

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GARRARD COUNTY WATER ASSOCIATION, INC.)	
COMPLAINANT)	
V.)	CASE NO.
CITY OF DANVILLE)	2014-00361
DEFENDANT)	

ORDER

The city of Danville ("Danville") is hereby notified that it has been named as a defendant in a formal complaint filed on October 16, 2014, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 20, Danville is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within ten days of the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

By the Commission

ENTERED
OCT 20 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

RECEIVED

OCT 16 2014

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

GARRARD COUNTY WATER ASSOCIATION INC.)
vs)
CITY OF DANVILLE)

Case No. 2014-_____

COMPLAINT

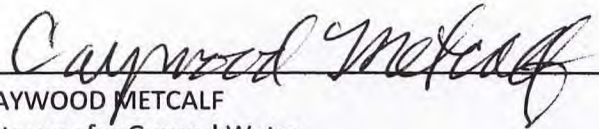
Garrard County Water Association, Inc , by counsel, files this complaint against the city of Danville for the purpose of protesting the proposed city's increase of its wholesale water rate and the beginning date of the collection thereof.

1. Garrard County Water Association, Inc., hereinafter referred to as Garrard Water, is a statutorily created water association operating pursuant to KRS Chapter 74, with an address of PO Box 670, 315 Lexington Road, Lancaster, Kentucky 40444; same is regulated by the Public Service Commission.
2. Danville is a city of the third class located in Boyle County and it owns and operates a water treatment and distribution system that provides wholesale water service to Parksville, Garrard County, Lake Village and Hustonville. Its address is PO Box 670, Danville, Kentucky 40423.
3. Garrard Water purchases water at wholesale from the city of Danville. A copy of the water purchase contract and amendments thereto are attached as Exhibit 1.
4. The City of Danville has now informed Garrard Water there will be an increase in the water rate effective September 1, 2014; same violates the Water Purchase Agreement between the Parties.
5. The Water Agreement provides a five month notice must be given.
6. The City, in enacting the ordinance, copy attached, pertaining to water rates and the Water Purchase Agreement, when reviewed together directs the increase should not take effect to about February 1, 2016.
7. The proposed increase, if beginning on September 1, 2014, would increase the cost of water to Garrard Water approximately \$75,000.00.
8. The proposed increase is void as proper notice and procedure were not followed in the adoption of said increase. Reference 807 KAR 5:011(8) (2), 807 KAR 5:011 (6) (3), KRS 278.190.

9. Complainant was not provided a copy of the complete cost study prepared by the City of Danville and believes the proposed increase is not reasonable.

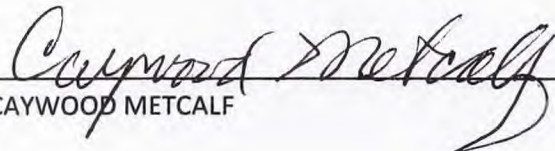
WHEREFORE, Garrard Water demands:

1. The proposed increase be denied; and
2. In the alternative, if not denied, the increase be denied until water is produced from the new completed treatment facility.


CAYWOOD METCALF
Attorney for Garrard Water
214 Stanford Street
Lancaster, Kentucky 40444
(859) 792-6679

CERTIFICATE OF SERVICE

Service of the foregoing Complaint had this 15th day of October, 2014, by mailing the original to Public Service Commission, 211 Sower Blvd., Frankfort, Kentucky 40602; and a true and correct copy thereof to Hon. Jeffrey W. Jones, 1000 E. Lexington Avenue #3, Danville, Kentucky 40422.


CAYWOOD METCALF

September 3, 2014

Mr. Jeff Derouen, Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40602

RE: Proposed Wholesale Water Rate Increase From City of Danville

Dear Mr. Derouen,

Please accept this letter as the Association's formal opposition to the proposed wholesale rate increase from the City of Danville. This proposed increase is a direct result of the construction of a new water treatment facility in Danville. The Association's primary complaint involves the timing of the proposed rate increase. After conversations with the City of Danville it appears that they will not be closing on the associated Rural Development loans for this construction project until the early part of 2016. It is the Association's belief that a wholesale customer should not realize the increased rate until such time as the City of Danville closes out the loans associated with this project and is producing water from the new, completed treatment facility. This proposed wholesale rate increase will result in an increase of approximately \$75,000 per year to the Association's members. This \$75,000 would be paid for at least one year prior to ever receiving the product in which the members are to receive.

In a letter dated August 20, 2014, the City of Danville provided the Association with notice of the proposed rate increase. As stated in the letter, the City of Danville proposes this rate increase to take effect on September 1, 2014. The Association, however, has stated in its Water Purchase Agreement that any proposed rate increase must provide five (5) months written notice. In the ordinance adopted by the Danville City Commission this provision in the original Water Purchase Agreement has been considered. Thus, when reviewing the letter proposing the rate increase and the ordinance, the Association's rate increase should occur on or around February 1, 2015. A copy of the letter sent by the City of Danville, the Garrard County Water Association Water Purchase Agreement and the ordinance adopted by the Danville City Commission have been included with this letter.

We ask for the Commission's consideration in this matter and should we be able to provide further information please advise.

Sincerely,

Paul Reynolds, President
Garrard County Water Association

Enclosures

Exhibit 1

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is made and entered into this 23rd day of July, 1999, by and between the City of Danville, Kentucky, a municipal corporation of the third class, sometimes hereinafter referred to as "Seller", and Garrard County Water Association, Inc., hereinafter referred to as "Purchaser";

W I T N E S S E T H

WHEREAS, the Seller owns and operates a water supply distribution system and desires to sell water to the Purchaser; and

WHEREAS, the Purchaser desires to purchase water from the Seller, and

WHEREAS, resolutions have been duly enacted by each of the governing bodies of the respective parties hereto, which resolutions approved the terms and provisions of this agreement and do further authorize the respective representatives of each party to execute this agreement.

NOW, THEREFORE, in consideration of the foregoing and in further consideration of the mutual promises and agreements contained herein, the parties hereby do now agree to the following terms and conditions:

1. The term of this contract shall be for a period of 45 years, commencing on or before the first day of October, 1999, and ending on the first day of October, 2044.

2. The Seller agrees to furnish the Purchaser at the point of delivery specified and set forth on Addendum a (attached hereto and incorporated by reference) during the term of this contract treated water suitable for human consumption and meeting applicable purity and safety standards, in a quantity not to exceed 300,000 gallons per day, 9,000,000 gallons per month. The Purchaser specifically agrees and covenants to purchase from Seller during the term set forth above and not exceeding the limits set forth above, unless a written agreement is had to the contrary.

3. The water to be sold hereunder will be furnished at a point set forth in the attached addendum. If a greater pressure than that normally available at the point of delivery is required by the Purchaser, the costs and means of providing such greater pressure shall be the responsibility of the Purchaser. It shall be the expense and the responsibility of the Purchaser to (a) construct and maintain any line or lines beyond the point of delivery, (b) purchase and install a water meter and necessary appurtenant facilities consistent with the specifications directed by the Seller's City Engineer, and (c) provide the hook-up or connection at the point of delivery, but subject to the supervision and the approval of the Seller's City Engineer.

4. The water purchased and sold under this agreement shall be delivered by Seller at the above-stated point of delivery and shall pass through and be measured by a meter capable and sufficient to measure the quantity of water so delivered. It shall

be the expense and responsibility of the Purchaser to furnish, install, and maintain the necessary metering equipment, the same to be determined by the Seller's City Engineer, and any required devices of standard types for property measuring the quantity of water delivered to the Purchaser and the responsibility of the Seller to calibrate and test for accuracy such metering equipment annually, or at such other times that are reasonably requested by either party. A meter registering not more than 2% above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by tests to be inaccurate shall be corrected for the six (6) months previous to such tests in accordance with the percentage of inaccuracy found by such tests.

If any meter fails to register for any period, the amount of water delivered in the corresponding period immediately prior to the failure shall be considered the amount consumed, unless the Seller and Purchaser shall agree upon a different amount. The metering equipment shall be read on a regular basis, but not less than once every month. An appropriate official or representative of the Purchaser shall at all reasonable times have access to the meter for the purpose of verifying its readings.

5. The Purchaser agrees to pay to Seller for water delivered in accordance with the following rate schedule based on monthly consumption:

Quantity (Cu Ft)	Rate (\$/100 Cu Ft)
---------------------	------------------------

First	20,000 cu ft	\$1.68
Next	80,000 cu ft	\$1.44
Next	100,000 cu ft	\$1.20
Next	300,000 cu ft	\$1.06
All over	500,000 cu ft	\$0.86

6. In addition to the foregoing schedule of rates, the Purchaser shall further pay to Seller a surcharge of twenty percent (20%) to be added to the total water bill (not including any applicable taxes or fees).

HOWEVER, the parties understand and agree that if at any time during the term of this agreement the rate charged to other wholesale consumers, including other municipalities, independent water districts, or privately owned water companies, are modified, either increased or decreased, the rate of charge to the Purchaser shall automatically be modified to confirm to such rates; similarly, it is agreed and understood that in the event the amount of the surcharge which is charged to all wholesale customers outside the city limits of Seller, is modified, then the rate of surcharge unto Purchaser shall automatically be modified to conform with such surcharge rate. It is understood and agreed by the parties that modification of the water purchase rate and the surcharge thereon shall be at the discretion of the Seller, City of Danville. The City of Danville shall be required to give a written five (5) month advance notice of any rate increase and comply with any applicable Public Service Commission rulings.

7. The Purchaser shall not consume more than the monthly limit without written permission from the Seller except in the case

of an emergency. If an emergency so arises, it shall be the duty of the Purchaser to immediately notify the Seller by telephone of such said emergency and its expected duration and then to follow-up the said telephonic notice with written notice within 24 hours served by certified mail, return receipt requested and that this exception does not apply if the reason for the emergency is due to drought or otherwise lack of rain.

8. Payment for such water delivered shall be made promptly and in accordance with the regular billing policy of the Seller, which shall from time to time, be in effect. The Seller shall furnish Purchaser with an itemized statement of the amount of water furnished the Purchaser during the proceeding period for which the meter was read.

9. The Seller will at all times operate and maintain its system to the point of delivery to Purchaser in a state of reasonable repair and will take such reasonable action as may be necessary to furnish the Purchaser with the quantities of water heretofore set forth. Temporary or partial failure to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or if the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's other customers located outside its corporate limits is reduced or diminished. Seller will afford priority to customers

within the City of Danville. The obligation of the Seller to supply water is limited, however, by the understanding that while the Seller shall use reasonable care and diligence in the operation and maintenance of its existing system to prevent and avoid interruptions or fluctuations in supply, that nevertheless the Seller does not guarantee that such interruptions and fluctuations will not occur. The parties agree that the Seller shall not be liable for the curtailment of supply due to emergencies, breaks, leaks, defects, necessary repairs, fires, strikes, acts of God, or other causes of unusual demand upon its system. Further, in the event of fire, storm, war, acts of God, or other emergencies, the Seller's City Manager may, without liability attaching to the Seller, and without notice, reduce or temporarily discontinue such water supply. In the event the Seller's City Manager shall be absent from the City of Danville, or be for any reason incapacitated, his power to order reduction or cessation of supply shall vest in the City of Danville's Fire Chief, or if he shall be absent or incapacitated, then in the Seller's City Engineer. In either event, the official determination of emergency shall permit such reduction or cessation during the emergency without liability unto the Seller, but with the understanding that same shall be rectified as quickly as is reasonably possible.

10. It is contemplated and understood that the water sold hereunder is for the purpose of providing for the needs of consumers located with the jurisdiction of the Purchaser. It is

agreed and understood the Purchaser shall not circumvent the intention of this contract by the selling of such water, or any portion thereof, unto other municipalities, water districts, or such other entities providing water to consumers not located within the jurisdiction of the Purchaser herein, without the express written consent of the City of Danville.

11. Should major industrial consumer of water desire to located within the area served by the Purchaser, the Purchaser shall not supply water unto said major industrial consumer of water without the express written consent and approval of the City of Danville, which consent and approval shall not be unreasonably withheld. A major industrial consumer of water is defined as one using more than 500,000 gallons of water per month.

12. The parties acknowledge that Seller obtains its raw water from Herrington Lake pursuant to an agreement with Kentucky Utilities Company dated April 14, 1970, under which Agreement the sale of water to the Purchaser herein may be subject to the approval or disapproval of said Kentucky Utilities Company. In the event Kentucky Utilities Company fails to grant approval, or in the event Kentucky Utilities Company grants approval but subsequently revokes such approval, or in the event the Kentucky Utility Company undertakes any action to prohibit or limit the sale of water specifically to the Purchaser herein or to the City of Danville, the City of Danville shall have only a good faith duty to negotiate the matter with Kentucky Utilities Company, but shall not be held

liable for any cessation or reduction in the amount of water provided to the Purchaser herein which results directly from such action by Kentucky Utilities Company.

13. By execution of this contract, the undersigned parties do hereby acknowledge that all prior contracts or agreements between these parties relative to the sale and purchase of water are hereby rescinded and of no further force and effect.

IN TESTIMONY WHEREOF, the parties hereto, by and through their respective authorized representatives, have executed this agreement effective the date first above written.

SELLER
CITY OF DANVILLE, KENTUCKY

BY: *Alex W. Stevens*
MAYOR

ATTEST:
Cindi Woolcum
CITY CLERK

PURCHASER
THE GARRARD COUNTY WATER ASSOC., INC.

BY: *Mark C. Clark*
PRESIDENT

ATTEST:
Philip W. Egan
SECRETARY

ADDENDUM A

Following is a description of the expected connection to the City of Danville system, by Garrard County Water Association.

1). The point of connection will be made to the existing 12-inch water main currently located on the City of Danville property on Gun Range Road, this point of connection being just south of an existing meter vault where there will be installed appropriate equipment to check flows in the main to determine if leaks may exist under the lake.

2). The Purchaser will be responsible for construction of the water mains including those under the lake as well as work necessary for connections and metering. The Purchaser will also be responsible for any repair work to said equipment and water mains. The Purchaser will not be responsible for leaks in unmetered portions of the mains provided repairs are made in a timely manner.

3). The meter to measure water to the Purchaser shall be located on the East Side of the lake on the northwest corner of the Jim Bryant property near the end of Bryant's Camp Road and accessible without interference of private property.

RESOLUTION NO. 2011-02-14-_____

Be it resolved by the Board of Commissioners of the City of Danville, Kentucky, that the Mayor or Mayor Pro Tem and the City Clerk are hereby authorized to execute the Second Amended Water Purchase Contract between the City of Danville, Kentucky and Garrard County Water Association, Inc.

This the _____ day of February, 2011.

BERNIE HUNSTAD, MAYOR
CITY OF DANVILLE, KENTUCKY

ATTEST:

DONNA PEEK, CITY CLERK
CITY OF DANVILLE, KENTUCKY

SECOND AMENDED WATER PURCHASE CONTRACT

This Second Amended Water Purchase Contract (hereinafter, "Agreement") is made and entered into this _____ day of February, 2011, by and between the City of Danville, Kentucky, a municipal corporation of the third class, 445 West Main Street, Danville, Kentucky 40422, (hereinafter, "Seller"), and Garrard County Water Association, Inc., 315 Lexington Road, P.O. Box 670, Lancaster, Kentucky 40444 (hereinafter, "Purchaser");

WHEREAS, the parties hereto executed a Water Purchase Contract effective July 23, 1999;

WHEREAS, as a result of a proceeding before the Public Service Commission of Kentucky styled Case No. 2008-00176, the parties entered into a Settlement Agreement which became effective on August 17, 2010, upon its filing with the Kentucky Public Service Commission pursuant to 807 KAR 5:011 §9(1), which Settlement Agreement by its terms operated as an addendum to the original contract between the parties dated July 23, 1999;

WHEREAS, the parties wish to further amend the agreement between them to increase the daily and monthly quantity limitations on the water to be purchased by Purchaser from Seller;

WHEREAS, the Board of Commissioners of the City of Danville has approved this Agreement in Resolution No. 2011-02-14-_____ and the Purchaser has approved this Agreement in Resolution No. _____;

NOW, THEREFORE, for a mutual and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties do hereby agree as follows:

1. Numerical paragraph 2 of the Water Purchase Contract dated July 23, 1999, is amended and restated in its entirety to read as follows:

“The Seller agrees to furnish the Purchaser at the point of delivery specified and set forth on Addendum A of the Water Purchase Contract dated July 23, 1999, during the term of this contract treated water suitable for human consumption and meeting applicable purity and safety standards, in a quantity not to exceed ^{750,000}450,000 gallons per day/^{24,500,000}13,500,000 gallons per month. The Purchaser specifically agrees and covenants to purchase from Seller during the term set forth above and not exceeding the limits set forth above, unless a written agreement is had to the contrary.”

2. The Purchaser has reviewed its records regarding past purchases of water from the Seller and hereby acknowledges that as of January 1, 2011, the Seller is in full compliance with its contractual obligations under the Water Purchase Contract between the parties dated July 23, 1999, and the Settlement Agreement filed with the Kentucky Public Service Commission effective August 17, 2010.

3. Except as amended herein, all the terms and conditions of the Water Purchase Contract between the parties dated July 23, 1999, and the Settlement Agreement filed with the Kentucky Public Service Commission effective August 17, 2010, remain in full force and affect and are incorporated herein by reference.

4. The parties' obligations under this Agreement are specifically contingent upon the approval of this Agreement by the Kentucky Public Service Commission and the filing of the Agreement with the Tariff Branch of the Public Service Commission.

CITY OF DANVILLE, KENTUCKY,
SELLER

BY: _____
BERNIE HUNSTAD, MAYOR

ATTEST:

DONNA PEEK, CITY CLERK

THE GARRARD COUNTY WATER ASSOCIATION, INC.,
PURCHASER

BY: _____
PAUL B. REYNOLDS, PRESIDENT

ATTEST:

JENNY LYNN WHITTAKER, SECRETARY

John Bowling
Mayor
City of Danville Water Dept.
P. O. Box 670
Danville, KY 40423

Caywood Metcalf
Metcalf & Metcalf
214 Stanford Street
Lancaster, KENTUCKY 40444

Paul Reynolds
Chairman / President
Garrard County Water Association, Inc.
315 Lexington Road
P. O. Box 670
Lancaster, KY 40444