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March 29, 2013

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APR - 2 2013

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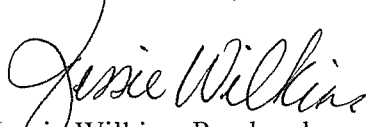
Re: Roy G. Cooksey, M.D. v. Warren County Water District
Case No. 2013-00109

To Whom It May Concern:

Enclosed are the original and ten copies of the motion to dismiss with the corresponding memorandum. Please file in accordance with your standard procedure. If you should have any questions, please do not hesitate to contact our office. Thank you for your assistance in this regard.

Very truly yours,

COLE & MOORE, P.S.C.


Jessie Wilkins, Paralegal

/JRW

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COMMONWEALTH OF KENTUCKY

APR - 2 2013

BEFORE THE PUBLIC SERVICE COMMISSION PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

ROY G. COOKSEY, M.D.,

COMPLAINANT

V.

CASE NO. 2013-00109

WARREN COUNTY WATER DISTRICT,

DEFENDANT

**MOTION TO DISMISS ON BEHALF OF
DEFENDANT, WARREN COUNTY WATER DISTRICT**


Defendant, Warren County Water District (“WCWD”), by counsel, moves the Public Service Commission to dismiss the Verified Petition filed by the Complainant herein, stating that the Commission has previously considered the issues raised in the present petition in a prior case (Case No. 2009-00190, *In the Matter of: Roy G. Cooksey, Complainant v. Bowling Green Municipal Utilities Board and Warren County District, Defendants*) and concluded that: “We clearly also lack the authority to declare Warren District the sole provider of water and sewer service to Complainant’s farm.” (April 16, 2010 Order of the Public Service Commission Dismissing Case, Case No. 2009-00190).

The Defendant submits that the 2009 dismissal order is binding on the parties and precludes the instant matter from proceeding. In support of this motion to dismiss, WCWD files contemporaneously herewith its memorandum of law. In the alternative, should the Commission

determine not to grant this motion, WCWD respectfully requests that it be granted additional time in which to file an answer to the Verified Petition.

This 29th day of March, 2013.

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Counsel for WCWD

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has this 29th day of March, 2013, been placed in the U.S. Mail, postage prepaid, addressed to the following:

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Matthew P. Cook
Counsel for WCWD

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ROY G. COOKSEY, M.D.,

COMPLAINANT

V.

WARREN COUNTY WATER DISTRICT,

DEFENDANT

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PUBLIC SERVICE
COMMISSION

CASE NO. 2013-00109

**MEMORANDUM IN SUPPORT OF WARREN COUNTY WATER DISTRICT'S
MOTION TO DISMISS**

Defendant, Warren County Water District ("WCWD"), by counsel, for its memorandum in support of its motion to dismiss the Verified Petition filed against it by Roy G. Cooksey, M.D., states as follows:

INTRODUCTION

The Complainant, Roy G. Cooksey, M.D., has filed a Verified Petition against WCWD seeking an order from the Commission to extend sewer service to that portion of his farm not currently served by it and additionally, for an order from the Commission to direct and require WCWD to file a petition with the Warren County Judge/Executive to amend the territorial limits of WCWD pursuant to KRS 74.110 to include all of Complainant's farm. In 2009, Dr. Cooksey filed a similar action with the Commission against both the WCWD and the Bowling Green Municipal Utilities Board ("BGMU") seeking the same relief. (*See* Kentucky Public Service

Commission Case No. 2009-00190, styled *In the Matter of: Roy G. Cooksey, M.D., Complainant v. Bowling Green Municipal Utilities Board and Warren County Water District, Defendants*).

In the prior 2009 case, the Commission entered an order granting the motion to dismiss filed by BGMU and further, dismissing the case and removing it from the Commission's docket. A copy of the Commission's order, entered on April 16, 2010, is attached hereto as Exhibit A. In making the ruling to dismiss the complaint, the Commission held as follows:

Based upon the foregoing, the Commission finds that it lacks the statutory authority to provide Complainant's requested relief and that this case should be dismissed as to both Defendants. Having no statutory authority to preclude BGMU from serving the area in dispute or to direct a revision to BGMU's service area, we clearly also lack the authority to declare Warren District the sole provider of water and sewer service to Complainant's farm.

(Commission's April 16, 2010 Order dismissing Complaint, p. 9) (copy attached as Exhibit A).

Dr. Cooksey did not appeal the Commission's 2009 dismissal order. Therefore, it is final and binding on the parties in this present action. Accordingly, the present case must be dismissed as the issues presented have already been adjudicated by the Commission.

FACTUAL BACKGROUND

The Complainant, Dr. Cooksey, owns a 101-acre farm in Warren County, Kentucky, which he acquired in 1976. At the time Dr. Cooksey acquired the farm and for many years prior to that date, WCWD and its predecessor provided all water service to the entire farm. The Cooksey farm is located outside the corporate limits of the City of Bowling Green.

The boundary line for water service between BGMU and WCWD was established by agreement in the mid-1970's. In addition, on August 3, 2006, the "Joint Engineering, Planning and Finance Committee"—a committee consisting of two members of BGMU's Board and two members of the WCWD's Board of Commissioners whose stated purpose is "to oversee the

development and implementation of a long range plan for development and expansion of water and sewer service from BGMU” to WCWD—recommended that the two utilities establish a sewer service boundary that would better define the limits of their service.¹ The boundary that was established effectively divides the Complainant’s farm. Approximately 70 acres of the farm fall within BGMU’s service area. The remaining 31 acres fall within WCWD’s area. Shortly after the issuance of the Joint Committee’s recommendation, the governing bodies of both utilities adopted the recommended boundaries as the jurisdictional limits of their sewer service.²

On June 19, 2007, the Joint Committee recommended the establishment of similar boundaries for the two entities’ water operations. The governing bodies of both utilities subsequently adopted the recommended boundaries as the jurisdictional limits of their water service.³

On May 14, 2009, Dr. Cooksey filed a complaint with the Commission in which he requested that WCWD be declared the exclusive provider of water and sewer service to his farm and that BGMU’s rights to provide water or sewer service to the farm be terminated. (Commission Case No. 2009-00190) (*See Exhibit B attached*), 2009 Complaint). After the 2009 complaint was filed, BGMU filed a motion to dismiss the complaint, contending that as a municipal utility, it was exempt from the jurisdiction of the Commission. (*See Exhibit C attached*, BGMU’s motion to dismiss; Dr. Cooksey’s response; and BGMU’s reply in support of

¹ *See* Commission Case No. 95-044, *The Application of Bowling Green Municipal Utilities for and Increase in Water and Sewer Rates to Warren County Water District* (Ky. PSC February 27, 1996) Appendix at 3. The creation of the Joint Committee was a term of an agreement between the two entities to resolve the issues presented by BGMU’s application for an adjustment in its rates for wholesale water and sewer service.

² Resolution of the Board of Directors of the Bowling Green Municipal Utilities (August 14, 2006); Reciprocal Resolution of the Board of Commissioners of the Warren County Water District (August 29, 2006).

³ Resolution of the Board of Directors of the Bowling Green Municipal Utilities (July 9, 2007); Reciprocal Resolution of the Board of Commissioners of the Warren County Water District (June 26, 2007).

the motion). WCWD took no position on the motion filed by BGMU but did state that if the motion to dismiss was granted, then no relief could be granted under the complaint because BGMU was an indispensable party to the action and the issues presented. (See Exhibit D attached). In addition, WCWD also filed an answer to the 2009 complaint (See Exhibit E attached) stating as follows:

3. Concerning the factual allegations set forth in paragraph 3 of the Complainant's verified complaint and petition, the Answering Defendant admits that Bowling Green Municipal Utilities ("BGMU") is asserting the right to provide water and sewer service to the rear 70 acres of the Complainant's farm described in the complaint. The Answering Defendant admits that it entered into an agreement with BGMU establishing their respective service boundaries in a manner that has divided the Complainant's farm into two separate service areas. The Answering Defendant further admits the existence of the Agreed Order entered by the Public Service Commission in Case No. 95-044, which required BGMU and the Answering Defendant to create a Joint Engineering, Planning and Finance Committee to address a long-range plan for development and expansion of services and the accompanying resolutions of both Boards that followed. The Answering Defendant denies the remaining factual allegations set forth in paragraph 3 of the Complainant's verified complaint and petition.

4. Concerning the factual allegations set forth in paragraph 4 of the Complainant's verified complaint and petition, the Answering Defendant admits the existence of the amended service boundaries which were agreed to by BGMU and the Warren County Water District. The Answering Defendant denies the remaining factual allegations set forth in paragraph 4 of the Complainant's verified complaint and petition.

5. Concerning the factual allegations set forth in paragraph 5 of the Complainant's verified complaint and petition, the Answering Defendant does not contest that the Public Service Commission has jurisdiction over the dispute referenced in the verified complaint and petition.

6. Concerning the factual allegations set forth in paragraph 6 of the Complainant's verified complaint and petition, the Answering Defendant denies that it has violated any statute or regulation or otherwise harmed the Complainant in any way. With that said, the Answering Defendant is willing to be the provider of water and sewer service to the Complainant's entire farm through an adjustment of the service area boundaries of BGMU and the Warren County Water District.

7. Concerning the factual allegations in paragraph 7 of the Complainant's verified complaint and petition, the Answering Defendant denies that it has violated any statute or regulation or otherwise harmed the Complainant in any way. With that said, the Answering Defendant does not object to a declaration that it shall be the sole provider of water and sewer service to the Complainant's entire farm through an adjustment of the service area boundaries of BGMU and the Warren County Water District.

8. The Answering Defendant denies that the Complainant is entitled to any damages from it as a result of any allegation made in the verified complaint and petition.

(WCWD's Answer to Complaint, Commission Case No. 2009-00190, pp. 2-3).

As indicated above, on April 16, 2010, the Commission entered an order dismissing Dr. Cooksey's complaint in full. A copy of this order is attached hereto as Exhibit A. At pages 6-7 of the order, the Commission held as follows: "As BGMU is not within the statutory definition of 'utility,' the Commission lacks any authority over its rates or service. As we have no authority over its service, we cannot direct it to modify its service area boundary to exclude the area in which a portion of Complainant's farm is located." In addition, the Commission went on in its order to hold as follows:

Present case law, moreover, does not support Complainant's assertion of Commission authority to alter or revise municipal utility boundaries. In *City of Georgetown v. Public Service Commission*, 516, [sic] S.W.2d 842 (Ky. 1974), Kentucky's highest court expressly held that this Commission lacked the statutory authority to resolve territory disputes involving municipal utilities and enjoined Commission proceedings in which a public utility sought a cease and desist order to prevent a municipal utility from extending its facilities into the public utility's service area.

Based upon the foregoing, the Commission finds that it lacks the statutory authority to provide Complainant's requested relief and that this case should be dismissed as to both Defendants. Having no statutory authority to preclude BGMU from serving the area in dispute or to direct a revision to BGMU's service area, we clearly also lack the authority to declare Warren District the sole provider of water and sewer service to Complainant's farm.

IT IS THEREFORE ORDERED that:

1. BGMU's Motion to Dismiss is granted.
2. This case is dismissed and is removed from the Commission's docket.
3. Subject to the filing of timely petition for rehearing pursuant to KRS 278.400, these proceedings are closed. The Executive Director shall place any future filings in the appropriate utility's general correspondence file or shall docket the filing as a new proceeding.

(Commission's Dismissal Order in Case No. 2009-00190, pp. 8-9) (attached as Exhibit A).

Dr. Cooksey did not file a petition for rehearing following the entry of the Commission's dismissal order in the 2009 case. In addition, Dr. Cooksey did not appeal the Commission's dismissal order pursuant to KRS 278.410. Accordingly, the dismissal order became final and binding as to the parties involved in the case.

Dr. Cooksey has now filed the present Verified Petition against WCWD, seeking an order from the Commission requiring WCWD to extend sewer service to that portion of his farm not currently served by it and further, seeking an order from the Commission to direct and require the Warren County Water District to file a petition with the Warren County Judge/Executive to amend its territorial limits pursuant to KRS 74.110 to include all of his farm (and impliedly, to remove BGMU as a provider). For the reasons set forth herein, it is submitted that the Commission has already adjudicated these issues and that the present petition must be dismissed.

ARGUMENT

The Complainant herein seeks the exact same relief that he sought in the 2009 case which was dismissed by the Commission. To the extent that Dr. Cooksey disagreed with the 2009 decision of the Commission, he had two options—(1) to file petition for rehearing of the Commission order pursuant to KRS 278.400 within twenty days of the dismissal order; or (2) to

file an appeal of the Commission's dismissal order to the Franklin Circuit Court pursuant to KRS 278.410 within thirty days after the entry of the dismissal order or within twenty days after the denial of a petition for rehearing. Dr. Cooksey did not do either of these things; he did not file a petition for rehearing with the Commission nor did he initiate an appeal of the dismissal order. An order of the Commission continues in full force until modified or revoked by the Commission or until it is vacated in whole or in part by a court of competent jurisdiction. *Commonwealth ex rel. Stephens v. South Central Bell Telephone Co.*, 545 S.W.2d 927, 931 (Ky. 1976). The right to challenge an order of the Commission (or any other state agency) is a matter of legislative grace and the technical requirements to exercise those rights must be strictly construed. The failure to fully comply with the statutory requirements, including the time in which to ask for rehearing or to file an appeal, are mandatory. *Taylor v. Duke*, 896 S.W.2d 618, 621 (Ky. App. 1995). Thus, the Complainant's failure to either petition for rehearing or to appeal the 2009 dismissal order in accordance with the statutory instructions is fatal to the instant action seeking the same relief.

The Commission has previously ruled that it lacks the legal authority to provide the Complainant with his requested relief. Specifically, the Commission held that it cannot preclude BGMU from serving the area in dispute or to direct a revision to BGMU's service area. The Commission also correctly held that it lacks the authority to declare WCWD the sole provider of water and sewer service to Dr. Cooksey's farm. None of the facts have changed since the Commission previously ruled in 2009. The Commission lacks the legal authority to redraw the service area boundaries of the utilities involved and cannot require BGMU to abandon its contractual right to service the subject property. As it stated in the 2009 case, WCWD would not

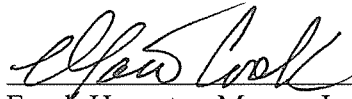
object to providing service to the Cooksey farm but it cannot do so given the prior holding of the Commission and the agreement reached with BGMU.

CONCLUSION

Based on all of the foregoing, WCWD moves the Commission to dismiss the complaint with prejudice based upon the 2009 adjudication referenced herein. The entry of a consistent order is respectfully prayed.

This 29th day of March, 2013.

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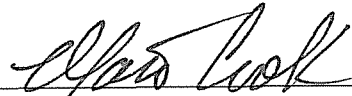


Frank Hampton Moore, Jr.
Matthew P. Cook
Counsel for WCWD

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has this 21st day of March, 2013, been placed in the U.S. Mail, postage prepaid, addressed to the following:

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Frank Hampton Moore, Jr.
Matthew P. Cook
Counsel for WCWD

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROY G. COOKSEY)	
)	
COMPLAINANT)	
)	
v.)	
)	CASE NO. 2009-00190
BOWLING GREEN MUNICIPAL UTILITIES BOARD)	
and)	
WARREN COUNTY WATER DISTRICT)	
)	
DEFENDANTS)	
)	

ORDER

Complainant has filed a formal complaint against Bowling Green Municipal Utilities Board ("BGMU") and Warren County Water District ("Warren District") in which he seeks an Order from the Commission requiring the Defendants to adjust their service area boundaries. Asserting that the Commission lacks jurisdiction to order the requested relief against it, BGMU has moved for dismissal. Finding that the Commission lacks the legal authority to prescribe a municipal utility's service area, we grant the motion and dismiss the complaint.

* * * * *

BGMU is a five-member board that was created pursuant to KRS Chapter 96¹ and that owns and operates the electric, water and sewer systems of the city of Bowling

¹ KRS 96.350-.510; KRS 96.550-.900.

Green, Kentucky.² It provides water service to 17,322 customers and sewer service to approximately 18,171 customers.³

Warren District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities in Warren County, Kentucky that provide water service to 24,012 customers⁴ and sewer service to 3,994 customers.⁵ In existence since 1964, it serves mostly the non-incorporated areas of Warren County.⁶ It does not own or operate any water or sewage treatment facilities, but purchases its total water requirements from BGMU and transports all collected sewage to BGMU for treatment.

Complainant owns a 101-acre farm in Warren County, Kentucky, which he acquired in 1975.⁷ This farm is located on the west side of Lovers Lane and is completely outside the corporate limits of the city of Bowling Green. Warren District or its predecessor has provided water service to the farm since before Complainant's

² Bowling Green, Ky., Code of Ordinances §23-2.02 (2009). For a history of Bowling Green's water and sewer operations, see http://www.bgm.com/water2_history.htm (last visited April 5, 2010).

³ See http://www.bgm.com/about2_stats.htm (last visited April 5, 2010).

⁴ *Annual Report of Warren County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2008 (Water Operations)* at 27.

⁵ *Annual Report of Warren County Water District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2008 (Sewer Operations)* at 12.

⁶ *2008 Water Annual Report* at 4. Warren District is the result of merger of three water districts: Northside Water District, Westside Water District and Morgantown Road Water District. See Case No. 5909, *The Proposed Merger of Northside Water District, Warren County, Kentucky, and Westside Water District* (Ky. PSC Dec. 18, 1973); Case No. 7186, *The Proposed Merger of the Warren County Water District, Warren County, Kentucky, and Morgantown Road Water District, Warren County, Kentucky* (PSC Ky. Jan. 16, 1979).

⁷ Complaint at ¶ 1.

acquisition of the property.⁸ Warren District currently serves the farm through a 10-inch water main.⁹ It has made sewer service available to the property through an 8-inch sewer main that runs along Lovers Lane.¹⁰ The farm is located within Warren District's territorial boundaries.¹¹

On August 3, 2006, the "Joint Engineering, Planning, and Finance Committee" – a committee consisting of two members of BGMU's Board and two members of Warren District's Board of Commissioners whose stated purpose is "to oversee the development and implementation of a long range plan for development and expansion of water and sewer service from BGMU" to Warren District¹² - recommended that the two utilities establish a sewer service boundary that would define the limits of their service. The proposed boundary effectively divides Complainant's farm. Approximately 70 acres of the farm fall within BGMU's proposed service area. The remaining 31 acres

⁸ In his Complaint, Dr. Cooksey alleges that Northside Water District previously provided water service to the property. Complaint at ¶ 1. In its answer, Warren District states that its predecessor, Westside Water District, actually served the property. Warren District Answer at 1.

⁹ Dr. Cooksey alleges that water service is provided through a 3/4-inch main and an 8-inch water main. Complaint at ¶ 1. Warren District states that a 10-inch water main serves the property. Warren District Answer at 1-2.

¹⁰ Dr. Cooksey alleges that a 12-inch sewer main is located on Lovers Lane. Complaint at ¶ 2. Warren District states the sewer service is presently available to the farm through an 8-inch sewer main. Warren District Answer at 2.

¹¹ "Territorial boundaries" refers to the water district's political boundaries. These boundaries were established when Warren County Fiscal Court established Warren District's predecessors. KRS 74.110 sets forth the procedure by which these boundaries may be amended. Territorial boundary is not synonymous with "service area."

¹² See Case No. 95-044, *The Application of Bowling Green Municipal Utilities for an Increase in Water and Sewer Rates to Warren County Water District* (Ky. PSC Feb. 27, 1996), App. A at 3. The creation of the Joint Committee was a term of an agreement between the two entities to resolve the issues presented by BGMU's application for an adjustment in its rates for wholesale water and sewer service.

fall within Warren District's area. Shortly after the issuance of the Joint Committee's recommendation, the governing bodies of both utilities adopted the recommended boundaries as the jurisdictional limits of their sewer service.¹³

On June 19, 2007, the Joint Committee recommended the establishment of similar boundaries for the two entities' water operations. These boundaries also divided Dr. Cooksey's farm between the two utilities. The governing bodies of both utilities subsequently adopted the recommended boundaries as the jurisdictional limits of their water service.¹⁴

On May 14, 2009, Complainant filed a complaint with the Commission in which he requests that Warren District be declared the exclusive provider of water and sewer service to his farm and that BGMU's rights to provide water or sewer service to the farm be terminated.

In his complaint, Complainant alleges that the boundary revisions are unlawful on three grounds. First, he asserts that the revised boundary subjects him to unreasonable prejudice or disadvantage with respect to water and sewer service. He contends that the utilities' actions were unjustly discriminatory as his farm is the only property that is transected by the service boundary and that lies wholly outside Bowling Green's corporate boundaries.¹⁵ Second, he alleges that the service boundary produces unnecessary and expensive duplication of facilities as it will require the construction of a

¹³ Resolution of the Board of Directors of the Bowling Green Municipal Utilities (Aug. 14, 2006); Reciprocal Resolution of the Board of Commissioners of the Warren County Water District (Aug. 29, 2006).

¹⁴ Resolution of the Board of Directors of the Bowling Green Municipal Utilities (July 9, 2007); Reciprocal Resolution of the Board of Commissioners of the Warren County Water District (June 26, 2007).

¹⁵ Complaint at ¶ 4.

1,700-foot sewer main from BGMU's existing sewer mains across adjacent properties to serve his farm when Warren District's sewer facilities are already available.¹⁶ Third, he alleges that the boundary revision is contrary to KRS 96.150.¹⁷

Upon service of the Complaint, BGMU moved to dismiss the Complaint for lack of subject matter jurisdiction. In its motion, it asserts that the Commission lacks jurisdiction over the territory boundaries established by agreement between a municipal utility and a public utility. While acknowledging that the Commission possesses limited jurisdiction over rates and service standards contained in agreements between municipal utilities and public utilities, it contends that the agreement at issue involves neither.

In its response to BGMU's motion, Complainant alleges that the resolutions between BGMU and Warren District constitute agreements that affect both rates and service and are therefore subject to Commission regulation pursuant to KRS 278.200. BGMU has submitted a reply to this response.

Warren District has filed an Answer to the Complaint and a response to BGMU's motion. While taking no position on the motion, Warren District has asserted that, should the Commission grant the motion and dismiss BGMU as a party to this case, the Commission will not be able to grant the relief requested in the Complaint.

¹⁶ *Id.* at ¶ 6. Dr. Cooksey alleges that this sewer main extension will cost in excess of \$200,000. He further alleges that BGMU will assess him "allocated sewer development cost" fees in excess of \$320,000.

¹⁷ Complaint at ¶ 7.

* * * * *

BGMU's motion presents the following issue: Does the Commission have jurisdiction to direct revisions in a municipal utility's service area and to prohibit or otherwise limit the municipal utility's service to a geographical area?

The Commission is "a creature of statute and has only such powers as have been granted to it by the General Assembly."¹⁸ KRS 278.040(1) provides that the Commission has the authority to regulate public utilities and to enforce the provisions of KRS Chapter 278. This authority to regulate public utilities, however, extends only to rates and service.¹⁹

The statutory definition of "utility," however, expressly excludes any city that "owns, controls, operates, or manages any facility used or to be used for or in connection with" the treatment or distribution of water or the collection, transportation or treatment of sewage.²⁰ As a result of this exclusion, Kentucky courts have generally concluded that "all operations of a municipally owned utility whether within or without the territorial boundaries of the city" are exempt from Commission jurisdiction.²¹

As BGMU is not within the statutory definition of "utility," the Commission lacks any authority over its rates or service. As we have no authority over its service, we

¹⁸ *Boone County Water and Sewer District v. Public Service Commission*, 949 S.W.2d 588, 591 (Ky. 1997). See also *Croke v. Public Service Commission of Kentucky*, 573 S.W.2d 927, 929 (Ky. App. 1978) ("The Public Service Commission's powers are purely statutory; like other administrative boards and agencies, it has only such powers as are conferred expressly or by necessary or fair implication").

¹⁹ KRS 278.040(2).

²⁰ KRS 278.010(3)(d) and (f).

²¹ *McClellan v. Louisville Water Co.*, 351 S.W.2d 197, 199 (Ky. 1961). See also *City of Mount Vernon v. Banks*, 380 S.W.2d 268, 270 (Ky. 1964) ("In the operation of a water plant a municipal corporation is not under the jurisdiction of the Public Service Commission").

cannot direct it to modify its service area boundary to exclude the area in which a portion of Complainant's farm is located.

Complainant argues that the current case falls within a limited exception to the exemption granted to municipal utilities that the Kentucky Supreme Court recognized in *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994).²² This exception occurs when a municipal utility contracts to provide utility service to a public utility.²³ Complainant argues that the resolutions that BGMU and Warren District have adopted regarding service area boundaries constitute an agreement that affects both rates charged to him and the service that he receives. As a result of entering this agreement, he argues, BGMU has waived its exemption from Commission jurisdiction and is subject to Commission authority.²⁴

Assuming that the resolutions constitute an agreement between the two entities, we find little evidence to support the proposition that they establish a rate or service standard. The resolutions do not refer to rates. While the practical effect of the

²² 872 S.W.2d at 463 (“[W]here contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation”).

²³ KRS 278.200 provides:

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, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.

²⁴ Complainant's Response to Motion to Dismiss at 3.

resolutions is to limit a resident within the defined service area to the rates charged by the designated service provider, the resolutions do not specify a rate for any type of service nor do they even refer to rates.

While the resolutions establish specific geographical areas in which each entity would provide service to the exclusion of the other, the establishment of such areas is not within the statutory definition of "service." KRS 278.010(13) defines "service" as

any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, **the purity, pressure, and quantity of water**, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility [emphasis added].

In adopting this definition, the General Assembly appears to have intended for "service" to include how the utility's product was provided and its general nature and quality, not its geographical availability.²⁵

Present case law, moreover, does not support Complainant's assertion of Commission authority to alter or revise municipal utility boundaries. In *City of Georgetown v. Public Service Commission*, 516, S.W2d 842 (Ky. 1974), Kentucky's highest court expressly held that this Commission lacked the statutory authority to resolve territory disputes involving municipal utilities and enjoined Commission

²⁵ See Case No. 96-256, *City of Lawrenceburg, Kentucky v. South Anderson Water District* (Ky. PSC June 11, 1998) at 5 - 6. In *Simpson County Water District v. City of Franklin*, 872 S.W.2d at 464, moreover, the majority expressly found that the "rates and service exception had no relationship to" the issue of service territorial disputes.

proceedings in which a public utility sought a cease and desist order to prevent a municipal utility from extending its facilities into the public utility's service area.²⁶

Based upon the foregoing, the Commission finds that it lacks the statutory authority to provide Complainant's requested relief and that this case should be dismissed as to both Defendants.²⁷ Having no statutory authority to preclude BGMU from serving the area in dispute or to direct a revision to BGMU's service area, we clearly also lack the authority to declare Warren District the sole provider of water and sewer service to Complainant's farm.

IT IS THEREFORE ORDERED that:

1. BGMU's Motion to Dismiss is granted.
2. This case is dismissed and is removed from the Commission's docket.
3. Subject to the filing of timely petition for rehearing pursuant to KRS 278.400, these proceedings are closed. The Executive Director shall place any future filings in the appropriate utility's general correspondence file or shall docket the filing as a new proceeding.

²⁶ See also *City of Flemingsburg v. Public Service Commission*, 411 S.W.2d 920 (Ky. 1967); Case No. 2004-00027, *City of Hawesville v. East Daviess County Water Association* (Ky. PSC Mar. 25, 2004).

²⁷ While Complainant's farm lies in BGMU's service area, it also lies within Warren District's territory. As a water district, Warren District has a legal duty to serve all within its territory if service can be reasonably extended. See OAG 75-719 (a "water district is under an obligation to serve all inhabitants, including the subject applicant, within its geographical area of service as fixed under KRS 74.010 and as defined by the certificate of convenience and necessity.") In dismissing this case, we make no finding as to whether a voluntary agreement between a municipal utility and a public utility regarding the allocation of service areas limits the Commission's authority under KRS 278.280 to require the public utility to make extensions of service that are contrary to or inconsistent with such agreement.

By the Commission

ENTERED
APR 16 2010 *M*
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Richard D. Hoff for
Executive Director

Case No. 2009-00190

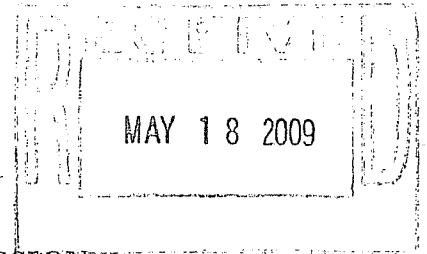
Honorable Keith M Carwell
Attorney At Law
English, Lucas, Priest & Owsley
1101 College Street
P.o. Box 770
Bowling Green, KY 42102

Honorable Timothy L Edelen
Attorney at Law
Bell, Orr, Ayers & Moore
P. O. Box 738
1010 College Street
Bowling Green, KY 42102

Mark Iverson
Bowling Green Municipal Utilities
801 Center Street
P. O. Box 10300
Bowling Green, KY 42102

Frank Hampton Moore, Jr.
COLE & MOORE
921 College Street - Phoenix Place
P. O. Box 10240
Bowling Green, KY 42102-7240

Alan Vilines
General Manager
Warren County Water District
523 US Highway 31W Bypass
P. O. Box 10180
Bowling Green, KY 42102-4780



COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF

ROY G. COOKSEY, M.D.,
COMPLAINANT

VS.

CASE NO. _____

BOWLING GREEN MUNICIPAL UTILITIES BOARD and
WARREN COUNTY WATER DISTRICT,
DEFENDANTS

**VERIFIED COMPLAINT AND PETITION
OF ROY G. COOKSEY, M.D.,
TO RETAIN WARREN COUNTY WATER DISTRICT
AS THE EXCLUSIVE PROVIDER OF WATER AND SEWER SERVICE
TO HIS FARM**

Pursuant to KRS 278.260, Roy G. Cooksey, M.D. (“Dr. Cooksey”), by counsel, hereby submits his Verified Complaint and Petition to the Kentucky Public Service Commission to retain the Warren County Water District (“WCWD”) as the exclusive provider of water and sewer service to his farm located in Warren County, Kentucky, entirely outside the corporate limits of the City of Bowling Green, Kentucky, and to terminate the rights of Bowling Green Municipal Utilities Board (“BGMU”) to provide water or sewer service to his farm.

1. Dr. Cooksey has owned a farm comprised of approximately 101 acres (“the Farm”) on Lovers Lane in Warren County, Kentucky, since 1975. The description of the Farm is set

forth on **EXHIBIT A** annexed hereto and incorporated herein by reference. The Farm is entirely outside the corporate limits of the City of Bowling Green as set forth on the map annexed hereto as **EXHIBIT B** and incorporated herein by reference. At the time Dr. Cooksey acquired the Farm, and for years prior to that date, Warren County Water District and its predecessor, Northside Water District, provided all water service to the entire Farm. In fact, to this date, the only water service to the Farm has been provided by WCWD which has both a $\frac{3}{4}$ -inch and 8-inch water main on the Farm. BGMU does not presently nor has it ever provided water or sewer service to the Farm.

2 Sewer service is, likewise, presently available on the Farm from Warren County Water District as a 12-inch sewer line with manhole has been installed on the Farm where it fronts on Lovers Lane. BGMU does not have sewer service presently available to the Farm and has never provided sewer service to the Farm.

3. Dr. Cooksey has now been advised that BGMU is asserting the exclusive right to provide water and sewer service to the rear 70 acres of the Farm. This 70-acre portion is a virtual island which currently has no access to water or sewer service from BGMU and, for that matter, does not have access to a public street (**EXHIBIT A**). This state of affairs has resulted from an agreement between WCWD and BGMU amending their service boundaries in such a manner as to have divided Dr. Cooksey's Farm into two separate service areas with no notice to him or opportunity afforded him to be heard on that matter. This action had the effect of removing the rear portion of the Farm from the service area of WCWD, the only utility to ever provide water or sewer service to the Farm.

This revision of the utilities' service areas had its genesis in an Agreed Order entered by the Public Service Commission in Case No. 95-044 which required BGMU and WCWD to create a Joint Engineering, Planning and Finance Committee which was to address a long-range plan

for development and expansion of water and sewer services with the cost of such expansion being allocated based upon factors including “the need for the capital improvements” and further to ensure that “the customers of both utilities the best service at the least cost.” Resolutions of the Board of Directors of BGMU and WCWD were then adopted approving a revision to both the sewer service boundary area and the water service boundary area. With respect to the sewer service boundary, this boundary was expressly to be established to “provide the customers of both utilities with the best service for the least cost.” (EXHIBIT C)

These resolutions revising the service areas for water and sewer service between WCWD and BGMU clearly do not provide Dr. Cooksey with the “best service for the least cost.” In fact, this action will result in a totally unnecessary and expensive duplication of facilities and services.

As a result of the creation of this 70-acre island, Dr. Cooksey is prohibited from extending his existing water lines on the Farm to the rear of the Farm for such simple matters as supplying a water trough. Dr. Cooksey currently has a barn on the rear 70 acres but is not able to provide water or restroom facilities to that barn as he is not permitted to extend his existing WCWD water lines or extend sewer service over the imaginary service line boundary. In the past, Dr. Cooksey has intermittently supplied water to the rear 70 acres by use of temporary surface lines, but he has been advised that this is no longer permitted. There can be no question that Dr. Cooksey is being discriminated against in an unjust manner as a result of the agreement entered into between BGMU and WCWD.

4. The Farm is currently the only property on Lovers Lane to be transected in this manner as to water and sewer service between BGMU and WCWD. The service area boundary with respect to sewer service to other similarly situated tracts within this geographical area follows their

property line boundaries. In addition, this is the only tract in this geographic vicinity which lies wholly outside the city limits of Bowling Green but with respect to which BGMU is asserting exclusive service rights for both water and sewer service. Therefore, the action of the Defendants is clearly discriminatory and, in this case, unjustly so and subjects Dr. Cooksey to significant disadvantages with respect to the obtaining of utility services.

5. As the agreement entered into between WCWD and BGMU affects the service provided to Dr. Cooksey as a customer of the utility, jurisdiction over this dispute does lie with the Public Service Commission of Kentucky pursuant to the decision of the Kentucky Supreme Court in *Simpson County Water District v. Franklin, Ky.*, 872 S.W.2d 460 (1994). As set forth in that decision, one of the manifest purposes of the Public Service Commission is to prevent unjust discrimination in not only rates but also services.

6. The actions of BGMU and WCWD are in violation of KRS 278.170 in that this action unjustly discriminates against Dr. Cooksey and subjects Dr. Cooksey to unreasonable prejudice or disadvantage with respect to services. Dr. Cooksey, in order to obtain sewer service to the rear of his Farm from BGMU, will be required to pay a fee to access the BGMU sewer in excess of \$320,000. This "hookup fee" has been referred to by BGMU as the "allocated sewer development cost" although strangely none of the sewer which has been constructed goes to the Farm and is, in fact, more than 1,700 feet from the Farm. In addition, Dr. Cooksey would be required to construct a sewer line in excess of 1,700 feet across adjacent properties, where no easement presently exists, at an additional cost in excess of \$200,000--this, while at the same, a WCWD 12-inch sewer line with manhole is actually located on the Farm. It is problematic as to whether or not an easement may even be acquired across the adjacent properties in view of the fact that Dr. Cooksey's Farm presently has access to both

water and sewer service; and, therefore, there would be no public purpose to be achieved by a condemnation, and there certainly could be no showing of necessity for the easement. No other property in this geographic vicinity is being, likewise, discriminated against.

7. The extension of BGMU into the service area of WCWD is in further violation of KRS 96.150 in that no evidence exists that WCWD requested this extension, and there is certainly not even a suggestion that WCWD is unable to provide adequate water and sewer service to the Farm and, in fact, it presently does provide such service. The Cooksey Farm is currently completely served by WCWD and neither needs nor desires service from BGMU.

WHEREFORE, Roy G. Cooksey, M.D., moves as follows:

1. That the Public Service Commission commence a proceeding to declare that WCWD to be the sole provider of water and sewer service to Dr. Cooksey's Farm and to require WCWD and BGMU to adjust their service area boundaries accordingly.
2. That the Public Service Commission make BGMU and WCWD parties to this proceeding and require their prompt responses to the Complaint and Petition herein.
3. For all other relief to which Dr. Cooksey may appear entitled.

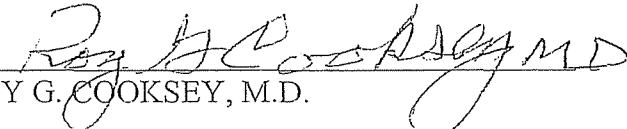
This 12 day of May, 2009.

ENGLISH, LUCAS, PRIEST & OWSLEY, LLP
1101 College Street, P. O. Box 770
Bowling Green, Kentucky 42102-0770
Phone: (270) 781-6500
Attorneys for Roy G. Cooksey, M.D.

BY: 

KEITH M. CARWELL

I, Roy G. Cooksey, M.D., certify that I have read the foregoing Verified Petition and Complaint and state that to the best of my knowledge, information and belief all facts set forth therein are true.




ROY G. COOKSEY, M.D.

COMMONWEALTH OF KENTUCKY

COUNTY OF WARREN

SUBSCRIBED AND SWORN TO before me by Roy G. Cooksey, M.D., on this 14th day of May, 2009.



NOTARY PUBLIC, Ky. State-at-Large

My Commission Expires: 2-11-2010

This is to certify that the original of the foregoing **VERIFIED PETITION AND COMPLAINT OF ROY G. COOKSEY, M.D., TO RETAIN WARREN COUNTY WATER DISTRICT AS THE EXCLUSIVE PROVIDER OF WATER AND SEWER SERVICE TO HIS FARM** were mailed to:

Public Service Commission
P. O. Box 615
Frankfort, KY 40602-0615

and copies were mailed to:

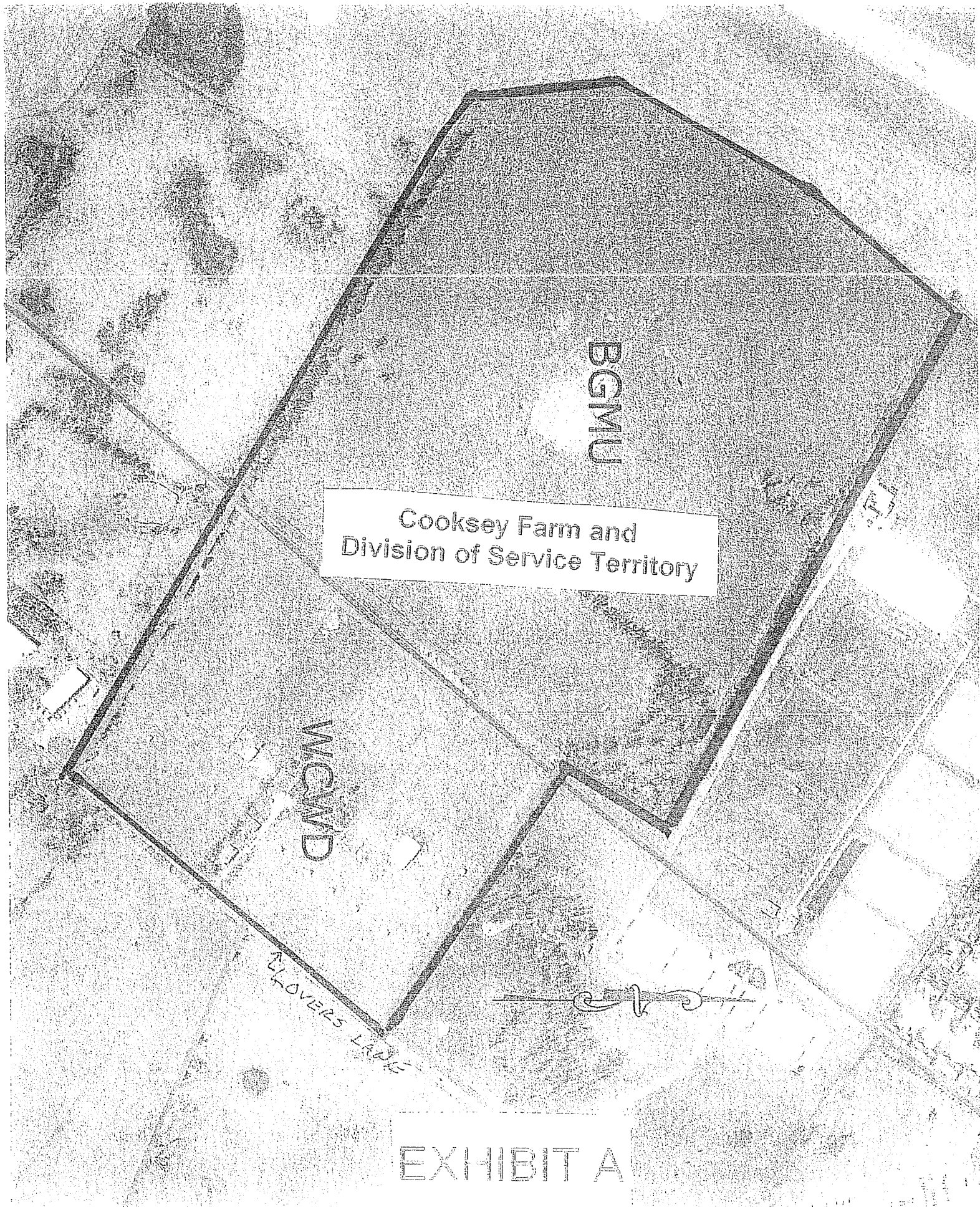
Warren County Water District
Attention: Alan Vilines, General Manager
P. O. Box 10180
Bowling Green, KY 42102-4780

Bowling Green Municipal Utilities
Attention: Mark Iverson, General Manager
P. O. Box 10300
Bowling Green, KY 42102-7300

This 14th day of May, 2009.



KEITH M. CARWELL



Cooksey Farm and
Division of Service Territory

BGMU

MICMCD

EXHIBIT A



EXHIBIT B

RECIPROCAL RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE WARREN COUNTY WATER DISTRICT

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

WHEREAS, all future capital improvements of BGMU and WCWD that result from the need for increased service and all future capital improvements which have an impact on the service of BGMU and WCWD is to be reviewed by the Committee in an effort to provide the customers of both utilities with the best service for the least costs, and:

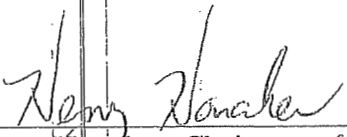
WHEREAS, the Committee has met and has recommended to the Board of Commissioners the approval of a sewer service boundary as described in the attached resolution and map dated the 3RD day of AUGUST, 2006.

NOW, THEREFORE, be it resolved by WCWD that the resolution of the joint committee be approved by WCWD and the sewer service boundary contained therein

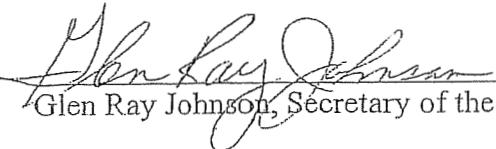
EXHIBIT C

adopted by WCWD as the jurisdictional limits of sewer service effective as of the date of this resolution.

ADOPTED this 29th day of AUGUST, 2006.


Henry Honaker, Chairman of the Board

ATTEST:


Glen Ray Johnson, Secretary of the Board

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE BOWLING GREEN MUNICIPAL UTILITIES

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

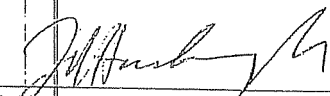
WHEREAS, all future capital improvements of BGMU and WCWD that result from the need for increased service and all future capital improvements which have an impact on the service of BGMU and WCWD is to be reviewed by the Committee in an effort to provide the customers of both utilities with the best service for the least costs, and:

WHEREAS, the Committee has met and has recommended to the Board of Directors the approval of a sewer service boundary as described in the attached resolution and map dated the 3rd day of August, 2006.

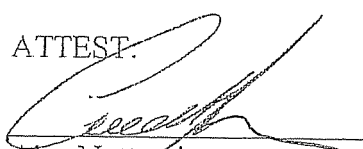
NOW, THEREFORE, be it resolved by BGMU that the resolution of the joint Committee be approved by BGMU and the sewer service boundary contained therein

adopted by BGMU as the jurisdictional limits of sewer service effective as of the date of this resolution.

ADOPTED this 14th day of August, 2006.



Randy Hansbrough, M.D.
Chairman of the Board

ATTEST.


Alex Nottmeier
Secretary of the Board

RESOLUTION OF THE JOINT ENGINEERING,
PLANNING, AND FINANCE COMMITTEE OF THE
WARREN COUNTY WATER DISTRICT AND THE
BOWLING GREEN MUNICIPAL UTILITIES

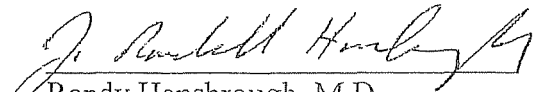
At a meeting of the Joint Engineering, Planning, and Finance Committee ("Joint Committee") which occurred on the 3RD day of AUGUST, 2006, the following resolution was unanimously adopted:

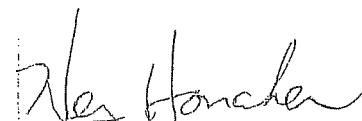
RESOLVED, that it is the recommendation of the Joint Engineering, Planning, and Finance Committee of the Warren County Water District ("WCWD") and Bowling Green Municipal Utilities ("BGMU") that the respective Boards of BGMU and WCWD approve and adopt the sewer service boundary as shown on the attached map (BGMU/WCWD Agreed Sewer Service Area Boundary Map dated August 3, 2006) as the jurisdictional limits for sewer service by the respective utilities, effective on the date of this resolution.


DATED this 3RD day of AUGUST, 2006.

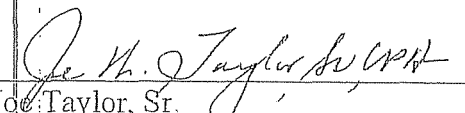
BOWLING GREEN
MUNICIPAL UTILITIES

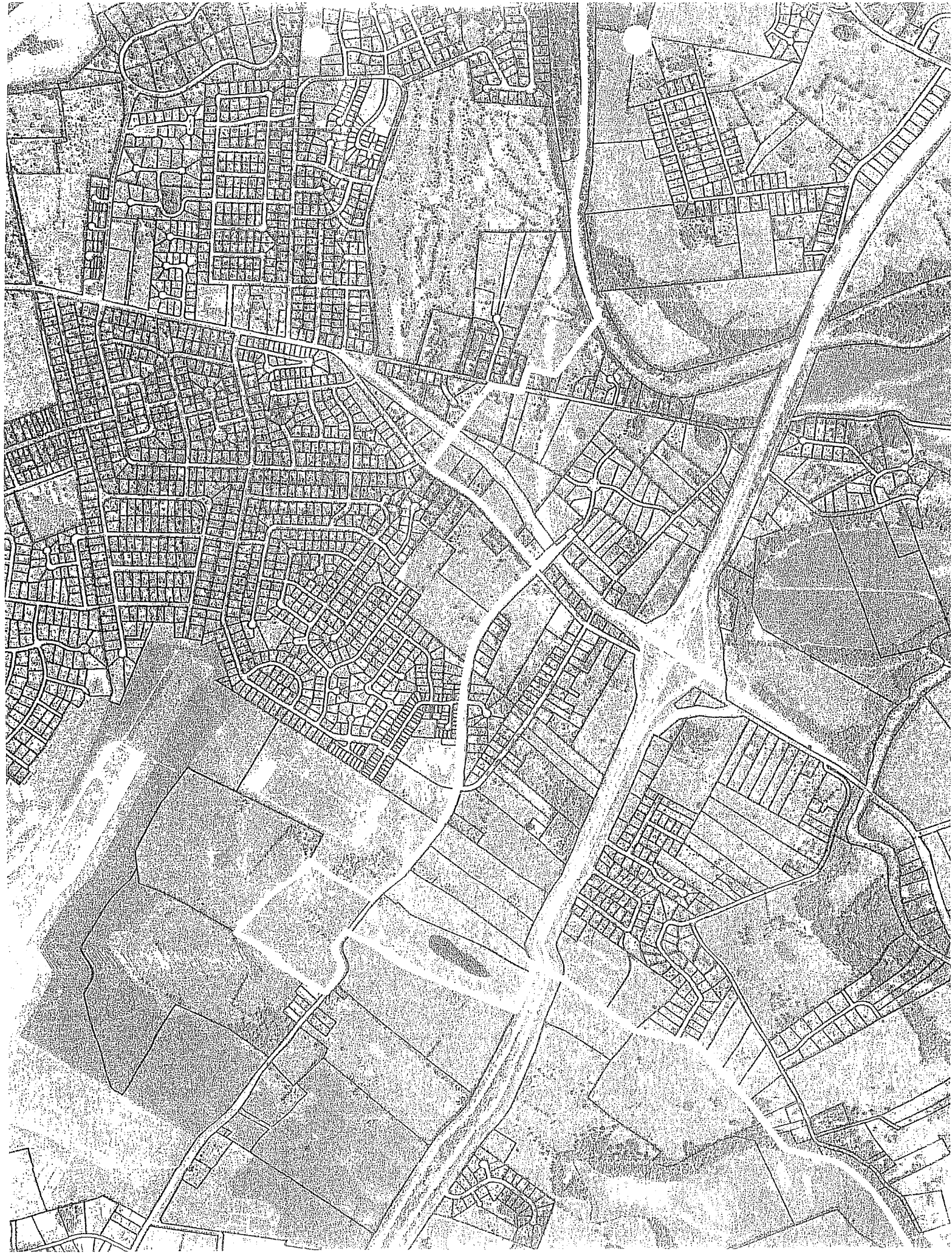
WARREN COUNTY
WATER DISTRICT


Randy Hansbrough, M.D.


Henry Honaker


Alex Nottmeier


Joe Taylor, Sr.



sewer service boundary

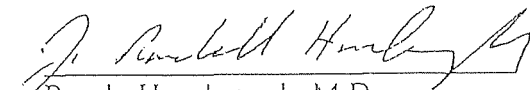
RESOLUTION OF THE JOINT ENGINEERING,
PLANNING, AND FINANCE COMMITTEE OF THE
WARREN COUNTY WATER DISTRICT AND THE
BOWLING GREEN MUNICIPAL UTILITIES

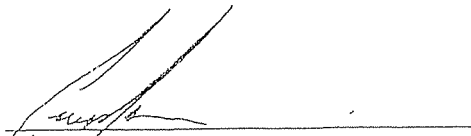
At a meeting of the Joint Engineering, Planning, and Finance Committee ("Joint Committee") which occurred on the 3RD day of AUGUST, 2006, the following resolution was unanimously adopted:

RESOLVED, that it is the recommendation of the Joint Engineering, Planning, and Finance Committee of the Warren County Water District ("WCWD") and Bowling Green Municipal Utilities ("BGMU") that the respective Boards of BGMU and WCWD approve and adopt the sewer service boundary as shown on the attached map (BGMU/WCWD Agreed Sewer Service Area Boundary Map dated August 3, 2006) as the jurisdictional limits for sewer service by the respective utilities, effective on the date of this resolution.


DATED this 3RD day of AUGUST, 2006.

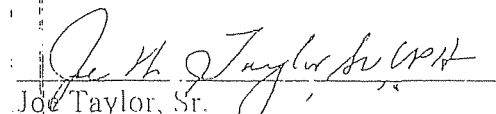
BOWLING GREEN
MUNICIPAL UTILITIES


Randy Hansbrough, M.D.


Alex Nottmeier

WARREN COUNTY
WATER DISTRICT


Henry Honaker


Joe Taylor, Sr.



RESOLUTION OF THE BOARD OF DIRECTORS
OF THE BOWLING GREEN MUNICIPAL UTILITIES

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

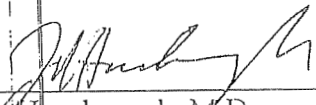
WHEREAS, all future capital improvements of BGMU and WCWD that result from the need for increased service and all future capital improvements which have an impact on the service of BGMU and WCWD is to be reviewed by the Committee in an effort to provide the customers of both utilities with the best service for the least costs, and:

WHEREAS, the Committee has met and has recommended to the Board of Directors the approval of a sewer service boundary as described in the attached resolution and map dated the 3rd day of August, 2006.

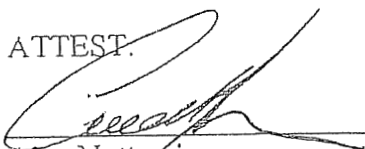
NOW, THEREFORE, be it resolved by BGMU that the resolution of the joint Committee be approved by BGMU and the sewer service boundary contained therein

adopted by BGMU as the jurisdictional limits of sewer service effective as of the date of this resolution.

ADOPTED this 14th day of August, 2006.



Randy Hansbrough, M.D.
Chairman of the Board

ATTEST.


Alex Nottmeier
Secretary of the Board

RECIPROCAL RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE WARREN COUNTY WATER DISTRICT

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

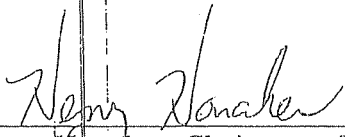
WHEREAS, all future capital improvements of BGMU and WCWD that result from the need for increased service and all future capital improvements which have an impact on the service of BGMU and WCWD is to be reviewed by the Committee in an effort to provide the customers of both utilities with the best service for the least costs, and:

WHEREAS, the Committee has met and has recommended to the Board of Commissioners the approval of a sewer service boundary as described in the attached resolution and map dated the 3RD day of AUGUST, 2006.

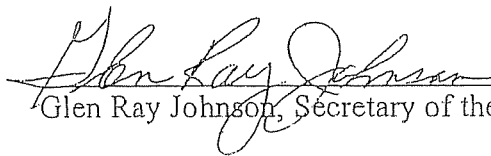
NOW, THEREFORE, be it resolved by WCWD that the resolution of the joint committee be approved by WCWD and the sewer service boundary contained therein

adopted by WCWD as the jurisdictional limits of sewer service effective as of the date of this resolution.

ADOPTED this 29th day of AUGUST, 2006.


Henry Honaker, Chairman of the Board

ATTEST:


Glen Ray Johnson, Secretary of the Board

RESOLUTION OF THE JOINT ENGINEERING,
PLANNING, AND FINANCE COMMITTEE OF THE
WARREN COUNTY WATER DISTRICT AND THE
BOWLING GREEN MUNICIPAL UTILITIES

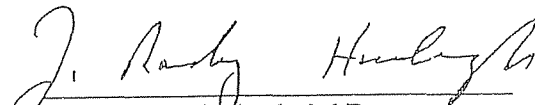
At a meeting of the Joint Engineering, Planning, and Finance Committee ("Joint Committee") which occurred on the 19TH day of JUNE, 2007, the following resolution was unanimously adopted:

RESOLVED, that it is the recommendation of the Joint Engineering, Planning, and Finance Committee of the Warren County Water District ("WCWD") and Bowling Green Municipal Utilities ("BGMU") that the respective Boards of BGMU and WCWD approve and adopt the water service boundary as shown on the attached map (BGMU/WCWD Agreed Water Service Area Boundary Map dated June 19, 2007) as the jurisdictional limits for water service by the respective utilities, effective on the date of this resolution.

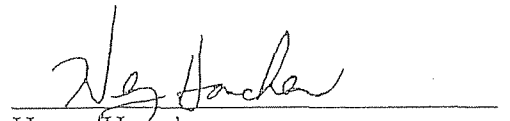
DATED this 19TH day of JUNE, 2007.

BOWLING GREEN
MUNICIPAL UTILITIES


WARREN COUNTY
WATER DISTRICT



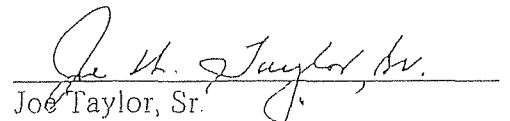
Randy Hansbrough, M.D.



Henry Henaker

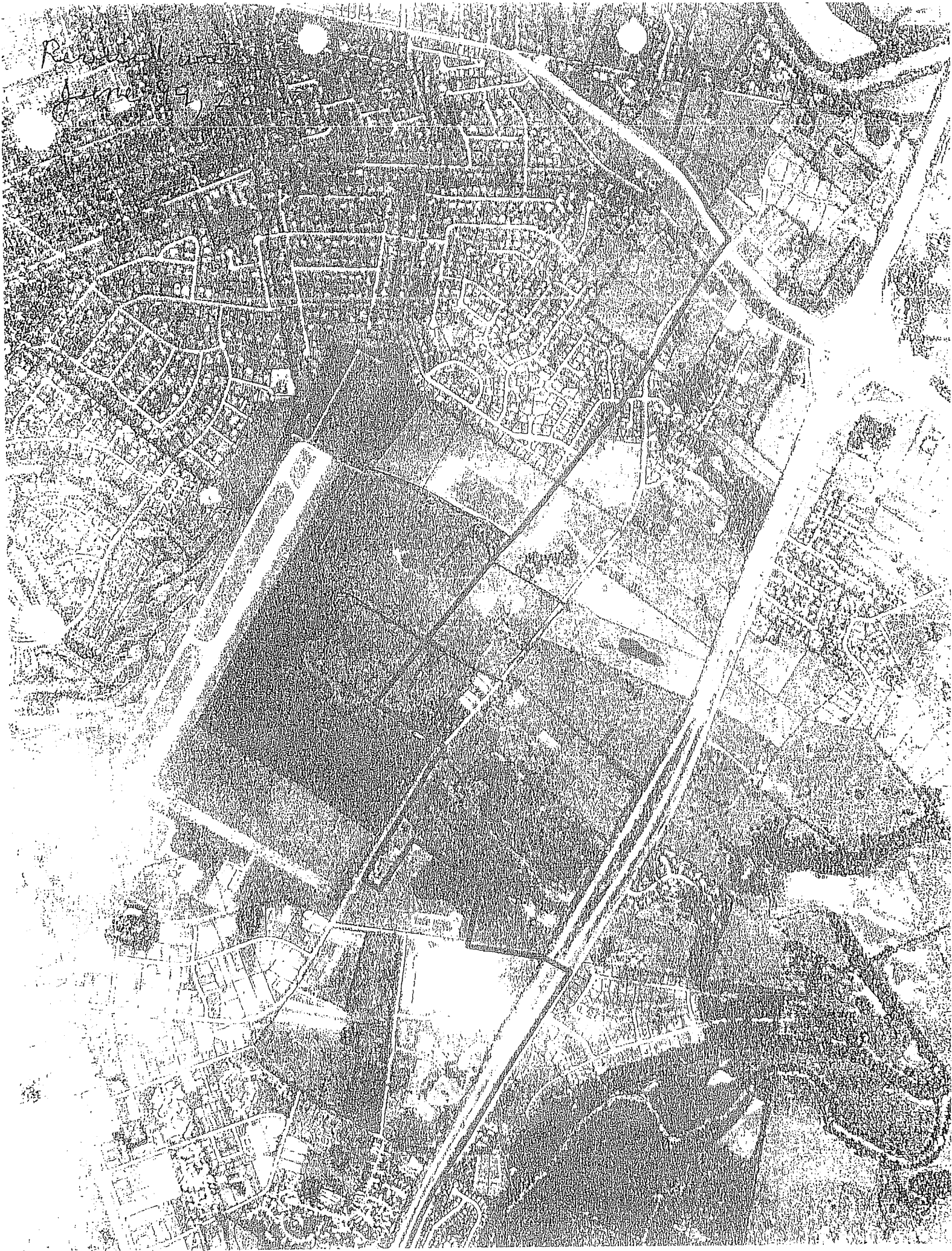


Alex Nottmeier



Joe Taylor, Sr.

Residential
Amenities




RESOLUTION OF THE BOARD OF DIRECTORS
OF THE BOWLING GREEN MUNICIPAL UTILITIES

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

WHEREAS, the Committee has met and has recommended to the Board of Directors the approval of a water service boundary as described in the attached resolution and map dated the 19th day of June, 2007.

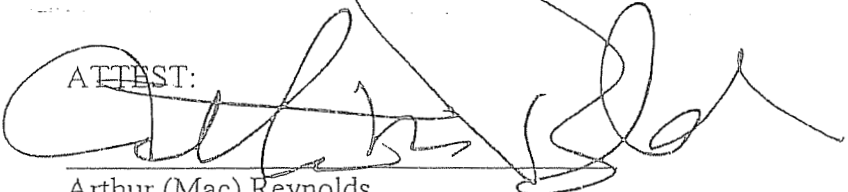
NOW, THEREFORE, be it resolved by BGMU that the resolution of the joint Committee be approved by BGMU and the water service boundary contained therein adopted by BGMU as the jurisdictional limits of water service effective as of the date of this resolution.

ADOPTED this 9th day of July, 2007.



Alex Noffmeier
Chairman of the Board

ATTEST:



Arthur (Mac) Reynolds
Secretary of the Board

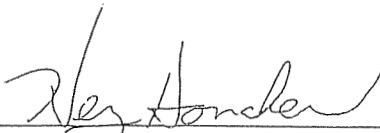
RECIPROCAL RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE WARREN COUNTY WATER DISTRICT

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities (“BGMU”) and Warren County Water District (“WCWD”) jointly create a “Joint Engineering, Planning, and Finance Committee” (“COMMITTEE”) to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

WHEREAS, the Committee has met and has recommended to the Board of Commissioners the approval of a water service boundary as described in the attached resolution and map dated the 19th day of June, 2007.

NOW, THEREFORE, be it resolved by WCWD that the resolution of the joint committee be approved by WCWD and the water service boundary contained therein adopted by WCWD as the jurisdictional limits of water service effective as of the date of this resolution.

ADOPTED this 26th day of June, 2007.



Henry Honaker, Chairman of the Board

ATTEST:



Glen Ray Johnson, Secretary of the Board

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2009-00190

IN THE MATTER OF:

ROY G. COOKSEY

COMPLAINANT

v.

**BOWLING GREEN MUNICIPAL UTILITIES BOARD'S
MOTION TO DISMISS**

BOWLING GREEN MUNICIPAL UTILITIES BOARD and
WARREN COUNTY WATER DISTRICT

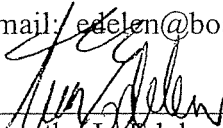
DEFENDANTS

Comes the defendant, Bowling Green Municipal Utilities Board ("BGMU"), by counsel, and hereby moves the Public Service Commission to dismiss the Verified Complaint and Petition filed by the complainant because the Commission lacks jurisdiction over this matter. In support of this motion, BGMU files contemporaneously herewith its memorandum of law.

In the alternative, should the Commission determine not to grant this Motion, BGMU respectfully requests that it be granted additional time in which to file an answer to the Verified Complaint and Petition.

This 5th day of June, 2009.

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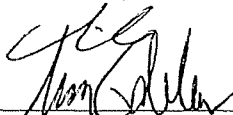
Timothy L. Edelen
*Attorney for Defendant,
Bowling Green Municipal Utilities Board*

This is to certify that a true and exact copy of the foregoing has this day been mailed to:

Keith M. Carwell
ENGLISH, LUCAS, PRIEST & OWSLEY, LLP
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Attorney for Complainant, Roy G. Cooksey

Frank Hampton Moore, Jr.
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921 College Street
P. O. Box 10240
Bowling Green, KY 42102-7240
Attorney for Defendant Warren County Water District

This 5th day of June, 2009.



*Attorney for Defendant,
Bowling Green Municipal Utilities Board*

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2009-00190

IN THE MATTER OF:

ROY G. COOKSEY

COMPLAINANT

v.

**MEMORANDUM IN SUPPORT OF
BOWLING GREEN MUNICIPAL UTILITIES BOARD'S
MOTION TO DISMISS**

BOWLING GREEN MUNICIPAL UTILITIES BOARD and
WARREN COUNTY WATER DISTRICT

DEFENDANTS

Comes the defendant, Bowling Green Municipal Utilities Board (“BGMU”), by counsel, and in support of its motion to dismiss the Verified Complaint and Petition filed against it by Roy G. Cooksey (“Cooksey”), states as follows:

INTRODUCTION

No statute grants jurisdiction to the Public Service Commission (“PSC”) over the matters Cooksey seeks to raise in his Complaint. As a city-owned supplier of water and sewer services, BGMU is expressly exempted from the definition of a “utility,” and is therefore generally exempt from PSC jurisdiction. Although the court in **Simpson County Water District v. City of Franklin**, 872 S.W.2d 460 (Ky. 1994) set forth an exception to this exemption, that exception is not applicable here. Cooksey’s Petition involves a complaint by a customer over the territorial boundary lines between BGMU and the Warren County Water District (the “WCWD”), not an issue of rates or services arising out of a contract under which BGMU

provides a commodity or service to the WCWD. Accordingly, the PSC has no jurisdiction over this matter and Verified Petition and Complaint filed by the complainant should be dismissed.

STATEMENT OF THE CASE

In his Verified Petition and Complaint (“Complaint”), Cooksey alleges that he owns a large tract of land comprising approximately 101 acres. Complaint, ¶ 1. Cooksey complains that the boundary lines established by agreement between BGMU and the WCWD via the Joint Engineering, Planning and Finance Committee created by the two entities has resulted in part of his property receiving water and sewer service from the WCWD and the other portion receiving water and sewer service from BGMU. Complaint, ¶ 3. According to Cooksey, the fact that his entire property does not receive water and sewer service from the single entity of his choice constitutes discrimination. Specifically, Cooksey alleges that the water and sewer service provided by BGMU will be more costly for him, and he therefore asserts that he is entitled to receive service for his entire property from the WCWD. Complaint, ¶¶ 3, 6.

ARGUMENT

The Public Service Commission does not have jurisdiction over the purported controversy alleged by Cooksey. Cooksey’s reliance upon the decision in **Simpson County Water District v. City of Franklin**, 872 S.W.2d 460 (Ky. 1994) in support of his argument that jurisdiction exists is misplaced. *See* Complaint, ¶ 5. Despite Cooksey’s attempt to characterize the issue in this case as arising from the provision of utility “services,” the actual issue is a disagreement regarding the boundary lines between the *service areas* of a utility, the WCWD, and a non-utility, BGMU. Because BGMU is not a “utility” under KRS Chapter 278, and because this case is not a dispute over “services” arising from a contract between BGMU and the WCWD, but rather over boundary lines, the PSC does not have jurisdiction.

The PSC “is a creature of statute and has only such powers as have been granted to it by the General Assembly.” **Boone County Water and Sewer Dist. v. Public Service Com'n**, 949 S.W.2d 588, 591 (Ky. 1997); *see also* **Public Service Com'n of Ky. v. Attorney General of Com.**, 860 S.W.2d 296, 298 (Ky. App. 1993) (“The PSC's powers are purely statutory.”); **Public Service Com'n v. Blue Grass Natural Gas Co.**, 197 S.W.2d 765, 767 (Ky. 1946) (“The power of the Public Service Commission to deal with and regulate public utilities is authorized, controlled, and restricted by Chapter 278.”). No statute grants the PSC the power to establish or change the territorial boundary lines for a city-owned provider of water and sewer services such as BGMU.

Pursuant to KRS 278.260, the PSC has “original jurisdiction over complaints as to rates or service of any utility.” KRS 278.260(1). (Emphasis supplied). City-owned providers of water and sewer service such as BGMU, however, are specifically exempted from the definition of a “utility” under KRS Chapter 278. According to KRS 278.010(3):

(3) “Utility” means any person except...a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation; [or]

(f) The collection, transmission, or treatment of sewage for the public, for compensation...

(Emphasis supplied). *See also* **City of Greenup v. Public Service Com'n**, 182 S.W.3d 535, 538 (Ky. App. 2005) (“KRS 278.010(3)(d) exempts from the definition of a utility a city which distributes or furnishes water to the public for compensation.”) Because BGMU is not a “utility,” it is not generally subject to regulation by the PSC.

In **Simpson County Water District v. City of Franklin**, relied upon by the complainant, the court recognized that cities are generally exempt from regulation by the PSC, but held that a city “waives its exemption when it contracts with a regulated utility upon the subjects of rates

and service.” *Id.* at 462. This holding was based upon the court’s interpretation of KRS 278.040(2), which provides as follows:

The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

(Emphasis supplied). Because the City of Franklin had contracted to provide water to the Simpson County Water District, the court held that the PSC had jurisdiction over the rates charged by the City to the District. Although the issue in Simpson County involved only rates, the court indicated that the exception to the general exemption for cities from PSC jurisdiction also applies to services. **Simpson County**, 872 S.W.2d at 462.

The actual issue raised by Cooksey in this matter is a complaint by an individual about the territorial boundaries established by agreement between a utility and a city, not an issue of rates or service. Although the complainant attempts to characterize this matter as a “service” issue, and thus rely upon the court’s opinion in **Simpson County**, issues regarding the boundary lines between service areas for a utility and a non-utility do not constitute “service” issues as such term is used in the court’s opinion or in KRS 278.040(2). Commenting on the application of the “exception to the exemption” for services, the court in **Simpson County** stated that “the service regulation over which the Commission was given jurisdiction refers clearly to the quantity and quality of the commodity furnished as contracted for...” *Id.* at 464. (Emphasis supplied). In KRS 278.010(13), “service” is defined as follows:

“Service” includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility...

Interpreting this statute, the court in **Benzinger v. Union Light, Heat & Power Co.**, 170 S.W.2d 38 (Ky. 1943), opined that “the legislature only intended for the word ‘service’ to apply to and comprehend ‘quality’ and ‘quantity’ of the product to be served...” **Id.** at 41; *see also* **Peoples Gas Co. of Ky. v. City of Barbourville**, 165 S.W.2d 567, 571 (Ky. 1942) (The regulation of service “clearly refers to the quantity and quality of the commodity furnished...”). In this case, the complaint does not refer to the quantity or quality of a commodity provided to a utility by a city, but rather objects to which of two entities provides such commodity directly to a consumer. Because the “legislature has conferred upon cities an exemption from the PSC’s power to regulate local utilities in every area except as to rates and services,” the PSC has no jurisdiction over the boundary lines of the territory in which BGMU operates. **Simpson County**, 872 S.W.2d at 462.

Even if Cooksey’s allegations could constitute a “service” issue, which is denied, the PSC would still have no jurisdiction over this case, because the issue raised in the complaint does not arise out of a contract between a non-regulated municipality for the provision of a commodity or other service to a regulated utility. Citing to the **Simpson County** opinion, the court in **City of Greenup v. Public Service Com’n**, 182 S.W.3d 535 (Ky. App. 2005) recognized that as “a municipal water system, [the City of] Greenup’s water system is not, in the absence of a contract to provide utility services to a regulated utility... subject to regulation by the PSC.” **Id.** at 536. (Emphasis supplied). According to the Court:

[T]he PSC does not have jurisdiction over utility services furnished by a municipality except to the extent that those services are rendered pursuant to a contract with a utility which is regulated by the PSC. In such cases the municipality, in the matters covered under the contract, is subject to the jurisdiction of the PSC.

Id. at 538. (Emphasis supplied). In fact, the issue in the **Simpson County** case, as articulated by the court, was not simply whether the PSC has jurisdiction over the rates and services provided by cities under any circumstances, but “whether, under the act, a city waives its exemption from PSC regulation by contracting to supply a commodity to a PSC-regulated entity.” **Simpson County**, 872 S.W.2d at 462. In its analysis of this issue, the court distinguished cases involving the rates charged for water service by a municipality to its individual customers, noting that such cases were inapplicable because “the municipality was not selling water to a PSC-regulated entity.” **Id.** at 464. Thus, under Kentucky law, the PSC only has jurisdiction over services provided by a city to the extent that those services are provided pursuant to a contract under which the city supplies a commodity to a PSC-regulated utility.

As set forth above, the complaint does not raise issues of rates or services arising from a contract by a non-utility to supply a commodity to a PSC-regulated utility. Instead, the complainant seeks to have the PSC alter the boundary lines between the territory of a utility, WCWD, and a non-utility, BGMU. Specifically, Cooksey objects that a portion of his property falls within the territorial boundaries of BGMU, within which BGMU *directly* provides water and sewer services to its customers (as opposed to supplying water or any other commodity to a PSC-regulated entity pursuant to a contract). In **Simpson County**, the court explicitly distinguished cases involving issues of territorial boundary lines from the issue of jurisdiction over rates and services in the context a contract for a city to supply a commodity to a PSC-regulated entity. Specifically, the court distinguished the case of **City of Georgetown v. Public Service Com’n**, 516 S.W.2d 842 (Ky. 1974), wherein “the parties were engaged in a dispute of territorial jurisdiction, between a private utility and a city utility,” noting that the “rates and service exception had no relationship to” such issues. **Simpson County**, 872 S.W.2d at 464. As

in **City of Georgetown**, the issue raised by Cooksey involves the territorial boundary line between a PSC-regulated utility and a municipal provider of water and sewer services, which has “no relationship” to the rates and service exception at issue in **Simpson County**. **Id.**

In **City of Georgetown v. Public Service Com'n**, the court held that the PSC did not have jurisdiction to resolve a territorial dispute between a city-owned water supply system and a privately owned water supplier. **City of Georgetown**, 516 S.W.2d at 845. Additionally, in **In the Matter of: City of Hawesville v. East Daviess County Water Association, Inc.**, 2004 WL 2039467 (Ky. P.S.C. 2004) (Slip Copy), this Commission concluded that it had no jurisdiction over a territorial dispute between a municipal service provider and a public utility. According to this Commission:

Hawesville presents no issue related to East Daviess's rates or service. Its requested relief is a Commission directive prohibiting East Daviess from extending water service into areas that Hawesville presently serves.

Nothing within KRS Chapter 278 authorizes this Commission to establish or enforce exclusive service territories for water utilities. *See Kentucky Utilities Co. v. Pub. Serv. Com'n*, Ky., 390 S.W.2d 168, 175 (1965) (stating that existing utilities do not “have any right to be free of competition.”). **Kentucky-American Water Co.**, Case No. 91-359 (Ky. P.S.C. Apr. 17, 1992); **Mountain Utilities, Inc. v. Equitable Gas Co.**, Case No. 91-316 (Ky. P.S.C. Apr. 6, 1992). *Cf. Re Flowing Wells, Inc.*, 180 PUR 4th 117 (Ind. URC 1997). Neither KRS Chapter 96, which governs the operation and governance of municipal utilities, nor KRS Chapter 273, which governs water associations, conveys such authority to the Commission.

The Commission lacks any legal authority to resolve territory disputes that arise between municipal water utilities and public water utilities. **City of Georgetown, Kentucky v. Pub. Serv. Com'n**, Ky., 516 S.W.2d 842, 845 (1974) (“While it may be desirable that the Public Service Commission resolve this type dispute because of its expertise in this area, this is of legislative, not judicial, concern, and we feel compelled to follow the clear language of KRS. 278.010(3).”). *See also City of Lawrenceburg, Ky. v. South Anderson Water District*, Case No. 1996-00256 (Ky. P.S.C. Jun. 11, 1998).

Id. Although no actual dispute exists between BGMU and the WCWD as to the appropriate territorial boundary lines between the two, the relief requested by the complainant in this matter is the same as that sought by Hawesville in the case above. Here, an individual consumer requests that the PSC issue a directive regarding the boundary between the service territory of a municipal service provider and that of a public utility, an issue over which the PSC has explicitly held that it “lacks any legal authority.” **Id.** Because BGMU is not a “utility” and is therefore generally exempted from PSC regulation, the exception to the exemption set forth in **Simpson County** does not apply. The PSC has no jurisdiction over disputes regarding service territory, and therefore the PSC has no jurisdiction over this matter. *See Id.*; **City of Georgetown v. Public Service Com’n.**

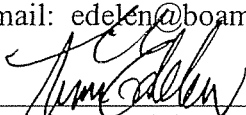
CONCLUSION

BGMU is expressly exempted from the definition of a “utility,” and is therefore generally exempt from the jurisdiction of the Public Service Commission. The exception to this exemption set forth in **Simpson County Water District v. City of Franklin**, 872 S.W.2d 460 (Ky. 1994) is not applicable in this case. This case involves a complaint by a customer about the territorial boundary lines between BGMU and the WCWD, not an issue of rates or services arising out of a contract under which BGMU provides a commodity to the WCWD. Accordingly, the PSC has no jurisdiction over this matter and Verified Petition and Complaint filed by the complainant should be dismissed.

In the alternative, should the PSC determine that it does have jurisdiction over this matter, BGMU respectfully requests that it be granted additional time in which to file an answer to the Verified Complaint and Petition.

This 5th day of June, 2009.

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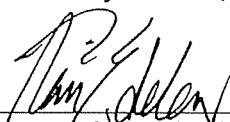
Timothy L. Edelen
*Attorney for Defendant,
Bowling Green Municipal Utilities Board*

This is to certify that a true and exact copy of the foregoing has this day been mailed to:

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Bowling Green, KY 42102-7240
Attorney for Defendant Warren County Water District

This 5th day of June, 2009.



*Attorney for Defendant,
Bowling Green Municipal Utilities Board*

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2009-00190

ROY G. COOKSEY, M.D.

PLAINTIFF

V.

BOWLING GREEN MUNICIPAL UTILITIES BOARD
AND WARREN COUNTY WATER DISTRICT

DEFENDANTS

**PLAINTIFF'S RESPONSE TO DEFENDANT,
BOWLING GREEN MUNICIPAL UTILITIES BOARD'S,
MOTION TO DISMISS**

Comes the Plaintiff, Roy G. Cooksey, M.D. ("Cooksey"), by counsel, and for his response to the Defendant, Bowling Green Municipal Utilities Board's ("BGMU"), Motion to Dismiss, states that same should be denied as the PSC clearly does have jurisdiction over this matter pursuant to KRS 278.040(2), KRS 278.200 and other applicable Kentucky law. In support of Cooksey's position, he states as follows:

STATEMENT OF THE FACTS

Dr. Roy Cooksey ("Plaintiff") owns a farm of approximately 101 acres (the "Farm"), and has owned the Farm since 1975. The Farm is located on Lovers Lane in Bowling Green, Kentucky. The Farm is outside of the corporate city limits of Bowling Green.

For many years Plaintiff received all his water service on the Farm from the Warren County Water District ("WCWD"). Even to this day, Plaintiff gets water only from WCWD. The same can be said for sewer service as well. WCWD has been, in the past, the sole provider of sewer service to Plaintiff. A 12-inch WCWD sewer line, as well as a manhole, is

currently located on the Farm. There is currently no water or sewer service to the Farm; and, in fact, the nearest BGMU sewer line is more than 1,700 feet from the Farm.

Plaintiff's terms of service were changed abruptly in 2006. On August 14, 2006 the BGMU board of directors adopted a resolution modifying the boundaries for sewer provision between BGMU and WCWD. On August 29, 2006, the WCWD board of directors adopted a reciprocal resolution, agreeing with BGMU as to the new boundaries for sewer service between the two companies. As per this agreement, both companies would only provide sewer service within their new respective jurisdictions.

The following year, both companies adopted further resolutions agreeing on changes in the water service boundaries. On July 9, 2007, the BGMU board adopted a resolution changing the water service boundaries. Again, WCWD adopted a similar provision on June 26, 2007. Both companies agreed on only providing water to their new respective jurisdictions. These actions constitute a contract between BGMU and WCWD which affects both rates and services provided to the Plaintiff.

The effect of these agreements was that Plaintiff's Farm was split into two pieces by the new boundaries. The back 70 acres of Plaintiff's property is now in BGMU's district even though BGMU has never provided service to this property--nor is BGMU in the better position to do so. When Plaintiff was aware that he would have to go to BGMU for water and sewer service and the cost of obtaining both sewer and water service from BGMU was going to exceed \$500,000 while WCWD's water and sewer lines are currently located on his Farm, Plaintiff filed this complaint.

ARGUMENT AND AUTHORITIES

I. The Agreement between BGMU and WCWD Waives BGMU's Exemption to PSC Jurisdiction.

The resolutions adopted by BGMU and WCWD constitute agreements between the two utilities on who, and how, sewer and water services are to be provided to certain areas. The agreement changes who provides the services to Plaintiff and, therefore, also changes the rates charged to Plaintiff. As a result of BGMU entering into these contractual arrangements with WCWD (a PSC regulated utility) which affect both rates and services, BGMU has waived its exemption to Public Service Commission ("PSC") jurisdiction. Therefore, the PSC has jurisdiction to hear this claim.

The PSC is a statutorily created entity under the provisions of KRS Chapter 278 and as such is limited to the powers and jurisdiction granted it by statute. *See Boone County Water v. Public Service Com'n*, Ky., 949 S.W.2d 588, 590 (1997). KRS 278.040(2) specifically grants the PSC with exclusive jurisdiction over rates and services of utilities. It provides:

The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions. (Emphasis supplied).

BGMU argues that KRS 278.010(3) exempts it as a city-operated water and sewage provider from the definition of a utility. That exemption was waived, however, when BGMU entered into a contract with WCWD which specifically relates to the respective services which would be provided by each. As a result of this action on behalf of BGMU and WCWD, BGMU is clearly subject to the jurisdiction of the PSC as it relates to this matter.

The Legislature provided a means by which a PSC may govern certain actions by a city operated utility. KRS 278.200 provides that when a city contracts with a PSC regulated utility regarding rates or the provision of service, the city loses its exemption to the extent of what is in the agreement. More specifically, KRS 278.200 states:

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, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter. (Emphasis supplied).

Since the City is not a utility, if KRS 278.040(2) stopped at the end of its first sentence, its impact would be obvious. However, the following sentence of KRS 278.040(2) must also be noted. “The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.” (Emphasis supplied). KRS 278.200 specifically is designed to address those instances where a contract has been made between a utility and a city. It provides that where a city and a utility enter into a contract, the terms of which include provisions for rates and services, then by so contracting the city gives up its exemption for PSC regulation and renders itself subject to regulation by the PSC. Clearly, KRS 278.200, read together with KRS 278.040(2), creates what has been called a “rates and services” exception to a city’s exemption from PSC regulation.

The Kentucky Supreme Court interpreted this statute in the case of *Simpson County Water Dist. v. Franklin*, Ky., 872 S.W.2d 460 (1994). In that case, the Court held that

when a municipal utility contracts over rates or services with a PSC regulated utility, that the municipal utility waives its exemption from PSC jurisdiction. *Simpson County Water Dist. v. Franklin* at 462. In that case, the City of Franklin had contracted with the Simpson County Water District to provide water to the county. The Court held that the PSC had jurisdiction over the rates being charged to the county because the city had waived its exemption by entering into the agreement. *Id.* at 463.

While the *Simpson County Water Dist.* case dealt with a rate contract between the two utility companies, it did not limit its holding to only those types of agreements. *Id.* at 462. Nothing in the case specifically limits the court's holding to situations of contracts for service between municipal utilities and PSC regulated utilities, as BGMU argues. The Court merely states that the primary issue in that case was whether, "...a city waives its exemption from PSC regulation by contracting to supply a commodity to a PSC-regulated utility." *Id.* at 462. The Court clearly states the rule that, "The statute has but one meaning-the City waives its exemption when it contracts with a regulated utility upon the subjects of rates and service."

"In summary, the PSC does not have jurisdiction over utility services furnished by a municipality *except to the extent that those services are rendered pursuant to a contract with a utility which is regulated by the PSC.*" *City of Greenup v. Public Service Com'n*, Ky.App., 182 S.W.3d 535, 538 (2005). (Emphasis supplied). BGMU is clearly subject to the jurisdiction of the PSC under this rule. BGMU entered into an agreement with WCWD. The two utilities agreed on how to divide up the customers by redefining their service boundaries. The two companies changed who they provided service to, and in that respect changed the rates that some individuals were going to have to pay. The agreement goes to the very nature of, as well as the extent of, the services provided by the utilities.

Defendant BGMU tries to argue that this agreement was not about a “service”. However, clearly, changing the boundaries of service alters the service itself. Just as in the *Simpson County Water Dist.* case, BGMU and WCWD’s adoption of an agreement directly related to the rates charged to customers, as well as the type of service they would be privy to. The Court held in that case, “The City's unilateral adoption of the two water-rate ordinances doubled the water charge and, in no uncertain terms, was an act that directly related to the rate charged by the water district.” Also, just as in *Simpson County Water Dist.*, the agreement between BGMU and WCWD related to the service provided by WCWD as, in that case, it was held that “The City's declaration to hold the parties' contracts null and void constitutes a practice relating to the service of the water district.”

Not to mention that the agreement clearly affects the “quantity” of the water provided. “Our interpretation of that language is, that the legislature only intended for the word “service” to apply to and comprehend “quality” and “quantity” of the product to be served...” *Benzinger v. Union Light, Heat & Power Co.*, 170 S.W.2d 38, 41 (Ky.App. 1943). Changing the respective jurisdictions of the two utilities clearly would affect the quantity of the water they would provide. WCWD might provide less water to customers now, it might provide more. In fact, it is providing less water now to at least one customer, the Plaintiff.

Cooksey is no longer able to provide water to the back 70 acres of the Farm at the rate he previously paid or, for that matter, any commercially reasonable rate. He is no longer able to run a water line from the front portion of his Farm to the rear. He is unable to provide sewer service to the barn located on the rear of the Farm without running a BGMU sewer line a distance in excess of 1,700 feet at a cost in excess of \$500,000 across property where no easement presently exists. This, while at the same time, a WCWD sewer line is located on the

Farm. The agreement entered into between BGMU and WCWD clearly affects both the rates and services provided to Cooksey.

Since the agreement between BGMU and WCWD is a clearly dealing with the services offered to customers, BGMU has waived its exemption and the PSC has jurisdiction over it.

II. **Plaintiff's Claim is not about the Territorial Lines, but about the Discrimination Caused by the BGMU and WCWD Agreement.**

BGMU argues in its motion to dismiss that Plaintiff's claim is only over the territorial boundaries of BGMU and WCWD; and that in *Simpson County Water Dist.* the court specifically distinguished cases of that nature. Motion to Dismiss, ¶ 7. BGMU is correct in that the rates and services exception does not apply to cases where, "The parties were engaged in a dispute of territorial jurisdiction, between a private utility and a city utility..." *Simpson County Water Dist. v. Franklin* at 464. However, the current case is not one of that nature. The dispute here is between a *customer* of a utility about the agreement for new territorial jurisdiction between two utilities which affects both rates and services.

In *City of Georgetown v. Public Service Commission*, Ky., 516 S.W.2d 842, 844 (1974), the dispute involved was between a municipal utility operated by the City of Georgetown, and the Kentucky American Water Company. The Kentucky American Water Company was complaining about Georgetown extending its lines into American Water's jurisdiction. In *City of Hawesville v. East Daviess County Water Ass'n, Inc.*, 2004 WL 2039467 (Ky. P.S.C 2004), another case cited by BGMU in its motion, the dispute was between the City of Hawesville and the East Daviess County Water Association. The City of Hawesville was complaining about the East Daviess County Water Association moving into its jurisdiction.

Neither of these cases involved a customer of either utility complaining about their service or the rates they have to pay.

Clearly, the facts in those cases are distinguished from the facts in this case. The issue before the PSC here is not about a municipal utility and a regulated utility arguing over territory. In fact, BGMU and WCWD have agreed on their respective territories. The current dispute is between two utilities and a *customer*. Plaintiff's action pending before the PSC specifically concerns the change in services which he is entitled to receive from the respective utilities because of their contractual arrangement as well as the rates he will have to pay. For this reason, *City of Georgetown v. Public Service Commission*, and *Hawesville v. East Daviess County Water Ass'n, Inc.* are not analogous and the PSC has jurisdiction over the complaint.

III The PSC was Designed Specifically for Cases of this Nature.

This is a case that the PSC was designed for. "The manifest purpose of the Public Service Commission is to require and insure fair and uniform rates, prevent unjust discrimination, and prevent ruinous competition." *Simpson County Water Dist. v. Franklin* at 464; citing *City of Olive Hill v. Public Service Commission*, 305 Ky. 249, 203 S.W.2d 68 (1947). The Legislature gave the PSC exclusive jurisdiction over issues concerning rates and services rendered by regulated utilities. KRS 278.040 (2). Why would the Legislature grant the PSC the ability to hear these cases unless it was to protect customers?

In this case some customers were going to be subject to the same conditions and rates; others were going to have to change companies. This may have been a good change for some, but for others it may have been a horrible change. In Plaintiff's case the change was of the latter type. It subjected him to much higher service rates for a piece of property he has owned

for over 25 years. No one else on his street is subjected to the same treatment. This is clearly the type of discrimination the PSC was designed to protect against.

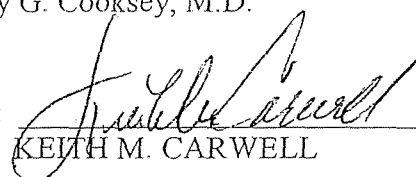
CONCLUSION

BGMU is clearly subject to the jurisdiction of the PSC in this case. BGMU voluntarily entered into an agreement with WCWD that directly affected the rates and services provided by each utility. Therefore, BGMU has waived its exemption from PSC jurisdiction. Also, this case is not about a territory dispute between a PSC regulated entity and a municipal utility. This dispute is between a customer and utility companies. Finally, the policy behind creation of the PSC was to protect from discrimination in rates and services provided. The agreement between BGMU and WCWD creates just that discrimination. Therefore, it would frustrate the purpose of the PSC if jurisdiction was not allowed in cases such as this. That is why the Legislature granted sole jurisdiction over rates and services to the PSC. For the aforementioned reasons, BGMU is subject to the regulation of the PSC to the extent that the regulation relates to the agreement between BGMU and WCWD.

WHEREFORE, Plaintiff, Roy G. Cooksey, M.D., requests that this Court enter an order overruling Defendant, Bowling Green Municipal Utilities, motion to dismiss, and for such other and further relief as this Court deems just and appropriate.

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Attorneys for Plaintiff,
Roy G. Cooksey, M.D.

BY:



KEITH M. CARWELL

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT, BOWLING GREEN MUNICIPAL UTILITIES BOARD'S, MOTION TO DISMISS** was this date placed in the U. S. Mail addressed to:

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Counsel for the Defendant, Warren County Water District

This 15 June 2009.



KEITH M. CARWELL

837854-2

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2009-00190

IN THE MATTER OF:

ROY G. COOKSEY

COMPLAINANT

v.

**BOWLING GREEN MUNICIPAL UTILITIES BOARD'S
REPLY TO PLAINTIFF'S RESPONSE TO
MOTION TO DISMISS**

BOWLING GREEN MUNICIPAL UTILITIES BOARD and
WARREN COUNTY WATER DISTRICT

DEFENDANTS

Comes the defendant, Bowling Green Municipal Utilities Board (“BGMU”), by counsel, and for its Reply to the plaintiff’s Response (“Response”) to BGMU’s Motion to Dismiss the Verified Complaint and Petition, states as follows:

As previously set forth in BGMU’s Memorandum in Support of its Motion to Dismiss (“Memorandum”), BGMU is expressly exempted from the definition of a “utility,” and is therefore generally exempt from the jurisdiction of the Public Service Commission. The exception to this exemption set forth in **Simpson County Water District v. City of Franklin**, 872 S.W.2d 460 (Ky. 1994) is not applicable in this case, as this does not involve a contract between BGMU and a PSC-regulated utility regarding rates or service. Instead, Cooksey disputes the territorial boundary lines between the service areas of a municipal entity, BGMU, and a utility, the Warren County Water District (“WCWD”), an issue which has been explicitly held not to be within the jurisdiction of the PSC. Accordingly, the PSC has no jurisdiction over this matter and Verified Petition and Complaint filed by the complainant should be dismissed.

I. An agreement regarding territorial boundary lines between WCWD and BGMU does not waive BGMU's exemption to PSC jurisdiction.

As previously set forth in BGMU's Memorandum, as a city-owned supplier of water and sewer services, BGMU is expressly exempted from the definition of a "utility," and is therefore generally exempt from PSC jurisdiction. *See* KRS 278.260, KRS 278.010(3). Although the court in **Simpson County Water District v. City of Franklin**, 872 S.W.2d 460, 462 (Ky. 1994) recognized that a city can waive its exemption when it contracts with a regulated utility "upon the subject of rates and service," this "rates and service" exception does not apply to complaints over territorial boundaries. In fact, the court in Simpson County explicitly recognized that the "rates and service exception had no relationship to" territorial boundary line issues. **Id.** at 464.

In attempting to characterize the boundary line issue as a "service" issue, the complainant argues that because WCWD and BGMU established the territorial boundary lines between the two of them by agreement, then this agreement waives BGMU's exemption from PSC jurisdiction. This argument is without merit. Although it has been held that the exemption from PSC jurisdiction may be waived when a municipal non-utility contracts with a PSC-regulated utility upon the subject of rates or service, an agreement as to the boundary lines of service areas is not such a contract. The provision of water and sewer services by BGMU to the customers within its agreed upon territory does not constitute "services [that] are rendered pursuant to a contract with a utility which is regulated by the PSC." **City of Greenup v. Public Service Com'n**, 182 S.W.3d 535 (Ky. App. 2005). These are simply services provided directly by BGMU to its own customers, over which the PSC has no jurisdiction. As previously set forth in BGMU's Memorandum, both Kentucky's highest court and the PSC itself have held that the PSC has no jurisdiction to resolve territory disputes that arise between municipal water utilities and PSC-regulated utilities. **City of Georgetown v. Public Service Com'n**, 516 S.W.2d 842

(Ky. 1974); **In the Matter of: City of Hawesville v. East Daviess County Water Association, Inc.**, 2004 WL 2039467 (Ky. P.S.C. 2004) (Slip Copy). If the complainant’s argument were to be accepted, the result would be a holding by the PSC that, although it has no jurisdiction under Kentucky law over boundary line *disputes* between PSC-regulated utilities and non-utilities such as BGMU, it does have jurisdiction to alter territorial boundary line *agreements* between two such entities. No authority supports such an inconsistent result. If boundary line disputes are not rates or service issues under Kentucky law that would trigger PSC jurisdiction over a non-utility, then neither are boundary line agreements.

The complainant’s argument that his objection to the agreement between WCWD and BGMU as to their territorial boundary lines is actually a rates and services issue is likewise without merit. One need only look to the relief requested by the complainant in order to establish that the core issue in this case is the location of the territorial boundary lines between WCWD and BGMU. In his Complaint, Cooksey seeks to have the PSC “require WCWD and BGMU to adjust their service area boundaries” so that his farm falls only within WCWD territory and not within BGMU territory. He does not request that the PSC make any order with regard to the actual rates or services offered by either WCWD or BGMU, but simply seeks to change the territorial boundary lines between the two. Accordingly, despite Cooksey’s arguments to the contrary, this case involves a complaint by a customer about the territorial boundary lines between a PSC regulated entity and a non-PSC regulated entity, not an issue of rates or services arising out of a contract.

Although the complainant attempts to characterize the issue in this case as a service issue by asserting that “changing the boundaries of service alters the service itself,” this argument is flawed for several reasons. The first is that, as previously set forth, disputes over the location of

a boundary line between the service area of a utility and the service area of a non-utility have previously been held by both Kentucky courts and the PSC itself not to be subject to PSC jurisdiction, indicating that boundary changes do not raise the type of “service” issues that would waive a non-utility’s exemption from PSC jurisdiction. *See, e.g., City of Georgetown v. Public Service Com’n*, 516 S.W.2d 842 (Ky. 1974); *In the Matter of: City of Hawesville v. East Daviess County Water Association, Inc.*, 2004 WL 2039467 (Ky. P.S.C. 2004) (Slip Copy). The second reason is that no actual “changing” of the service area boundaries has occurred.

In attempting to characterize the issue in this case as a “service” issue, as opposed to a boundary line issue, Cooksey makes multiple erroneous assertions of fact. One such assertion is that reciprocal resolutions by BGMU and WCWD adopted in 2006 created “new” sewer service boundaries, and that further resolutions in 2007 created “new” water service boundaries. Cooksey claims that these “new” boundaries caused his farm to no longer be completely served by WCWD, and to instead be partially served by BGMU. *See Response*, p. 2.

In reality, the boundary line for water service had been established in the 1970s. That water boundary line is 1,000 feet off Lovers Lane. The front portion of Cooksey’s farm therefore was supplied with water by the WCWD. The back 70 acres of Cooksey’s farm has always been considered part of BGMU’s water service area. It is contiguous with BGMU’s existing water service area. In fact, at the Lovers Lane Soccer Complex, and in particular at the maintenance building at the rear of that property (see Cooksey’s Exhibit A to his Complaint), BGMU has installed an 8 inch waterline, directly adjacent to Cooksey’s property in question. Therefore, water service is readily available by BGMU at the back 70 acre portion of Cooksey’s farm. No resolutions in either 2006 or 2007 “changed” the water service area for Cooksey’s

farm. The 2007 resolution that Cooksey refers to at page 2 of his Response was adopted merely to clean up the water service boundary map in other areas. Cooksey's farm was not affected.

The Lovers Lane area in which Cooksey's farm is situated had previously been unserved for sewer, by any utility. Cooksey therefore, as of that time, was not a customer of either BGMU or WCWD for sewer. BGMU and WCWD established a sewer boundary line by resolutions in 2006, and set that sewer boundary line along the same line as the water service boundary line at Cooksey's farm. The sewer boundary line was set between and among BGMU and WCWD after extensive engineering studies which took into consideration capacities of BGMU's sewer system and topography in the area.¹ It was determined that the back 70 acres should remain part of BGMU's service area.

Therefore, the resolutions adopted in 2006 did not have the effect of "changing" the back 70 acres of the Cooksey property from being a WCWD customer to a BGMU customer. For the back 70 acres, Cooksey had never been a WCWD sewer customer. The back 70 acres of Cooksey's farm had never been part of WCWD's sewer service area.

Accordingly, Cooksey's claim that these "agreements" or resolutions split his farm "into two pieces by the new boundaries," is false. Not only is there no merit to Cooksey's argument that the issue in this case is somehow a "service" issue and not a boundary line issue because "modifications" in the boundary lines between WCWD and BGMU affect service to his property, but this argument is not factually based. Moreover, Cooksey's argument that no water service from BGMU is available for the back portion of his farm is also false, as there is an eight inch water main located at the maintenance barn at the Lovers Lane Soccer Complex, which is adjacent to Cooksey's back 70 acres. (See Exhibit A to Cooksey Complaint). Even if the factual allegations in Cooksey's Complaint and Response were true, which is denied, the core

¹ As the PSC is fully aware, BGMU treats all sewage received from WCWD.

issue in this case would nevertheless remain a boundary line issue, and not an issue of “service,” as evidenced by the relief sought in the Complaint.

Additionally, whether a customer’s property falls within the boundaries of WCWD or BGMU does not create a “quantity” issue with regard to the water provided to that customer. Despite the fact that Cooksey may be receiving “less” water from WCWD and more water from BGMU than he would prefer, due to the location of the territorial boundary lines between the two entities, he has made no credible allegations that he is unable to receive an acceptable quantity of water overall. *Response*, p. 6. As stated, BGMU has an 8 inch waterline available to serve the back 70 acres of Cooksey’s property. The fact that an individual customer does not get to choose which of two possible entities provides his water service is not an issue of “quantity” of the water provided so as to constitutes a “service” issue, but is simply an issue of which of two entities provides the water.² Accordingly, the complainant has asserted no actual issue as to “quantity” and/or “service.” Instead, the complainant requests that the PSC issue a directive regarding the boundary between the service territory of a municipal service provider and that of a public utility, an issue over which the PSC has explicitly held that it “lacks any legal authority.” **In the Matter of: City of Hawesville v. East Daviess County Water Association, Inc.**, 2004 WL 2039467 (Ky. P.S.C. 2004) (Slip Copy).

II. The fact that a customer, not a service provider, raises a territorial boundary issue, does not create jurisdiction with the PSC.

The complainant’s argument that the allegations in his Complaint do not create a boundary line issue, but rather an issue of “discrimination,” is without merit and does not create jurisdiction with the PSC. *See Response*, p. 7. The fact that it is a customer (in this case

² It is unclear why Cooksey would request WCWD to serve water to the back 70 acre portion of his farm. WCWD buys its water from BGMU, and if WCWD were to serve Cooksey with water for the back 70 acres, Cooksey would be paying a higher rate for that water.

BGMU's customer), rather than a service provider, that takes issue with the location of the territorial boundary line between a utility and a non-utility does not change the nature of the dispute. As set forth above, if the PSC has no jurisdiction over territorial disputes between a utility and a non-utility, then the PSC likewise has no jurisdiction to alter the territorial lines between the two simply because such lines were established by agreement, and BGMU's customer now complains of it. Moreover, the complainant has cited no authority whatsoever for the proposition that the PSC could somehow acquire jurisdiction to alter the territorial boundaries between such entities simply because the party disputing the boundaries is a customer, rather than one of the entities.

III. The PSC was not “designed” to allow individual customers to choose whether to receive water and sewer service from a regulated utility or a non-regulated municipal entity.

Contrary to the plaintiff's allegations, this case does not involve “fair and uniform rates,” “unjust discrimination,” or “ruinous competition.” *Response*, p. 8. This case involves a customer (BGMU's customer), Cooksey, who wishes to receive service on a particular part of his property from one service provider instead of the other, regardless of the established territorial boundary lines between the two providers, premised on extensive engineering and study. Following Cooksey's logic, all customers would be entitled to choose the provider of their water and sewer services, regardless of the established territorial service boundaries for the particular provider, and the reasons for establishing those boundaries. Additionally, as set forth above, no actual “change” in the water or sewer boundary lines took place in 2006 or 2007. Because Cooksey never received sewer or water service on the back portion of his farm from WCWD, his argument that the “change” in the territorial boundaries is somehow discriminatory is without merit. Accordingly, allowing individual customers to object to the territorial

boundary lines between a utility and a non-utility is certainly not the type of case that the PSC was designed for, but rather is the type of case over which the PSC has no jurisdiction.

IV. The fact that Cooksey’s farm is outside of the corporate city limits of Bowling Green is irrelevant.

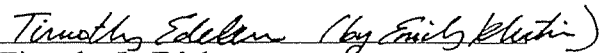
In both his Complaint and his Response, the complainant noted that his farm is outside of the corporate city limits of Bowling Green. Such fact is completely irrelevant. KRS 96.150(1) expressly authorizes a city to provide water and sanitary sewer service outside the city boundaries in areas that are contiguous to the city. According to KRS 96.150(1), any “city that owns or operates a water supply or sanitary sewer system may extend the system into, and furnish and sell water and provide sanitary sewers to any person within, any territory contiguous to the city, and may install within that territory necessary apparatus...” *See also* KRS 96.350(1) (authorizing cities to “purchase, establish, erect, maintain and operate waterworks... within or without the corporate limits of the city”) (emphasis supplied). In **City of Georgetown v. Public Service Commission**, 516 S.W.2d 842 (Ky. 1974), the court recognized a city’s authority to extend the boundaries of its water and/or sewer service areas beyond the boundaries of the city limits, and further held that the PSC has no jurisdiction over a city’s exercise of such authority pursuant to KRS 96.150(1). According to the Court, “the exemption [from PSC jurisdiction] extends to all operations of a municipally owned utility whether within or without the territorial boundaries of the city.” *Id.* at 844 (emphasis supplied). *See also Louisville Water Co. v. Public Service Commission*, 357 S.W.2d 877 (Ky. 1962) (holding that the PSC had no jurisdiction over the extension of water mains and services by the Louisville Water Company outside the corporate limits of the City of Louisville). Accordingly, the complainant’s assertion that his farm is outside the city limits does not avail the PSC of jurisdiction over the Complaint.

CONCLUSION

Contrary to the allegations in the complainant's Response, an agreement between WCWD and BGMU regarding the territorial boundary lines between the two entities is not a contract on the subject of rates and services so as to fall under PSC jurisdiction. Instead, complaints regarding the location of territorial boundary lines are simply boundary line disputes, even if the complaining party is an individual customer (in this case, BGMU's customer for the area in question). Finally, the purpose of the PSC is not to allow an individual customer to choose the entity that will provide water and sewer service to him, and to rearrange the territorial boundary lines between the two entities based upon such customer preferences. Cooksey's Complaint seeks to raise issues regarding territorial boundaries and to cause a change in such boundaries, which is an issue over which the PSC has no jurisdiction. Accordingly, the Verified Petition and Complaint filed by the complainant should be dismissed.

This 25th day of June, 2009.

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Timothy L. Edelen
Attorney for Defendant,
Bowling Green Municipal Utilities Board

This is to certify that a true and exact copy of the foregoing has this day been mailed to:

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Attorney for Complainant, Roy G. Cooksey

Frank Hampton Moore, Jr.
Cole & Moore, PSC
921 College Street
P. O. Box 10240
Bowling Green, KY 42102-7240
Attorney for Defendant Warren County Water District

This 25th day of June, 2009.

Timothy Edelen (by Emily Khat)
Attorney for Defendant,
Bowling Green Municipal Utilities Board

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 19 2009

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF

ROY G. COOKSEY, M.D.,

COMPLAINANT

V.

CASE NO. 2009-00190

BOWLING GREEN MUNICIPAL UTILITIES BOARD and
WARREN COUNTY WATER DISTRICT,

DEFENDANTS

**RESPONSE TO THE MOTION TO DISMISS FILED BY
BOWLING GREEN MUNICIPAL UTILITIES BOARD**

Defendant, Warren County Water District, by counsel, for its response to the motion to dismiss filed by Defendant, Bowling Green Municipal Utilities Board, states as follows:

The Warren County Water District adopts, reiterates and incorporates by reference its previously-filed answer to the complaint filed herein as if set forth in full. The Warren County Water District takes no position on the motion to dismiss filed by Bowling Green Municipal Utilities Board. However, it is submitted that there can be no relief granted under the complaint herein if each of the Defendants is not before this Commission and subject to an order of this Commission. Therefore, should the Commission elect to grant the motion to dismiss, then the Warren County Water District reserves the right to subsequently seek a dismissal based upon the failure to have all indispensable parties before the Commission.

This 17th day of June, 2009.

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Bowling Green, KY 42102-7240
Phone: (270) 782-6666
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Frank Hampton Moore, Jr.
Matthew P. Cook
Counsel for Warren County Water District

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has this 17th day of June, 2009, been placed in the U.S. Mail, postage prepaid, addressed to the following:

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Counsel for Bowling Green Municipal Utilities



Frank Hampton Moore, Jr.
Matthew P. Cook

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 08 2009

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF

ROY G. COOKSEY, M.D.,

COMPLAINANT

V.

CASE NO. 2009-00190

BOWLING GREEN MUNICIPAL UTILITIES BOARD and
WARREN COUNTY WATER DISTRICT,

DEFENDANTS

**ANSWER TO COMPLAINT ON BEHALF OF DEFENDANT,
WARREN COUNTY WATER DISTRICT**

Defendant, Warren County Water District, by counsel, for its answer to the verified complaint and petition filed herein by Roy G. Cooksey, M.D., states as follows:

FIRST DEFENSE

1. The Complainant's verified complaint and petition fails to state a claim against the Answering Defendant upon which relief may be granted.
2. Any allegation in the Complainant's verified complaint and petition not specifically admitted herein by the Answering Defendant is denied.

SECOND DEFENSE

1. The Answering Defendant admits the factual allegations set forth in paragraph 1 of the Complainant's verified complaint and petition except for the allegations that the Complainant's predecessor provider was the Northside Water District and that the Warren County Water District provided the Complainant's farm an 8-inch water main. In fact, the

predecessor provider was the Westside Water District and the Warren County Water District provided the Complainant's farm with a 10-inch water main.

2. The Answering Defendant admits the factual allegations set forth in paragraph 2 of the Complainant's verified complaint and petition except for the allegation that the sewer service presently available on the Complainant's farm is a 12-inch sewer line. In fact, the sewer service presently available is an 8-inch sewer line.

3. Concerning the factual allegations set forth in paragraph 3 of the Complainant's verified complaint and petition, the Answering Defendant admits that Bowling Green Municipal Utilities ("BGMU") is asserting the right to provide water and sewer service to the rear 70 acres of the Complainant's farm described in the complaint. The Answering Defendant admits that it entered into an agreement with BGMU establishing their respective service boundaries in a manner that has divided the Complainant's farm into two separate service areas. The Answering Defendant further admits the existence of the Agreed Order entered by the Public Service Commission in Case No. 95-044, which required BGMU and the Answering Defendant to create a Joint Engineering, Planning and Finance Committee to address a long-range plan for development and expansion of services and the accompanying resolutions of both Boards that followed. The Answering Defendant denies the remaining factual allegations set forth in paragraph 3 of the Complainant's verified complaint and petition.

4. Concerning the factual allegations set forth in paragraph 4 of the Complainant's verified complaint and petition, the Answering Defendant admits the existence of the amended service boundaries which were agreed to by BGMU and the Warren County Water District. The Answering Defendant denies the remaining factual allegations set forth in paragraph 4 of the Complainant's verified complaint and petition.

5. Concerning the factual allegations set forth in paragraph 5 of the Complainant's verified complaint and petition, the Answering Defendant does not contest that the Public

Service Commission has jurisdiction over the dispute referenced in the verified complaint and petition.

6. Concerning the factual allegations set forth in paragraph 6 of the Complainant's verified complaint and petition, the Answering Defendant denies that it has violated any statute or regulation or otherwise harmed the Complainant in any way. With that said, the Answering Defendant is willing to be the provider of water and sewer service to the Complainant's entire farm through an adjustment of the service area boundaries of BGMU and the Warren County Water District.

7. Concerning the factual allegations in paragraph 7 of the Complainant's verified complaint and petition, the Answering Defendant denies that it has violated any statute or regulation or otherwise harmed the Complainant in any way. With that said, the Answering Defendant does not object to a declaration that it shall be the sole provider of water and sewer service to the Complainant's entire farm through an adjustment of the service area boundaries of BGMU and the Warren County Water District.

8. The Answering Defendant denies that the Complainant is entitled to any damages from it as a result of any allegation made in the verified complaint and petition.

WHEREFORE, Defendant, Warren County Water District, prays for the following relief:

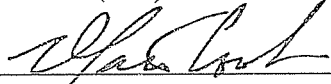
1. That the Complainant's verified complaint and petition be dismissed with prejudice against it, the Complainant to take nothing by way of relief from it thereunder;

2. Alternatively, for a declaration or order from the Public Service Commission that the Warren County Water District shall be the sole provider of water and sewer service to the Complainant's entire farm referenced in the verified complaint and petition; and

3. For any and all other relief to which it may be deemed entitled.

This 5th day of June, 2009.

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Frank Hampton Moore, Jr.
Matthew P. Cook
Counsel for Warren County Water District

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has this 5th day of June, 2009, forwarded to the following:


Original by FedEx:

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Executive Director
Public Service Commission
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Frankfort, KY 40602-0615

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Matthew P. Cook