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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF SANDY)
VALLEY WATER DISTRICT, SOUTHERN) CASE NO. 2006-0327
WATER AND SEWER DISTRICT AND THE)
CITY OF PIKEVILLE FOR THE)
TRANSFER OF FACILITIES AND FOR THE)
ASSUMPTION OF DEBT BY SOUTHERN)
WATER AND SEWER DISTRICT)

MOTION OF CITY OF PRESTONSBURG TO INTERVENE
AND
MOTION FOR A TEMPORARY RESTRAINING ORDER

City of Prestonsburg, acting by and through its Utilities Commission, the Prestonsburg City’s Utilities Commission, 2560 South Lake Drive, Prestonsburg, Kentucky 41653-1048, (collectively, the “Movant”), hereby moves the Kentucky Public Service Commission (the “Commission”), pursuant to KRS §278.310 and 807 KAR 5:001 Section 3(8), for full intervention in this case. As grounds for this Motion, Movant states as follows:

1. Movant is a municipal corporation, acting by and through its Utilities Commission. The Utilities Commission is a “public project” established by the City of Prestonsburg pursuant to Chapter 58 of the Kentucky Revised Statutes.

2. Movant and its counsel appear herein pursuant to the jurisdiction of the Public Service Commission (“Commission”) set forth by the Kentucky Supreme Court in Simpson County Water District v. City of Franklin, Ky., 872 S.W. 2d 460 (1994) (“Simpson County”). On August 10, 1994, in Administrative Case No. 351, the Commission notified municipal utilities of the Commission’s assertion of jurisdiction

over the wholesale rates and service of municipal utilities which provide utility service to any public utility. With respect to the Commission's assertion of jurisdiction over Movant's wholesale rates and service to "public utilities" pursuant to Simpson County, Movant offers its full cooperation and assistance to the Commission and its Staff in fulfilling these responsibilities.

3. The City of Pikeville states in its Joint Application that it has wholesale water sales to Sandy Valley Water District ("Sandy Valley"). Sandy Valley is also a major wholesale water customer of Movant. To the extent, this Joint Application and the operations proposed therein affect Movant's rights, duties and responsibilities under its existing Water Contract dated October 1, 1997 ("Water Contract"), Movant has a direct interest in this proceeding.

4. In December, 1994, Movant expanded its water treatment plant to 4.0 MGD, effective capacity, at a cost of \$2,000,000.00 to ensure an adequate supply of potable water to Sandy Valley and to other existing customers. The cost of construction was financed by a note from the Kentucky Infrastructure Authority ("KIA") at a rate of 2.9% with annual debt service of approximately \$130,000.00, that matures June 1, 2014. Sandy Valley purchases 125,000 gallons per day on average from Movant which generates monthly cash flow that approximates the annual debt service on the KIA loan. The term of Sandy Valley's Water Contract expires on October 1, 2021, and was intended to extend beyond the maturity date of the KIA loan.

5. The City of Pikeville has entered into an "Interlocal Agreement Relating to Water and Sewer Along US 23 in the Harold/Betsy Layne/Mare Creek Area of Floyd County and the Mossy Bottom/Coal Run Area of Pike County, Kentucky" ("Interlocal

Agreement”) with Floyd County Fiscal Court, Sandy Valley Water District and Southern Water & Sewer District (“Southern”).

6. Said Interlocal Agreement provides that the City of Pikeville will assume complete control of all operations and assets of Sandy Valley effective February 1, 2006, until certain debts are satisfied. The City of Pikeville has not obtained the Commission’s approval for such management. Upon information and belief, the City of Pikeville has taken preliminary steps necessary to implement this portion of the Interlocal Agreement, contrary to KRS 278.020(5) and KRS 278.218.

7. The Interlocal Agreement provides for the transfer (“Transfer”) of the Floyd County portion of Sandy Valley’s potable water and wastewater (post-construction) systems to Southern and the portion of the system located in Pike County to the City of Pikeville. However, Southern does not have the financial or managerial capacity required by KRS §278.020(5) and (6) and KRS §278.218 to permit such a transfer, and presently, does not operate a wastewater system. Interestingly, Southern cannot accept the Floyd County portion of the wastewater system from the City of Pikeville until it constructs a wastewater treatment plant, which Southern has not committed to do.

8. Movant previously withdrew its Motion to Intervene in the proceeding styled as the Joint Petition of the City of Pikeville and Mountain Water District for the Transfer of Certain Wastewater Facilities and Related Debt, Case No. 2006-00123, and reserved its right to intervene in this proceeding.

9. Movant believed that it had resolved its concerns with the transfer of the assets and liabilities of Sandy Valley by agreement with Sandy Valley in the form of an Assignment of Water Contract (“Assignment”) between Movant, Sandy Valley and

Southern (See Exhibit 1). The attached copy of the Assignment has been signed by the Movant and the Chairman of the Commission of Sandy Valley, but has not been signed by Southern. Movant had not previously intervened in this proceeding on the basis that its existing Water Contract would be honored by Southern for the remaining term of the Water Contract.

10. On May 12, 2007, counsel for the Movant, the undersigned, and counsel for Southern meet with the Commission's staff for an informal conference to discuss the basis for Southern's request for full intervention in a proceeding regarding Movant's annual water rate increase to its wholesale customers. It was at this meeting that counsel for Southern gave notice ("Notice") of Southern's intent to not honor the terms of the Water Contract after the transfer of the assets and liabilities of Sandy Valley to Southern. Based upon Southern's recent Notice, Movant is compelled to request the right to intervene at this late date in this proceeding to protect its interest in the Water Contract and Movant's other commitments related to Movant's remaining customers and creditors.

11. Movant is concerned that the loss of the revenue from the Water Contract may adversely impact its ability to borrow necessary funds to proceed with various water and sewer projects that it has committed to complete in its service territory.

12. Movant states that it will suffer immediate and irreparable injury, loss, or damage if Southern acquires from Sandy Valley the portion of the potable water system located in Floyd County, Kentucky due to the anticipated loss of revenue from the Water Contract and from the litigation in the local Circuit Court and before the Commission to enforce the contract and to determine appropriate relief from the illegal termination of the Water Contract by Southern.

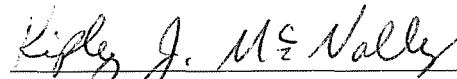
13. Movant moves the Commission to restrain Sandy Valley and Southern from any further actions to complete the Transfer until Movant may be heard by the Commission.

RELIEF REQUESTED

Movant requests:

1. That the Commission grant to Movant the right to full intervention in this proceeding;
2. That Sandy Valley's potable water distribution system and other assets and related debt should not be transferred to Southern, unless Southern agrees to the unconditional assumption of the Water Contract;
3. That the Commission issued a temporary order that restrains Sandy Valley and Southern from completing any further actions in furtherance of the Interlocal Agreement, until the Commission has completed its investigation of the allegations made by Movant herein.
3. That the Commission grant to Movant any other relief that it deems appropriate.

Respectfully submitted,



KIPLEY J. McNALLY, ESQ.

JANE CONNELL YOUNG, ESQ.

Kipley J. McNally, PLC

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Louisville, Kentucky 40223

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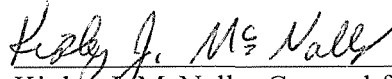
Counsel for the Prestonsburg City's Utilities

Commission and Special Counsel For the City of

Prestonsburg

CERTIFICATE OF SERVICE

This is to certify that an original and ten copies of the foregoing Motion of City of Prestonsburg to Intervene in the above-referenced case was hand delivered to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; and copies were mailed to John N. Hughes, Esq., 124 W. Todd Street, Frankfort, Kentucky 40601 and Joseph G. Jacobs, Chairman of Sandy Valley Water District, P.O. Box 127, Betsy Layne, Kentucky 41605.



Kipley J. McNally, Counsel for the Prestonsburg
City's Utilities Commission and Special Counsel
for the City of Prestonsburg

**CITY OF PRESTONSBURG
INDEX TO EXHIBITS**

1. Assignment of Water Contract.

ASSIGNMENT OF WATER CONTRACT

THIS ASSIGNMENT is entered into and deemed effective this _____ day of June, 2006, by and between SANDY VALLEY WATER DISTRICT, a public utility, whose address is 525 George Road, Betsy Layne, Kentucky 41642 (the "Assignor") and SOUTHERN WATER AND SEWER DISTRICT, a public utility, whose address is 245 KY Route 680, McDowell, Kentucky 41647 (the "Assignee").

W I T N E S S E T H:

WHEREAS, Assignor is a party to a certain Water Contract dated October 1, 1997 ("Water Contract") by and between Assignor and Prestonsburg City's Utilities Commission ("Prestonsburg") attached hereto as Exhibit A and made a part hereof; and

WHEREAS, Assignor agreed to transfer all of its rights, interest and obligations under the Water Contract pursuant to an Interlocal Agreement dated January 1, 2006 and attached hereto as Exhibit B.

WHEREAS, the Public Service Commission, by Order dated _____, has approved the transfer of assets and related debts of Assignor located in Floyd County to Assignee.

WHEREAS, Assignee desires to acquire from Assignor, and Assignor desires to transfer and assign to Assignee, all of Assignor's right, interest and obligation in and to the Water Contract.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, including the assumption of all rights and obligations and debts of Assignor, Assignor does hereby assign, transfer, set over and deliver unto Assignee the Water Contract and all of the rights, interests, and obligations of the Assignor thereunder,

but subject to all terms, conditions, reservations and limitations set forth in the Water Contract.

This Assignment is given pursuant to that certain Interlocal Agreement dated January 1, 2006, by and between Assignor and Assignee.

Assignee accepts the foregoing Assignment and assumes the performance of the terms, covenants and conditions of the Water Contract on the part of the Assignor thereunder to be performed from and after the date hereof and agrees to indemnify and hold Assignor harmless from and against any liability, cost or failure arising from Assignee's failure to so perform.

All of the covenants, terms and conditions set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have made this Assignment effective as of the day and year first above written, but actually executed on the date following their signatures.

"ASSIGNOR"

SANDY VALLEY WATER DISTRICT

By: Joseph L. Jacob
Its: Chairman
Date: 08-16-06

"ASSIGNEE"

SOUTHERN WATER AND SEWER DISTRICT

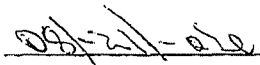
By: _____
Its: _____
Date: _____

CONSENT TO ASSIGNMENT

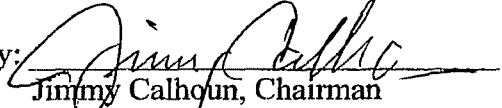
Under Section 18 of the Water Contract dated October 1, 1997, attached hereto as Exhibit A, Assignor may not lawfully assign its rights, interests and obligations under said Water Contract without the express written consent of the Prestonsburg City's Utilities Commission ("Prestonsburg"). Prestonsburg enters into this Agreement for the limited purpose of granting its consent to this Assignment based upon the full assumption of all obligations of the Assignor by the Assignee.

PRESTONSBURG CITY'S UTILITIES
COMMISSION

By: 
David Ellis, Superintendent

Date: 

Attest:

By: 
Jimmy Calhoun, Chairman
of the Prestonsburg
City's Utilities Commission