

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BOONE COUNTY FISCAL)
COURT AND BOONE COUNTY WATER DISTRICT)
FOR TRANSFER OF CONTROL OF WATER)
SYSTEM; TO TERMINATE AN EXISTING)
OPERATION AND MAINTENANCE AGREEMENT)
BETWEEN THE APPLICANTS; AND APPROVAL) CASE NO. 2010-00065
OF AGREEMENTS BETWEEN THE BOONE)
COUNTY FISCAL COURT AND BOONE COUNTY)
WATER DISTRICT AND KENTUCKY)
INFRASTRUCTURE AUTHORITY AND BOONE)
COUNTY WATER DISTRICT AS DEBT)
INSTRUMENTS)

ORDER

Boone County Fiscal Court (“the County”) and Boone County Water District (“Boone District”) have jointly applied for Commission authorization for the transfer of control of the County’s water distribution system to Boone District. Boone District has also applied for authorization to enter into a Purchase and Lease Agreement with the County and for authorization to assume the County’s obligations under a loan agreement with the Kentucky Infrastructure Authority (“KIA”).

Having considered the application and being otherwise sufficiently advised, the Commission finds that:

1. Boone District is a water district organized pursuant to KRS Chapter 74.

2. Boone District owns and operates a water distribution system that serves approximately 23,097 customers in Boone County, Kentucky.¹

3. As of December 31, 2009, Boone District had total net utility plant of \$70,165,663.²

4. As of December 31, 2009, Boone District had total assets and debits of \$78,514,967 and total liabilities of \$4,004,524.³

5. As of December 31, 2009, Boone District employed 30 persons to operate and manage its water distribution system.⁴

6. For the year ending December 31, 2009, Boone District had total water operating revenues of \$10,350,435.⁵

7. The County is the legislative and governing body for Boone County, Kentucky.

8. In 2002, the County began a multi-phased project to construct facilities to serve portions of unincorporated Boone County for which service by Boone County's then-existing water suppliers⁶ was not feasible.

¹ *Annual Report of Boone County Water District to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2009* at 27.

² *Id.* at 7.

³ *Id.* at 9.

⁴ *Id.* at 5.

⁵ *Id.* at 11.

⁶ At that time, Boone County Water District, the city of Florence, Kentucky, and Bullock Pen Water District served areas of Boone County.

9. In 2002, the County constructed Subdistrict A - the first phase of its planned facilities. This phase consisted of 6.83 miles of 12-inch water mains and 15.15 miles of 8-inch water mains and was constructed at a cost of \$5,081,811. It was financed with the proceeds of the sale of general obligation bonds (General Obligation Public Bonds, Series 2002B).⁷

10. In 2006, the County constructed Subdistrict B - the second phase of its planned facilities. This phase consisted of 4.07 miles of 12-inch water mains and 9.27 miles of 8-inch water mains and was constructed at a cost of \$3,815,378. The County funded this construction with \$2,548,148 from the proceeds of a KIA loan, a KIA grant of \$1,000,000, and internal funds of \$267,230.⁸

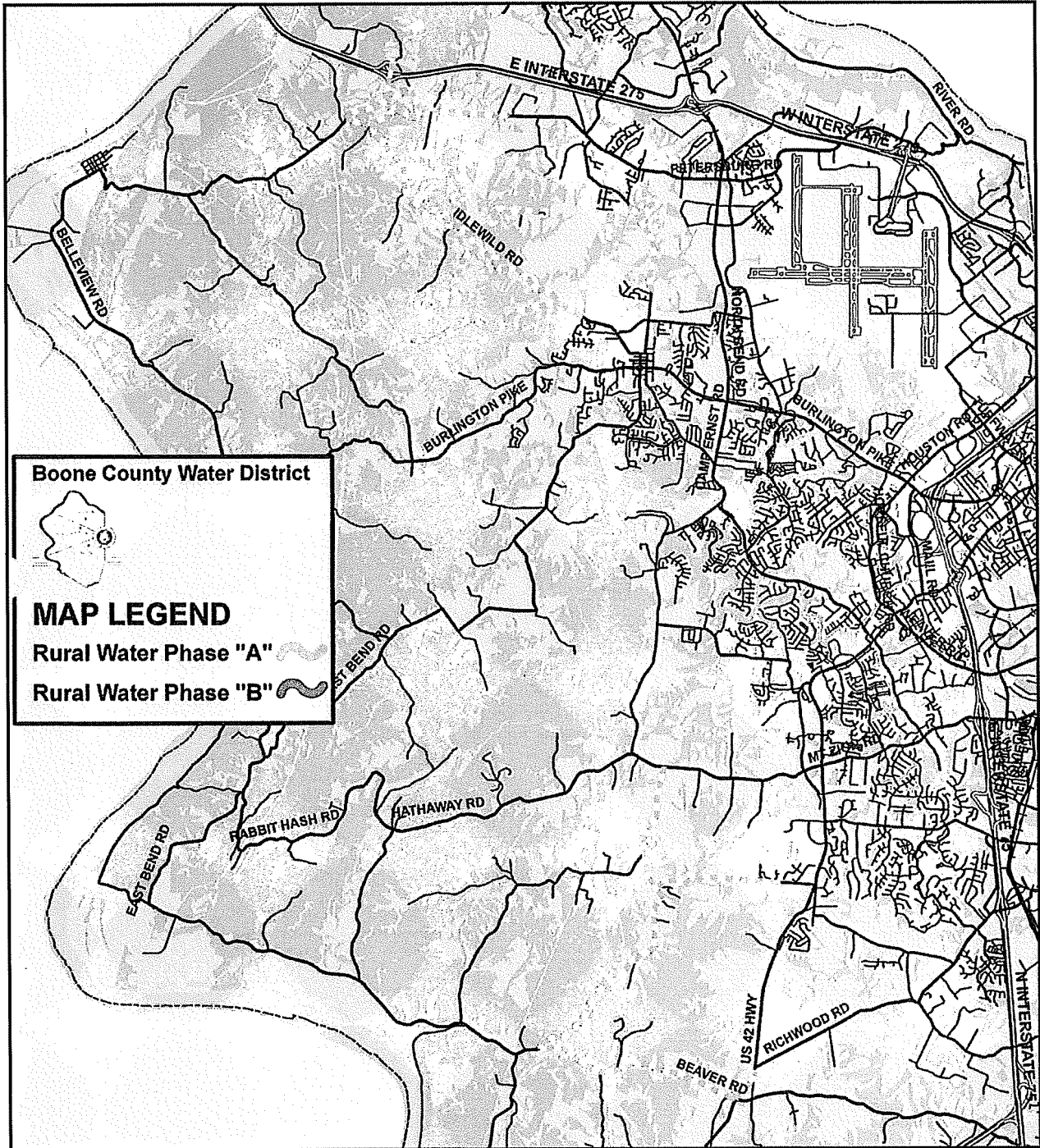
11. The County's facilities are located in unincorporated areas of Boone County and are within Boone District's territory. Figures 1 and 2 reflect the locations of these facilities.

12. On August 1, 2002, the County executed an "Operation and Maintenance Agreement" with Boone District in which Boone District agreed to operate and maintain the County's water distribution facilities, to provide potable water to customers of these facilities, and to perform all billing and collection services. In return for these services, the County would compensate Boone District based upon an operation and maintenance expense factor, which is determined from Boone District's reported operation and maintenance expenses applied to the number of gallons of water sold to

⁷ See Case No. 2002-00085, *County of Boone, Kentucky* (Ky. PSC July 9, 2002) (approving construction of the facilities and issuance of bonds).

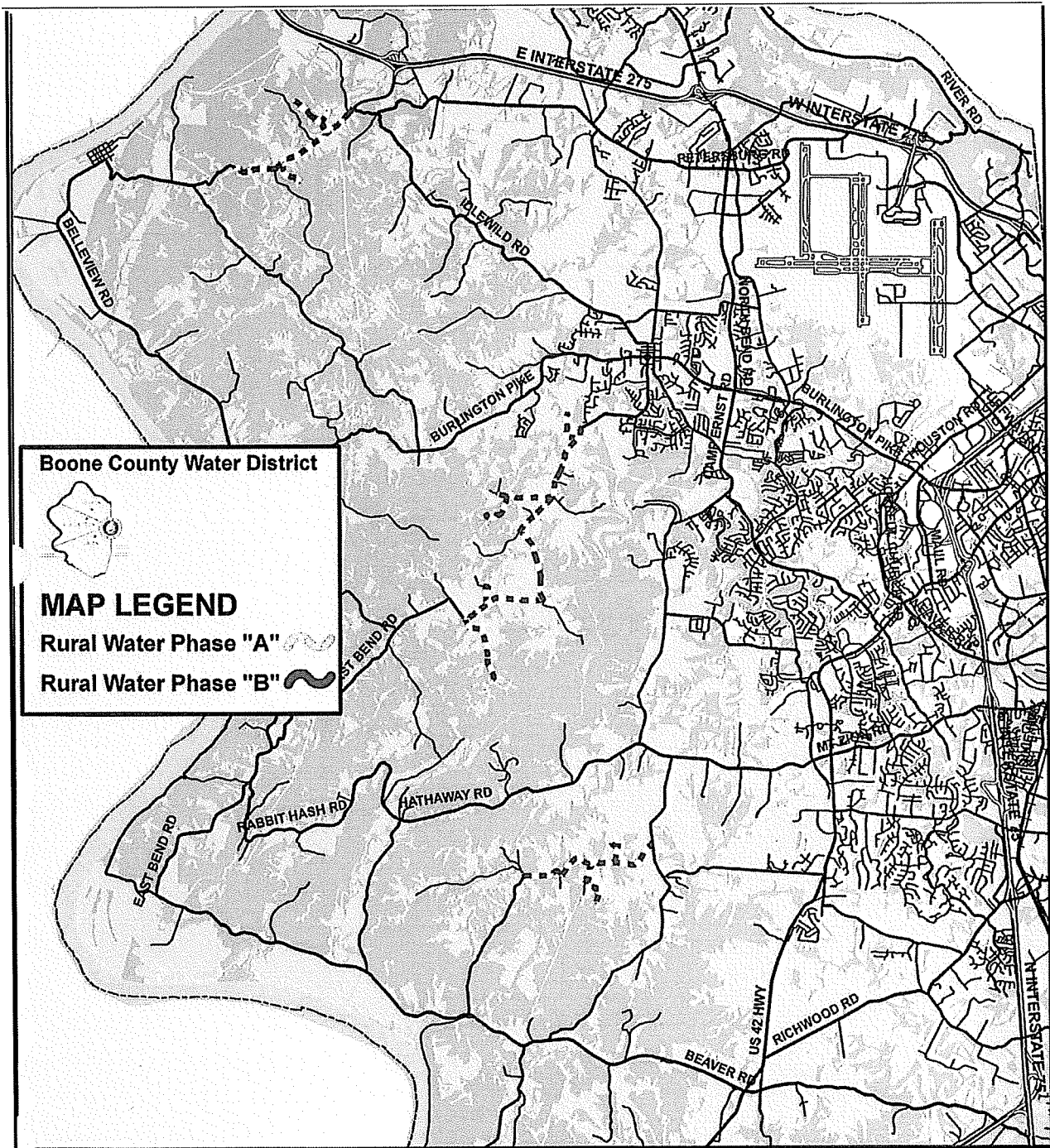
⁸ See Case No. 2005-00291, *County of Boone, Kentucky* (Ky. PSC Feb. 1, 2006).

FIGURE 1: SUBDISTRICT A



Source: Application, Exhibit 4-A.

FIGURE 2: SUBDISTRICT B



Source: Application, Exhibit 4-B

Boone District's customers. Upon payment of all debt instruments to finance these facilities, the County agreed to transfer its interest in the facilities to Boone District.

13. Boone District has operated and maintained the County's water distribution facilities since their construction.

14. The County currently charges rates for water service based upon Boone District's schedule of rates for water service and a monthly surcharge of \$25. The proceeds from the monthly surcharge are used solely to retire the debt obligations incurred to finance the facilities' construction.

15. The County's water service rates do not presently generate sufficient revenues to meet the facilities' operating expenses and debt service requirements.⁹ Since the construction of the facilities, the County has paid from its general funds any deficit to meet debt instruments.

16. As of December 31, 2008, the County's facilities served 500 customers and had total annual water operating revenues of \$781,078.¹⁰

17. The County proposes to execute a "Purchase and Lease Agreement" with Boone District to transfer control of its water distribution facilities to Boone District. This agreement provides:

a. Boone District will lease the County's Subdistrict A facilities until August 1, 2037.

⁹ *Annual Report of the County of Boone, Kentucky to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2008* at 9.

¹⁰ *Id.* at 21.

b. Boone District will make semi-annual lease payments to the County. These payments represent the amount necessary to meet the principal and interest payments on that portion of General Obligation Public Bonds, Series 2002B, that the County used to finance the construction of Subdistrict A facilities.

c. Boone District's semi-annual lease payments will also compensate the County for revenues that the County foregoes by the termination of the Operations and Maintenance Agreement and immediate transfer of control of the facilities to Boone District.

d. Assuming no prepayments, Boone District will make lease payments to Boone County totaling \$4,374,900 over the term of the lease agreement. Approximately \$2,728,167 of this amount represents the payment of principal.

e. Boone District may prepay in full its lease payments by paying the sum of the unpaid principal component of the lease payments, any due or past due lease payments, and any unpaid accrued interest on the outstanding principal component of the lease payments.

f. Upon completion or prepayment of the lease payments, full legal title to the Subdistrict A facilities will transfer to Boone District.

g. The County will transfer title and all interest in the County's Subdistrict B facilities in return for Boone District's assumption of the County's obligations to repay the remaining balance owed on the KIA loan into which the County entered to finance the construction of the Subdistrict B facilities.

h. The County, Boone District, and KIA will execute an "Assumption and Supplemental Assistance Agreement" that amends the County's original loan

agreement with KIA and substitutes Boone District as the responsible party for payment of the remaining balance owned on the KIA loan.

18. Upon execution of the Purchase and Lease Agreement and the Assumption and Supplemental Assistance Agreement, the County and Boone District will terminate the existing Operation and Maintenance Agreement and the customers of the County's facilities will become Boone District's customers.

19. The County's current customers will not experience any change in their current rates for water service, but will continue to pay Boone District's rates and charges for water service and a monthly surcharge of \$25. Proceeds from the monthly surcharge will be used solely to retire Boone District's obligations under the Purchase and Lease Agreement and the Assumption and Supplemental Assistance Agreement. Upon payment of these obligations, the surcharge will cease.

20. The County's loan agreement with KIA is for a 30-year period and requires semi-annual principal and interest payments. The final loan payment is scheduled for June 1, 2037. The loan has an interest rate of 2.70 percent per annum. As of December 1, 2009, the remaining balance on this loan was \$2,394,369.¹¹

21. Boone District's acquisition of the County's facilities will enhance Boone District's ability to expand water service in rural areas of Boone County by integrating the County's facilities completely within its own distribution system and permitting Boone District to make extensions to the existing County facilities. Presently, the County's facilities serve as a barrier to expansion of Boone District's facilities to unserved areas of Boone County.

¹¹ Application at Exhibit 9.

Based upon these findings of fact, the Commission makes the following conclusions of law:

1. KRS 278.010(3)(d) defines a utility as “any person except . . . a city, who owns, controls, operates or manages any facility used or to be used for or in connection with . . . [t]he diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation.”

2. KRS 278.010(2) defines a “person” to include corporations.

3. KRS 278.010(1) defines “corporation” to include “private, quasipublic and public corporations.”

4. The County is a county of Kentucky and, as such, is a quasipublic corporation.¹²

5. Through its ownership and operation of water distribution facilities, the County is a utility and is subject to Commission jurisdiction.¹³

6. Boone District is a public corporation.¹⁴

7. Boone District is a utility and is subject to Commission jurisdiction.¹⁵

8. KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission.” As Boone District is a

¹² See *Howell v. Haney*, 330 S.W.2d 941 (Ky. 1960).

¹³ KRS 278.040(1) and (2).

¹⁴ KRS 74.070. See also *Essex Intern, Inc. v. Public Service Commission*, 484 S.W.2d 837 (Ky. 1972); *City of Cold Spring v. Campbell County Water District*, 334 S.W.2d. 269 (Ky. 1960).

¹⁵ KRS 278.015.

person and proposes to acquire ownership of the County's water distribution facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

9. KRS 278.020(6) provides that "[n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an 'acquirer'), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission."

10. Boone District has the financial, technical, and managerial abilities to provide reasonable service to the County's present customers.

11. Boone District's proposed acquisition of control of the County's facilities is in accordance with law, for a proper purpose, and consistent with the public interest.

12. KRS 278.300 provides that no utility shall issue any evidences of indebtedness or assume any obligation or liability in respect to evidences of indebtedness of any other person until it has been authorized to do so by the Commission.

13. Boone District's execution of the Purchase and Lease Agreement and the Assumption and Supplemental Assistance Agreement and the obligations and liabilities evidenced by those agreements is for a lawful object within Boone District's corporate purposes, is necessary and appropriate for and consistent with Boone District's proper performance of its service to the public and will not impair its ability to perform that service and is reasonably necessary and appropriate for such purpose.

IT IS THEREFORE ORDERED that:

1. The transfer of control of the County's water distribution facilities to Boone District is approved.

2. Boone District is authorized to enter into the Purchase and Lease Agreement.

3. Boone District is authorized to execute the Assumption and Supplemental Assistance Agreement.

4. Within 10 days of executing the Purchase and Lease Agreement, Boone District and the County shall notify the Commission in writing of the execution of the Agreement.

5. Within 10 days of executing the Purchase and Lease Agreement, Boone District shall file revised tariff sheets reflecting addition of the monthly surcharge assessed to the County's current customers. These sheets shall contain separate descriptions and maps of the areas comprised by Subdistrict A and Subdistrict B.

6. Boone District shall maintain a current description of Subdistrict A and Subdistrict B in its filed tariff sheets as long as the monthly surcharges are in effect.

7. Boone District shall maintain separate records of the collection of all surcharge revenues from Subdistrict A and Subdistrict B to ensure an accurate accounting of surcharge collections.

8. Boone District is authorized to assess a monthly surcharge of \$25 to Subdistrict A customers until complete satisfaction of its obligations to make lease payments to the County under the Purchase and Lease Agreement. Upon satisfaction

of these obligations, Boone District shall cease charging this surcharge to Subdistrict A customers.

9. Boone District is authorized to assess a monthly surcharge of \$25 to Subdistrict B customers until complete satisfaction of its obligations under the Assumption and Supplemental Assistance Agreement. Upon satisfaction of these obligations, Boone District shall cease assessing this surcharge to Subdistrict B customers.

10. Beginning for the year ending December 31, 2010, and each year thereafter until the surcharges to Subdistrict A and Subdistrict B customers terminate, Boone District shall submit with the annual financial and statistical report required by 807 KAR 5:006, Section 3(1), a written report stating:

a. The number of customers in Subdistrict A and Subdistrict B, respectively, as of December 31 of the preceding year;

b. The total surcharge billed for each subdistrict during the preceding calendar year;

c. The total amount paid to the County during the calendar year pursuant to the Purchase and Lease Agreement;

d. Boone District's total remaining obligation, as of December 31 of the preceding year, on the Purchase and Lease Agreement;

e. The total amount paid to KIA during the calendar year pursuant to the Assumption and Supplemental Assistance Agreement;

f. Boone District's total remaining obligation to KIA, as of December 31 of the preceding year, resulting from the Assumption and Supplemental Assistance Agreement.

11. Within 20 days of the completion of the proposed transfer, Boone District shall file the journal entries it proposes to record the approved acquisition.

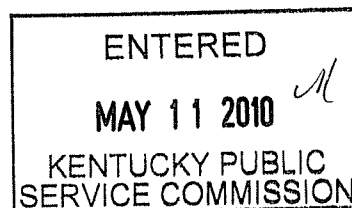
12. The County shall be responsible for submitting to the Commission a financial and statistical report, as described in 807 KAR 5:006, Section 3, for that period in 2010 prior to the transfer of control.

13. Boone District shall be responsible for submitting to the Commission a financial and statistical report, as described in 807 KAR 5:006, Section 3, for that period in 2010 beginning from the date of the to the transfer of control.

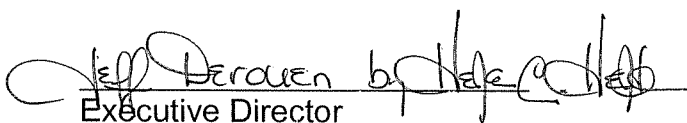
14. All documents filed pursuant to Ordering Paragraphs 4 and 11 shall reference this case number and shall be retained in the utility's general correspondence file.

Nothing contained herein shall be deemed a warranty of the Commonwealth of Kentucky, or any agency thereof, of the agreements authorized herein.

By the Commission



ATTEST:


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