



**KIPLEY J. McNALLY, PLC**  
2527 Nelson Miller Parkway  
Suite 104  
Louisville, Kentucky 40223

(502) 245-6133  
Fax (502) 245-1974  
kjm@mcnallylaw.com

RECEIVED

April 25, 2018

APR 30 2018

PUBLIC SERVICE  
COMMISSION

Public Service Commission  
ATTN: Gwen R. Pinson  
P.O. Box 615  
Frankfort, Kentucky 40602

Re: Martin County Water District  
PSC Case No. 2016-00142

Dear Ms. Pinson:

Enclosed please find an original and six (6) copies of a Notice of Filing regarding the above captioned matter.

Thank you for your attention to this matter.

Very truly yours,

Kipley J. McNally

KJM:jlr  
Enclosures

RECEIVED

APR 30 2018

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE OPERATING CAPACITY  
OF MARTIN COUNTY WATER DISTRICT  
PURSUANT TO KRS 278.280

Case No. 2016-00142

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record  
of this proceeding:

- Letter to John Horn from Eddie Campbell dated April 24, 2018
- Statement of Municipal Utility Lien dated April 24, 2018

Respectfully Submitted,



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Kipley J. McNally, Esq.  
Kipley J. McNally, PLC  
2527 Nelson Miller Parkway, Suite 104  
Louisville, Kentucky 40223  
Telephone: 502-245-6133  
Facsimile: 502-245-1974  
[kjm@mcnallylaw.biz](mailto:kjm@mcnallylaw.biz)  
*Counsel for Prestonsburg City's  
Utilities Commission*

CERTIFICATE OF SERVICE

I, Kipley J. McNally, hereby certify that on April 25, 2018, a true and accurate copy of the  
foregoing Notice of Filing was served via postage-paid U.S. mail to the following:

Public Service Commission  
ATTN: Gwen R. Pinson

P.O. Box 615  
Frankfort, Kentucky 40602

Brian Cumbo  
86 W. Main St., STE 100  
P.O. Box 1844  
Inez, Kentucky 41224  
[cumbolaw@cumbolaw.com](mailto:cumbolaw@cumbolaw.com)  
Counsel for Martin County Water District

Mary Varson Cromer  
Jim Gardner  
Appalachian Citizens' Law Center, Inc.  
317 Main Street  
Whitesburg, Kentucky 41858  
[mary@appalachianlawcenter.org](mailto:mary@appalachianlawcenter.org)  
*Counsel for MCCC*

M. Todd Osterloh  
Turner, Barker & Molone, PLLC  
333 West Vine Street, Suite 1400  
Lexington, Kentucky 40507  
[tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)

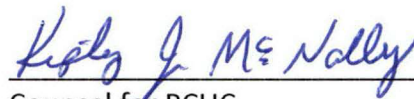
  
Counsel for PCUC

EXHIBIT A

LETTER

# Prestonsburg City's Utilities Commission

Water, Waste Water and Natural Gas System

(Municipally Owned)

2560 South Lake Drive

Prestonsburg, Kentucky 41653-1048

Phone (606) 886-8871 • Fax (606) 886-8779

TDD: Ky Relay #711

April 24, 2018

John Horn, Chairman  
Martin County Water District  
387 East Main Street, Suite 140  
Inez, Kentucky 41224

Re: Notice of Breach of  
Joint Operation Agreement &  
Notice of Termination

Dear Mr. Horn:

Pursuant to the Joint Operation Agreement dated July 3, 2000, as amended by the First Amendment dated the 1<sup>st</sup> day of January, 2017 (collectively, the "Agreements"), the parties agreed to the joint operation of certain waterworks facilities in the Honey Branch Park located in Martin County. In addition, the Agreements provided that Prestonsburg City's Utilities ("PCUC") would provide "... emergency backup water service of a non-recurring nature to the District." PCUC has provided such service on a recurring basis during the term of the Agreements. During the previous four (4) months the District has delivered 1,630,000 gallons to the jointly operated facilities, while PCUC has delivered 43,650,000 gallons. Clearly, the District has not provided fifty percent (50%) of the waterworks facilities' requirements. The District took delivery of 11,867,000 gallons of water for delivery to its customers for which PCUC has not been paid, in full.

The Agreements provide that the District shall make payment within ten (10) working days from the date of PCUC's invoice for backup emergency water service. The following invoices to the District have not been paid, in full, and are, now, overdue:

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>
1231 2017	January 1, 2018	6,754.50 *
0131 2018	February 1, 2018	44,291.00
0228 2018	March 1, 2018	26,164.00
0331 2018	April 1, 2018	<u>5,936.25</u>
	TOTAL	<u>\$83,145.75</u>

Martin County Water District  
April 24, 2018  
Page Two

\*The payment in the amount of \$12,000.00 received on February 20, 2018, was applied to satisfy the December 1<sup>st</sup> statement in the amount of \$5,603.00, in full, leaving a credit of \$6,397.00. The remaining credit was applied, in part, to the outstanding invoice for January 1, 2018, leaving a balance due of \$6,754.50. Attached are copies of the foregoing statements.

Since neither you nor any member of your board or management staff have given us the professional courtesy of a call or any other contact relating to the status of the above unpaid invoices, we have no choice, but to request full payment in writing. We have gone above and beyond our usual billing/service disruption policies to lessen the suffering of the customers of the District. Without any communication, we do not know when to expect payment for the increasing, outstanding debt owed to PCUC. We are willing to discuss alternatives, please contact me.

The Commission held a special called meeting to re-consider and propose alternatives to the earlier version of the tank lease. The version of the tank lease submitted to you for the District's consideration was consistent with our understanding of the terms discussed during the luncheon break during the Public Service Commission ("PSC") hearing held on February 28, 2018. Once again, you did not give us the courtesy of a call or letter explaining your Board's concerns with the proposal. Our Commission revised the Tank Lease with an offset provision as a reasonable collection alternative. Since the date of the PSC hearing, you have neither contacted us regarding the tank lease, nor proposed a payment plan. Consequently, we are, terminating the emergency back-up water service to the District by a complete shut-off of the meter that delivers water to your water line located on Route 3. This shut-off will not affect the District's customers located in the Honey Branch Industrial Park, or the District's customer's located along-side airport road located near the Honey Branch Industrial Park.

The effective date of this shut-off will be thirty (30) days from the date that this letter is filed with the PSC.

Since PCUC has provided uninterrupted water service to a substantial portion of the District's customers during the water shortage crisis this winter, we are dismayed by the District's lack of business decorum and courtesy. In addition, the Commission has long tired of being portrayed as the villain, being constantly described in public as "kicking the District when it is down", and being accused of attempting to "take a valuable asset (the Honey Branch Tank) from Martin County". Our offer to purchase the tank from the District made very good business sense for both entities and was made with the intent of trying to provide the quickest help available to give the District a fighting chance. The numbers don't lie, the involvement by the District in the sharing of the supply of potable water to the Honey Branch Tank has never been anything but a burden to the District's operations, having at the very best broken even

Martin County Water District  
April 24, 2018  
Page Three

financially over the past decade and a half. The purchase of the tank by PCUC could have infused a substantial amount of near immediate cash into the coffers of the District and provided a stable, abundant source of potable water at a very reasonable wholesale rate to the District for years to come. Again, a very good business transaction for the District.

If you have any questions regarding this letter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "TE Campbell". The signature is written in a cursive, flowing style.

Turner E. Campbell, Superintendent

Copy: Kentucky Public Service Commission  
Les Stapleton, Mayor of Prestonsburg  
File

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 12312017

January 1, 2018

Martin County Water and Sewer District  
387 East Main Street  
Suite 140  
Inez, KY 41224

Water Provided to Martin County November 27, 2017 through December 26, 2017

Total Provided	1,764,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>12,803.00</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 13,151.50</u>



MARTIN COUNTY WATER DISTRICT  
PRESTONSBURG CITY UTILITIES

13569

Check Number [REDACTED]  
Check Date Feb 16, 2018

Check Amount \$12,000.00

Item to be Paid - Description

Discount Take	Amount Paid
[REDACTED]	5,603.00
[REDACTED]	6,397.00

MARTIN COUNTY WATER DISTRICT  
OPERATION & MAINTENANCE  
387 EAST MAIN STREET SUITE 140  
INEZ, KY 41224



73-519/421

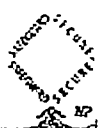
Memo:

DATE	AMOUNT
Feb 16, 2018	*****\$12,000.00

PAY Twelve Thousand and 00/100 Dollars

TO THE ORDER OF  
PRESTONSBURG CITY UTILITIES  
2560 SOUTH LAKE DRIVE  
PRESTONSBURG, KY 41653

*Ref. Ernest H. [Signature]*  
*John P. [Signature]*



Original Invoice  
11/30/17 uav

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 11302017

December 1, 2017

Martin County Water and Sewer District  
387 East Main Street  
Suite 140  
Inez, KY 41224

Water Provided to Martin County October 26, 2017 through November 27, 2017

Total Provided	790,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>5,254.50</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 5,603.00</u>

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 1312018

February 1, 2018

Martin County Water and Sewer District  
387 East Main Street  
Suite 140  
Inez, KY 41224

Water Provided to Martin County December 26, 2017 through January 26, 2018

Total Provided	5,782,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>43,942.50</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 44,291.00</u>

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 2282018

March 1, 2018

Martin County Water and Sewer District  
387 East Main Street  
Suite 140  
Inez, KY 41224

Water Provided to Martin County January 26, 2018 through February 26, 2018

Total Provided	3,488,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>26,164.00</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 26,512.50</u>

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 3312018

April 1, 2018

Martin County Water and Sewer District  
387 East Main Street  
Suite 140  
Inez, KY 41224

Water Provided to Martin County February 26, 2018 through March 26, 2018

Total Provided	833,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>5,587.75</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 5,936.25</u>

**EXHIBIT B**

**MUNICIPAL UTILITY LIEN**

# COPY

MARTIN COUNTY  
LP57 PG 164

**STATEMENT OF**  
**MUNICIPAL UTILITY LIEN**  
**PURSUANT TO KRS 376.265**

The name of the lien claimant is Prestonsburg City's Utilities Commission (Claimant) whose address is 2560 South Lake Drive, Prestonsburg, Kentucky 41653. The Affiant, Turner E. Campbell, states that he is the Superintendent of the Claimant, that he is authorized to make and file the statement on the Claimant's behalf, and that he is its agent for the service of process.

The Affiant states that a lien is hereby asserted against the property owned by the Martin County Water District, which is located on Airport Road off of Kentucky Hwy. 3 and is more particularly described as follows:

WITNESSETH: That the parties of the first part for and in the consideration of the sum of One Dollar (\$1.00) cash in hand paid, receipt of which is hereby acknowledged, do hereby grant and convey unto the party of the second part the right to enter onto the premises of **Martin County Industrial Park** belonging to the parties of the first part and to lay a water service line, storage tank, and pumping station, and to thereafter enter upon the premises for the purposes of maintenance of said line. The location of said line shall be placed on the premises of the party of the first part as described and outlined by map recorded in Martin County Clerk's Office, Plat Book #5 page 40.

And being a portion of the same land conveyed to the GRANTORS herein by deed from **The Homer and Elanor Goble Trust** dated the **28<sup>th</sup>** day of **August, 1993** and of record in Deed Book **116** at Page **553**, records of the Martin County Court Clerk's Office.

Being the same property conveyed to the Martin County Water District herein by Deed of Easement dated the **18<sup>th</sup>** day of March, **1996** and of record in Deed Book **124** at Page Number **483**, records of the Martin County Court Clerk's Office.

The Claimant, as a municipal utility, entered into the Joint Operation Agreement dated July 3, 2000 ("Agreement") with the Martin County Water District ("District") to jointly provide potable water and operate the water distribution facilities located at the Honey Branch Industrial Park. Pursuant to that Agreement, the Claimant has delivered water to the District for use by the District's customers for the billing cycles of February, 2018 and March, 2018.

The amount of \$32,100.25 is, now, due and owing to the Claimant after deducting all just credits and set-offs known to it. The Claimant does hereby claim and assert a Municipal Utility Lien pursuant to KRS 376.65, on all of the rights, title, and interest on the real property as described herein and the improvements thereon to secure the Claimant in the payment of said amount, plus interest, and the cost of filing this Statement, and the further cost of the enforcement of this Lien.

Prestonsburg City's Utilities Commission

By: *TE Campbell*  
Turner E. Campbell, Superintendent

COMMONWEALTH OF KENTUCKY )  
   )  
COUNTY OF FLOYD                   )

I, a Notary Public within the Commonwealth of Kentucky, do hereby certify that on this the 14<sup>th</sup> day of April, 2018 the foregoing instrument was subscribed and sworn to by Turner E. Campbell for and on behalf of said Claimant.

My Commission Expires: 9/5/21

*Mary J Noble*  
NOTARY PUBLIC ID # 585963

This Document Prepared By:

*Kipley J. McNally*  
Kipley J. McNally, Esq.  
Kipley J. McNally, PLC  
2527 Nelson Miller Parkway, Suite 105  
Louisville, Kentucky 40223  
(502) 245-6133