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RECEIVED

February 13, 2008

FEB 29 2008

**PUBLIC SERVICE
COMMISSION**

VIA UPS
#1Z X1R 324 22 1000 0565

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Dear Ms. O'Donnell:

I enclose the original and five copies of Prestonsburg's response to the Commission's Order dated January 30, 2008 to be filed with the Public Service Commission. Please file the enclosed and return our file copy with your filed stamp on it.

In addition, please find enclosed an original and five copies of a Motion for an Informal Conference for filing. Please file the enclosed and return our file copy with your filed stamp on it.

Thank you for your assistance with this and please do not hesitate to contact me if you have any questions.

Very truly yours,

Kipley J. McNally

KJM:jlr
Enclosures
cc: Mr. David M. Ellis

BEFORE THE PUBLIC SERVICE COMMISSION
COMMONWEALTH OF KENTUCKY

RECEIVED

FEB 29 2008

PUBLIC SERVICE
COMMISSION


In the Matter of:

PRESTONSBURG CITY UTILITIES)
COMMISSION'S EMERGENCY WATER SUPPLY)
AGREEMENT WITH SOUTHERN WATER AND) CASE NO.
SEWER DISTRICT) 2007-00218

**PRESTONSBURG CITY UTILITY COMMISSION'S
RESPONSES TO COMMISSION'S
ORDER DATED JANUARY 30, 2008**

****CERTIFICATION****

The undersigned, David M. Ellis, being first duly sworn, state that he is the Superintendent of Prestonsburg City's Utilities Commission (herein after "Prestonsburg"), and certifies that he supervised the preparation of the following responses to the Order of the Commission and that they are true and accurate to the best of his knowledge, information and belief formed after a reasonable inquiry.



David M. Ellis, Superintendent

Subscribed and sworn to before me, this 27th day of February, 2008



Notary Public

My Commission expires on: SEPTEMBER 26, 2009

**PRESTONSBURG'S RESPONSES TO COMMISSION'S
ORDER DATED JANUARY 30, 2008**

Comes Prestonsburg, by counsel, and for its separate Response to the Commission's Order in the above-captioned matter, states:

INTRODUCTION

A. JURISDICTION. Prestonsburg is responding to the data requests contained in Appendix A to the Public Service Commission's ("Commission") Order

entered January 30, 2008, pursuant to the jurisdiction of the Commission set forth by the Kentucky Supreme Court in Simpson County Water District vs. City of Franklin, Ky., 872 S.W. 2d 460 1994. In Administrative Case No. 351, the Commission notified the Municipal Utilities of the Commission's assertion of jurisdiction over the wholesale rates and services of Municipal Utilities which provide utilities service to any public utility. This response is made pursuant to Administrative Case No. 351. Prestonsburg offers its full cooperation and assistance to the Commission and its Staff in fulfilling these responsibilities.

B. BACKGROUND. At the request of Southern Water and Sewer District ("Southern"), Prestonsburg entered into the Emergency Water Supply Agreement dated July 25, 2005 (the "Emergency Agreement"). Southern had incurred an unexpected problem with its sole potable water treatment plan, and consequently, had to be shut-down for immediate repairs. Having no other source of water, Southern requested Prestonsburg's assistance to supply Southern's customers. Southern serves two hospitals and several schools and other commercial customers. Due to the critical need, Prestonsburg agreed to supply potable water.

In relative short order, the Emergency Agreement was prepared and executed. The parties did not have time to enter into a thorough analysis of the potential consequences of the Emergency Agreement. The initial pricing structure was taken from an agreement entered into with United States Bureau of Prisons. The adjustment clause was copied from another agreement to provide a mechanism for Prestonsburg to increase rates, if needed.

It was anticipated that this would be a one-time venture. However, as can be seen from the Billing History Reports (attached as Exhibit A), Southern has continued to take water on an intermittent basis with a gap of several months between emergency events.

C. HISTORY OF CPI CLAUSES. Prestonsburg has a long history of using the Consumer Price Index (“CPI”) as a factor for increasing rates to wholesale customers.

Specifically, the Commission has previously approved a water contract between Prestonsburg and Auxier Water Co. dated February 11, 1998 (“1998 Water Contract”) that used the CPI as an adjustment mechanism. See Exhibit B for a filed stamped copy of the 1998 Water Contract. This contract was approved by the Commission in Case Number 96-362. Under the 1998 Water Contract, Prestonsburg has increased Auxier’s wholesale rate several times pursuant to the CPI adjustment mechanism. Most recently, the Commissioner approved an increase in Auxier wholesale rates pursuant to the CPI adjustment mechanism in Case Number 2007-0095.

1. State the amount of sales that Prestonsburg has made to Southern District under the Emergency Water Supply Contract in 2006 and 2007.

RESPONSE: See Exhibit A attached hereto for a Billing History Report for five (5) separate meters for Southern Water and Sewer District (“Southern”) for volume taken by Southern under the Emergency Water Supply Agreement dated April 23, 2007. No volumes were taken at two of the meters.

Below is a summary of Prestonsburg’s billings to Southern for 2006 and 2007 under the Emergency Agreement with Southern:

<u>ACCOUNT NUMBER</u>	<u>2006</u>	<u>2007</u>	<u>TOTAL</u>
162-15320-20	1,909.30	3,739.30	5,648.60
152-018000-00	2,302.44	1,259.60	3,562.04
152-12350-00	<u>2,038.28</u>	<u>2,506.60</u>	<u>4,544.88</u>
TOTAL	<u>6,250.02</u>	<u>7,505.50</u>	<u>13,755.52</u>

Prestonsburg has not increased the rate charged to Southern since the execution of the Emergency Agreement.

Calendar year 2007 is the first full calendar year of service under the Emergency Agreement. If a 4% increase had been implemented on the first anniversary of the Emergency Agreement, Prestonsburg would have received approximately \$300.00 ($\$7,505.50 \times 4\%$) in additional revenue. The amount of lost revenue in this situation is inconsequential to Prestonsburg. The cost of responding to this data request far exceeds the amount of lost revenue to-date and over the remaining life of the Emergency Agreement.

WITNESS: David M. Ellis

2. State whether Prestonsburg considers the Consumer Price Index to be an accurate measure of changes in the cost of providing wholesale water service. If yes, explain why.

RESPONSE: Prestonsburg considers the Consumer Price Index to be a reasonable measure on an annual basis for determining an increase in the cost of providing water service to its wholesale customers. Historically, Prestonsburg has not prepared an annual cost of service study for multiple reasons, including (without limitation) the requirement of Prestonsburg's staff and the expense of outside consultants. Prestonsburg has used the CPI as a basis for adjusting rates for wholesale consumers. It is especially appropriate in situations such as the Emergency Agreement when only small quantities of water are purchased. It is not economically viable to prepare a cost of service study for such a small account. Since Prestonsburg anticipates completing the acquisition of its major wholesale customer (Auxier Water Co.) in the near future, Prestonsburg will not need to prepare an annual cost of service study for the purpose of increasing rates to its wholesale customers.

WITNESS: David M. Ellis

3. In Case No. 2006-0067 (footnote omitted), the Commission voiced the following criticism on the Consumer Price Index:

[T]he proposed mechanism, which is based upon the CPI, is based upon too large and diverse a group of goods and services. The CPI is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. This basket contains 8 major categories of goods and services: food and beverages; housing; apparel; transportation; medical care; recreation; education and communication; and other goods and services. Several of these categories are unrelated to the provision of water service. Their presence in the basket limits the CPI's accuracy as an adjustment mechanism. For example, increases in the cost of food and beverages, apparel and education would produce a positive increase in the CPI but have no effect on the cost of goods and services that are used to provide water service. An automatic adjustment mechanism must provide an accurate measurement of changes in the cost of providing water service. It therefore should be based principally on those goods and services that are reasonably likely to be used to provide water service.

State whether Prestonsburg agrees with this criticism. Explain.

RESPONSE: Prestonsburg disagrees with the Commission's criticism. Prestonsburg believes that all of the components that the Commission criticizes are items that tend to affect individuals. Usually, Prestonsburg gives its workforce an annual cost of living wage increase in order to remain competitive with other institutions that would hire its employees. All of the cost components that the Commission states that "... have no effect on the cost of goods and services that are used to provide water service" are items that directly affect Prestonsburg's workforce. If the effect of these components were excluded from the CPI as an index, Prestonsburg would have to add back a component for the cost of living increases provided to its workforce.

WITNESS: David M. Ellis

4. Identify all other price indexes that the parties consider when negotiating the Emergency Water Supply Contract. For each price index listed, state the reasons why the index was not selected.

RESPONSE: No other indices were considered.

WITNESS: David M. Ellis

5. Explain why the proposed adjustment mechanism allows for a rate adjustment in the event of an increase in the Consumer Price Index but does not provide for an adjustment if a decrease in the Consumer Price Index occurs.

RESPONSE: Prestonsburg does not intend to reduce its rates.

WITNESS: David M. Ellis

Respectfully submitted,



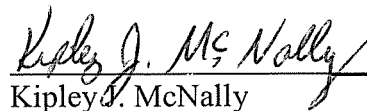
Kipley J. McNally, Esq.
Kipley J. McNally, PLC
2527 Nelson Miller Parkway, Ste. 104
Louisville, Kentucky 40223
Telephone: (502) 245-6133
Fax: (502) 245-1974

Counsel for Prestonsburg City's
Utilities Commission

Date submitted: February 28th, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served via U.S. mail, postage prepaid, on Mr. Hubert Halbert, Southern Water & Sewer District, Water Division, P.O. Box 610, 245 Kentucky Route 680, McDowell, Kentucky 41647 on the 28th day of February, 2008.



Kipley J. McNally

INDEX TO EXHIBITS
PRESTONSBURG CITY'S UTILITIES COMMISSION

A. Billing History Reports

B. 1998 Water Contract

UCMREAD 2008/02/15 09:31:24

PRESTONSBURG UTILITIES

WAS READING HISTORY REPORT

READ DATE SERVICE METER NO RATE/ACTION CURRENT PREVIOUS USAGE DEMAND READ TYPE FLAG

162-15320-00 SOUTHERN WATER

MARTIN

READ DATE	SERVICE	METER NO	RATE/ACTION	CURRENT	PREVIOUS	USAGE	DEMAND	READ TYPE	FLAG
01/13/2006	WT	1	WT	226	226	0		A	
02/13/2006	WT	1	WT	226	226	0		A	
03/13/2006	WT	1	WT	226	226	0		A	
04/13/2006	WT	1	WT	226	226	0		A	
05/13/2006	WT	1	WT	226	226	0		A	
06/13/2006	WT	1	WT	226	226	0		A	
07/13/2006	WT	1	WT	226	226	0		A	
08/14/2006	WT	1	WT	226	226	0		A	
09/13/2006	WT	1	WT	226	226	0		A	
10/13/2006	WT	1	WT	423	0	423		A	
11/13/2006	WT	1	WT	287	34	203		A	
12/13/2006	WT	1	WT	287	287	0		A	
01/12/2007	WT	1	WT	287	287	0		A	
02/05/2007	WT	1	WT	2870	2870	0			
02/05/2007	WT	2	WT	287	287	0			
02/13/2007	WT	1	WT	2870	2870	0			
03/13/2007	WT	1	WT	3526	2870	656		A	
03/13/2007	WT	2	WT	370	287	83		A	
04/13/2007	WT	1	WT	3644	3526	118		A	
04/13/2007	WT	2	WT	378	370	8		A	
05/14/2007	WT	1	WT	3744	3644	100		A	
05/14/2007	WT	2	WT	390	378	12		A	
06/04/2007	WT	1	WT	3947	3744	203		A	
06/04/2007	WT	2	WT	436	390	46		A	
07/03/2007	WT	1	WT	4126	3947	179		A	
07/03/2007	WT	2	WT	463	436	27		A	
08/03/2007	WT	1	WT	4126	4126	0		A	
08/03/2007	WT	2	WT	463	463	0		A	
09/06/2007	WT	1	WT	4126	4126	0		A	
09/06/2007	WT	2	WT	463	463	0		A	
10/03/2007	WT	1	WT	4126	4126	0		A	
10/03/2007	WT	2	WT	463	463	0		A	
11/05/2007	WT	1	WT	4126	4126	0		A	
11/05/2007	WT	2	WT	463	463	0		A	
12/05/2007	WT	1	WT	4126	4126	0		A	
12/05/2007	WT	2	WT	463	463	0		A	

MEMPHIS 00000001 09/20/04

MEMPHIS 00000001

DATE BEARING HISTORY REPORT

100-40400-00 SOUTHERN WATER

DATE	STATUS	WATER NO.	PRODUCTION	CHARGE	FEELINGS	REASON	REMARK	ROAD TYPE	PLAGE
01/23/2006	WT	1	WT	145	145	0		A	
02/23/2006	WT	1	WT	145	145	0		A	
03/23/2006	WT	1	WT	145	145	0		A	
04/23/2006	WT	1	WT	145	145	0		A	
05/22/2006	WT	1	WT	145	145	0		A	
06/13/2006	WT	1	WT	145	145	0		A	
07/13/2006	WT	1	WT	145	145	0		A	
08/14/2006	WT	1	WT	145	145	0		A	
09/13/2006	WT	1	WT	145	145	0		A	
10/13/2006	WT	1	WT	145	145	0		A	
11/13/2006	WT	1	WT	145	145	0		A	
12/13/2006	WT	1	WT	145	145	0		A	
01/12/2007	WT	1	WT	145	145	0		A	
02/07/2007	WT	1	WT	145	145	0		A	
03/13/2007	WT	1	WT	145	145	0		A	
03/13/2007	WT	1	WT	145	145	0		A	
04/13/2007	WT	1	WT	145	145	0		A	
05/14/2007	WT	1	WT	145	145	0		A	
06/06/2007	WT	1	WT	145	145	0		A	
07/06/2007	WT	1	WT	145	145	0		A	
08/03/2007	WT	1	WT	145	145	0		A	
09/07/2007	WT	1	WT	145	145	0		A	
10/05/2007	WT	1	WT	145	145	0		A	
11/06/2007	WT	1	WT	145	145	0		A	
12/05/2007	WT	1	WT	145	145	0		A	

* End of Report: Prestonburg City's Toll Cover *

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PRESTONSBURG UTILITIES

O/E READING HISTORY REPORT

READ DATE	SERVICE	METER NO	DATE/ACTION	CURRENT	PREVIOUS	USAGE	DEMAND	READ TYPE	FLAGS
126-04300-00 SOUTHERN WATER				DAVID METER					
01/13/2006	WT	1	WT	17284	17284	0		A	
02/13/2006	WT	1	WT	17284	17284	0		A	
03/13/2006	WT	1	WT	17284	17284	0		A	
04/13/2006	WT	1	WT	17284	17284	0		A	
05/12/2006	WT	1	WT	17284	17284	0		A	
06/13/2006	WT	1	WT	17284	17284	0		A	
07/13/2006	WT	1	WT	17284	17284	0		A	
08/14/2006	WT	1	WT	17284	17284	0		A	
09/06/2006	WT	1	WT	17284	17284	0		A	
10/13/2006	WT	1	WT	17284	17284	0		A	
11/13/2006	WT	1	WT	17284	17284	0		A	
12/13/2006	WT	1	WT	17284	17284	0		A	
01/12/2007	WT	1	WT	17284	17284	0		A	
02/05/2007	WT	1	WT	17284	17284	0			
02/13/2007	WT	1	WT	17284	17284	0			
03/13/2007	WT	1	WT	17284	17284	0		A	
04/13/2007	WT	1	WT	17284	17284	0		A	
05/14/2007	WT	1	WT	17284	17284	0		A	
06/04/2007	WT	1	WT	17284	17284	0		A	
07/05/2007	WT	1	WT	17284	17284	0		A	
08/06/2007	WT	1	WT	17284	17284	0		A	
09/07/2007	WT	1	WT	17284	17284	0		A	
10/02/2007	WT	1	WT	17284	17284	0		A	
11/05/2007	WT	1	WT	17284	17284	0		A	
12/06/2007	WT	1	WT	17284	17284	0		A	

* End of Report: Prestonsburg City's Util Comm *

DCNREAD 2008/02/15 09:32:32

PRESTONSBURG UTILITIES

M/S READING HISTORY REPORT

READ DATE	SERVICE	METER NO	DATE/ACTION	CURRENT	PREVIOUS	USAGE	DEMAND	READ TYPE	PLACE

152-01000-00	SOUTHERN WATER & SEWER		181	ALLEN-BANNER RD					
01/10/2006	WT	1	W5	2326	2293	33		A	
02/07/2006	WT	1	W5	2369	2326	43		A	
03/08/2006	WT	1	W5	2417	2369	48		A	
04/10/2006	WT	1	W5	2474	2417	57		A	
05/08/2006	WT	1	W5	2521	2474	47		A	
06/08/2006	WT	1	W5	2574	2521	53		A	
07/11/2006	WT	1	W5	2629	2574	55		A	
08/08/2006	WT	1	W5	2676	2629	47		A	
09/12/2006	WT	1	W5	2731	2676	55		A	
10/09/2006	WT	1	W5	2769	2731	38		A	
11/08/2006	WT	1	W5	2797	2769	28		A	
12/08/2006	WT	1	W5	2823	2797	26		A	
01/09/2007	WT	1	W5	2850	2823	27		A	
02/06/2007	WT	1	W5	2867	2850	17		A	
03/09/2007	WT	1	W5	2880	2867	13		A	
04/10/2007	WT	1	W4	2924	2880	44		A	
05/08/2007	WT	1	W4	2960	2924	36		A	
06/07/2007	WT	1	W4	2997	2960	37		A	
07/09/2007	WT	1	W4	3013	2997	16		A	
08/06/2007	WT	1	W4	3022	3013	9		A	
09/10/2007	WT	1	W4	3032	3022	10		A	
10/05/2007	WT	1	W4	3041	3032	9		A	
11/07/2007	WT	1	W4	3051	3041	10		A	
12/10/2007	WT	1	W4	3061	3051	10		A	

* End of Report: Prestonsburg City's Util Comm *

UCMREADQ 2008/02/15 09:33:02

PRESTONSBURG UTILITIES

U/B READING HISTORY REPORT

DATE SERVICE METER NO RATE/ACTION CURRENT PREVIOUS USAGE DEMAND READ TYPE FLAG

LS2-12350-00 SOUTHERN WATER & SEWER

ALLEN-BANNER ROAD

01/13/2006	WT	1	WP	1771	1771	0		A
02/13/2006	WT	1	WP	1771	1771	0		A
03/13/2006	WT	1	WP	1771	1771	0		A
04/13/2006	WT	1	WP	1771	1771	0		A
05/12/2006	WT	1	WP	1771	1771	0		A
06/13/2006	WT	1	WP	1771	1771	0		A
07/13/2006	WT	1	WP	1771	1771	0		A
08/14/2006	WT	1	WP	1771	1771	0		A
09/13/2006	WT	1	WP	1771	1771	0		A
10/13/2006	WT	1	WP	1772	1771	1		A
11/13/2006	WT	1	WP	1772	1772	0		A
12/13/2006	WT	1	WP	1772	1772	0		A
01/12/2007	WT	1	WP	1772	1772	0		A
02/06/2007	WT	1	WP	1772	1772	0		
02/15/2007	WT	1	WP	1772	1772	0		
03/13/2007	WT	1	WP	1773	1772	1		A
04/13/2007	WT	1	WP	1773	1773	0		A
05/14/2007	WT	1	WP	1773	1773	0		A
06/07/2007	WT	1	WP	1773	1773	0		A
07/09/2007	WT	1	WP	1773	1773	0		A
08/06/2007	WT	1	WP	1773	1773	0		A
09/10/2007	WT	1	WP	1773	1773	0		A
10/08/2007	WT	1	WP	1773	1773	0		A
11/07/2007	WT	1	WP	1774	1773	1		A
12/10/2007	WT	1	WP	1774	1774	0		A

* End of Report: Prestonsburg City's Util Comm *

WATER CONTRACT

THIS AGREEMENT, made and entered into this 11 day of February, 1998,
by and between the PRESTONSBURG CITY'S UTILITIES COMMISSION ("Prestonsburg") and
AUXIER WATER COMPANY, INC. ("Auxier").

RECEIVED

FEB 25 1998

PUBLIC SERVICE
COMMISSION

WITNESSETH:

That the parties hereto, for and in consideration of the covenants of this Agreement hereinafter set out, to be paid, kept and performed, hereby agree as follows:

1. Water Delivery Points. Prestonsburg agrees to furnish to Auxier during the term of this contract at the existing points of delivery, which are located at the site of the Highlands Regional Medical Center and at Little Paint ("Delivery Points"), and Auxier agrees to purchase, potable treated water meeting applicable purity standards of the Kentucky Department of Health.

2. Maximum and Minimum Quantities of Water. Prestonsburg shall deliver and Auxier shall purchase quantities of water not to exceed 500,000 gallons per day of twenty four hours, and not to exceed 10,000,000 gallons per month. Prestonsburg shall have the right to install equipment to restrict the flow of water on an hourly basis or establish temporary shut-offs to restrict the flow so that the quantities can be limited to the contract maximums set forth herein. It shall be the sole responsibility of Auxier to control its customer load so that the water flow at the Delivery Points need not be restricted. A minimum contract quantity of 4,000,000 gallons per month shall be taken by Auxier.

3. Metering Equipment and Testing. Prestonsburg agrees to furnish, install, operate and maintain at its own expense at the Delivery Points, 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 Auxier and to calibrate such metering equipment whenever requested by Auxier, 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 three (3) 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. An appropriate official of Auxier, at all reasonable times, shall have access to the meter for the purpose of verifying its readings.

4. Statement of Water Supplied. Prestonsburg agrees to furnish Auxier, once each month, a statement of the quantity of water furnished Auxier during the applicable billing period.

5. Payment Policy. Payment shall be made in accordance with Prestonsburg's customer payment policy ("Payment Policy"), as it may be modified pursuant to public notice from time to time, which currently is as follows:

Customers' bills will be mailed on the last business day of each month. Payment is due when bills are mailed. Prestonsburg City's Utilities Commission is not responsible for mail delivery. If payment is not received in our office by the 15th day of the following month, a 10% penalty will be added to the accounts of customers who have not paid their bills in full. On the 16th day of the month, Prestonsburg City's Utilities Commission will mail a

disconnect notice to those customers who have not paid their bills in full. The disconnect notice, mailed on the 16th, will be the only notice sent to delinquent customers before their utilities services will be subject to disconnection for non-payment. Customers receiving disconnect notices will have five business days to bring or mail their payments to our office located at 2103 South Lake Drive, Prestonsburg, Kentucky. Our office hours are Monday through Friday, 8:00 A.M. to 5:00 P.M. For the convenience of our customers, we have a night deposit box located at the front of our building. Meters will be scheduled for removal if payment is not received in our office within five business days of the date of the disconnect notice. If it is necessary to send a service representative to collect a bill, a \$20.00 collection fee will be charged. If it is necessary to remove the meter for non-payment, customers will be required to pay their bills in full, plus a \$25.00 reconnection fee before service is restored. If customers' bills and/or notices are mailed late by Prestonsburg City's Utilities Commission, the payment period will be extended the same amount of time the bill and/or notices were mailed late.

6. Rate Schedule. Auxier agrees to pay Prestonsburg, according to Prestonsburg's Payment Policy, for water delivered in accordance with this Agreement at the following rates for each metered delivery point:

- (a) the rate for the first 2,000 gallons of water delivered monthly hereunder shall be \$6.97;
- (b) the rate for the next 98,000 gallons of water delivered monthly hereunder shall be \$3.02 per 1,000 gallons;

- (c) the rate for all gallons of water delivered monthly hereunder exceeding 100,000 gallons shall be \$2.02 per 1,000 gallons;
- (d) service which requires booster pump service for delivery of the water also shall include a surcharge of \$.10 per booster pump per 1,000 gallons.

7. Overrun Volumes. Prestonsburg has no obligation to deliver more than 500,000 gallons per day or 10,000,000 gallons per month in total to Auxier. Any quantities of water taken by Auxier above these contract maximums shall be considered overrun volumes. Overrun volumes shall be fully interruptible for any reason and at any time in the sole discretion of Prestonsburg. The rate for overrun volumes shall be \$3.00 per 1,000 gallons. In the event of a force majeure condition as defined in Section 14 hereof, the overrun rate shall not apply and Auxier shall pay the rate set forth in Section 6.

8. Rate Schedule Modifications. All rates set forth in this Agreement shall be adjusted annually on the anniversary date of this Agreement to correspond with the Consumer Price Index ("CPI"), but no such increase under this provision shall increase rates by more than 2 percent per year. In addition, Prestonsburg may make a rate filing with the Kentucky Public Service Commission at any time requesting a rate increase for service to Auxier; and this Agreement is subject to rate increase adjustments approved by the Kentucky Public Service Commission or its successor agency or entity.

9. Termination. This contract shall commence on the date hereof and continue for a period of ten (10) years. This Agreement may be extended or renewed by the parties, if they mutually agree, upon such terms and conditions as agreed upon by the Parties.

10. Fire Protection and System Reliability. Prestonsburg shall not be responsible in any way for the failure of Auxier to furnish sufficient water for fire protection purposes, or sufficient water storage tanks for system reliability purposes, and Auxier shall indemnify Prestonsburg from any such claims related thereto.

11. Indemnification. Each party shall indemnify the other party, its employees, and agents from all claims, demands, and liabilities of any kind relating to or arising out of this Agreement, except to the extent such claims, demands, or liabilities result from or arise out of the negligence of party being indemnified.

12. Chlorination. Auxier shall be responsible for any chlorination of the water furnished by Prestonsburg if such chlorination is required by the Floyd County Department of Health or any other Federal or State governmental agency.

13. Interruptible Service. If Prestonsburg does not have a sufficient supply of water to supply its retail customers, then Prestonsburg, at its sole discretion, may reduce on a proportional basis the amount of water to be furnished to Auxier; provided that Prestonsburg shall be entitled at all times to retain sufficient water to provide adequate fire flow within the City of Prestonsburg.

14. Force Majeure. All obligations of either party with respect to service hereunder shall be excused without liability during the pendency of any condition of force majeure. Force majeure shall include any act, event or condition beyond the reasonable control of the party claiming force majeure, and shall include, but not be limited to, any act of God, fire, storm, earthquake, freezing condition, wind, flood, drought, snow, water used to fight fires, line breaks, environmental release, breakage of or delay in receiving parts, equipment or supplies, or shortage thereof, strike or lockout, or any act, event or requirement of any governmental law, regulation or entity. Force majeure shall not include routine line leakage or financial inability to pay, and shall not excuse payment for services rendered by Prestonsburg, including the payment of Auxier's minimum bill obligation hereunder.

15. Notices. All notices and other communications provided hereunder shall be in writing and shall be delivered personally or transmitted by registered or certified mail, return receipt requested or by a recognized overnight courier service. Such notice shall be deemed to have been given at the time of personal delivery or upon receipt thereof, as reflected on the signed certificate or delivery statement of the courier service. Notice must be delivered or sent to the party at the following address or to such other address as a party may have designated by notice:

TO PRESTONSBURG: Prestonsburg City's Utilities Commission
2103 South Lake Drive
Prestonsburg, Kentucky 41653

TO AUXIER: Auxier Water Company, Inc.
P.O. Box 99
Auxier, Kentucky 41602

16. Amendment. This Agreement may be amended in writing only, duly signed by both parties, and will be governed by and construed in accordance with Kentucky law.

17. Binding Effect and Benefit. Upon execution, the Agreement will inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, subject to regulatory approval as set forth below; provided, however, neither this Agreement nor any rights and obligations hereunder may be assigned by Auxier without the written consent of Prestonsburg.

18. Severability. The terms and provisions of this Agreement shall not be severable, and in the event that any term or provisions hereof is held to be invalid or unenforceable, the remaining terms or provisions hereof shall be invalid and unenforceable, and Prestonsburg shall have no further obligation hereunder.

19. Regulatory Approval. This Agreement is contingent upon and subject to approval by the Kentucky Public Service Commission. Should the Commission fail to approve this Agreement in its entirety, Prestonsburg shall not be bound by the terms hereof, and this Agreement shall be considered null and void and of no force or effect. Auxier shall not resell at wholesale water supplied hereunder so as to make Prestonsburg, directly or indirectly, a wholesale supplier to any other water system.

20. Non-Waiver. Prestonsburg's failure to exercise any of its rights hereunder at any time will not operate as a waiver of its right to exercise same at any other time(s).

21. Counterparts. This Agreement may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers or agents to execute this Agreement the day and year first above written.

AUXIER WATER COMPANY, INC.

BY: Phil Ward
PRESIDENT

PRESTONSBURG CITY'S UTILITIES COMMISSION

BY: Seldon Horne
SELDON HORNE, SUPERINTENDENT

ATTEST:

C. J. McNally
C. J. McNALLY, CHAIRMAN