of the initial delivery of any water by the City to the District and, thereafter may be renewed or extended for such term, or terms, as may be agreed upon by the City and District, or such additional period of time as may be required to pay any bonded indebtedness incurred by the District during the first five years of this contract.

2. That thirty days prior to the estimated date of completion of construction of the District's water supply distribution system, the District will notify the City in writing the date for the initial delivery of water.

3. When requested by the District the City will make available to the contractor at the point of delivery, or other point reasonably close thereto, water sufficient for testing, flushing, and trench filling the system of the District during construction, irrespective of whether the metering equipment has been installed at that time, at a flat charge of \$144.00 which will be paid by the contractor or, on his failure to pay, by the District.

4. That the City will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the District with quantities of water required by the District. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the City is otherwise diminished over an extended period of time, the supply of water to District consumers shall be reduced or diminished in the same ratio or proportion as the supply to City consumers is reduced or diminished.

5. That the District is also granted an option to renew or extend this contract under the same terms and conditions for an additional twenty year period, provided at least two years written notice of the District's intention to exercise this option to extend or renew is given to the City before the expiration of the initial forty-five year period. Other provisions of this contract may be modified or altered by mutual agreement.

6. In the event the City increases its rates to each of its customers, the rates which apply to this contract shall be automatically increased, the same percentage as that percentage increase charged such customer of the City, whose rate is increased

the smallest percentage.

7. The District shall make a deposit in an amount equal to one month's minimum charge (\$215.00, before tap is made.

8. That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of Kentucky and the City and District will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

9. That the construction of the water supply distribution system by the District is being financed by a loan from (or a loan insured by) the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the District are conditioned upon the approval, in writing, of the State Director of Kentucky of the Farmers Home Administration. Similarly, any modification of the provisions of this contract, including any increase in the schedule of rates to be paid by the District for the delivery of water shall be conditioned upon the prior approval, in writing, of the State Director of Kentucky, of the Farmers Home Administration.

10. That in the event of any occurrence rendering the District incapable of performing under this contract, any successor of the District, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the District hereunder.

11. The District agrees not to contract with nor furnish water to any user for resale.

12. The District agrees to furnish the City with a sales tax exemption certificate so that no sales tax need be withheld and charged on the water furnished to the District by the City.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be

executed by its duly authorized officers on the day and year first above written.

CITY OF FRANKLIN, KENTUCKY

BY Henry Broderson
Henry Broderson, Mayor

ATTEST:

W. B. Caudill
W. B. Caudill, Clerk

SIMPSON COUNTY WATER DISTRICT

BY Billy J. Cherry
Chairman
(Official Title)

ATTEST:

Jack H. Ferguson
Secretary

STATE OF KENTUCKY

COUNTY OF SIMPSON

I, the undersigned, a notary public in and for the state and county aforesaid, hereby certify that on this 5th day of April 1967, the foregoing Instrument of Writing was produced to me by the parties in the County aforesaid and acknowledged by Henry Broderson, Mayor of the City of Franklin, Kentucky, and by W. B. Caudill, Clerk thereof, to be the free act and deed of the City of Franklin, and on the 5th day of April, 1967 the same was acknowledged before me by Billy J. Cherry, Chairman of the Simpson County Water District, and Jack H. Ferguson, Recording Secretary thereof, to be the free act and deed of said Simpson County Water District.

Given under my hand this 5th day of April, 1967.

My com. expires NOTARY PUBLIC, STATE OF KY. AT LARGE
MY COMMISSION EXPIRES JULY 20, 1968

Robert E. Taylor
Notary Public

APPROVAL BY FARMERS HOME ADMINISTRATION

This contract is approved on behalf of the Farmers Home Administration on this the _____ day of _____, 19____.

FARMERS HOME ADMINISTRATION
BY _____
(Official Title)

STATE OF KENTUCKY
COUNTY OF SIMPSON

I, the undersigned, a notary public in and for the state and county

aforesaid, hereby certify that the foregoing Instrument of Writing was on this the _____ day of _____, 19____ produced to me and acknowledged before me by _____ of Farmers Home Administration, to be the free act and deed of said Farmers Home Administration.

Given under my hand this _____ day of _____, 19____

My com. expires _____.

Notary Public