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2650 AEGON CENTER | 400 WEST MARKET STREET | LOUISVILLE, KENTUCKY 40202-3377
(502) 568-9100 PHONE | (502) 568-5700 FAX | WWW.SKP.COM

C. KENT HATFIELD
502-568-5745
Kent.Hatfield@skp.com

DEBORAH T. EVERSOLE
502-568-5770
Deborah.Eversole@skp.com

September 26, 2005

RECEIVED

SEP 27 2005

PUBLIC SERVICE
COMMISSION

Ms. Beth O'Donnell
Executive Director,
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

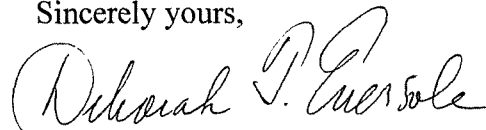
Re: PSC Case No. 2004-00455

Dear Ms. O'Donnell:

Enclosed please find the original and five (5) copies of East Clark County Water District's response to the Commission's Order of September 20, 2005. An extra copy is enclosed for your file stamp. Please return the extra copy in the enclosed, self-addressed postage paid envelope.

Your assistance in this matter is greatly appreciated.

Sincerely yours,



C. Kent Hatfield
Deborah T. Eversole

Counsel to East Clark County
Water District

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

SEP 27 2005

PUBLIC SERVICE
COMMISSION

PURCHASED WATER ADJUSTMENT)
OF EAST CLARK COUNTY) CASE NO. 2004-00455
WATER DISTRICT)

**RESPONSE OF EAST CLARK COUNTY WATER DISTRICT
TO THE COMMISSION'S ORDER OF SEPTEMBER 20, 2005**

East Clark County Water District ("East Clark"), by counsel, for its Response to the Commission's Order of September 20, 2005, reopening this case for the purpose of revisiting East Clark's purchased water adjustment previously approved by Orders dated December 22, 2004, and January 6, 2005, states as follows:

INTRODUCTION

East Clark does not object to Commission modification of East Clark's rates on a forward-looking basis, as interim relief pending Commission determination of a fair and reasonable rate to be charged by the City of Winchester, Acting By and Through the Winchester Municipal Utilities Commission ("Winchester," or "City") to East Clark and subsequent recalculation of East Clark's rates. East Clark recognizes that the Commission has the authority – indeed, the obligation – to ascertain that utility rates are just and reasonable.

However, East Clark suggests that, if the Commission determines that East

Clark's rate to Winchester justifies revisiting its decision in this case,¹ equity requires the Commission also to revisit its decision to approve Winchester's current rates. Extremely questionable practices were employed by Winchester in converting East Clark from a wholesale customer receiving a flat \$1.18 per 100 cubic feet rate to a retail customer subject to its out-of-city, declining block, retail rate at all six service connections – resulting in East Clark's effective rate going from \$1.18 per 100 cubic feet to approximately \$2.06 per 100 cubic feet.

RESPONSE TO DATA REQUEST

1. State whether East Clark District calculated its proposed purchased water adjustment using the wholesale water service rate contained in its filed rate schedules. If no, explain why not.

RESPONSE: As a result of Winchester's decision to breach the parties' agreement (which provides that East Clark is to be treated as a wholesale customer and given a wholesale rate, while East Clark is to charge Winchester a proportionately increased rate), and in an effort to avoid the expense of litigation, East Clark acquiesced in Winchester's new retail rate to it, obtained what it believed was Winchester's agreement to a reciprocal retail rate, and calculated its purchased water adjustment treating Winchester as a retail customer.

¹ East Clark does not waive its argument that the Commission is not permitted by law to reopen this case and reconsider its long-final decision. KRS 278.015 provides that, when a water district files for a purchased water adjustment as a result of an increase in rates by a wholesale supplier, the Commission "*shall approve the [water purchase adjustment] filing or establish revised rates by order no later than thirty (30) days after the above documents are filed with it.*" (Emphasis added.) No "revised rates" were established by the Commission in this case. Instead, the Commission approved the rates as filed.

2. State the size(s) of meters through which East Clark District provides water service to WMU.

RESPONSE: Highway 15: 3” compound meter.

Highway 89: 4” turbine meter.

3. In his letter of November 29, 2004, William Ballard stated that “the City of Winchester will not [sic] longer sell water to the district at a wholesale rate. Therefore, the district can no longer resell water to the city at a wholesale rate.”

a. State whether Mr. Ballard is referring to a legal restriction or prohibition that prohibited East Clark District from continuing to make sales to WMU at the wholesale rate contained in its filed rate schedule.

RESPONSE: Mr. Ballard was not referring to a “legal” restriction prohibiting East Clark from selling water to the City at a wholesale rate. Instead, he was referring to the economic reality resulting from the City’s unilateral decision to sell water to East Clark at its out-of-city, retail, declining block rate which has resulted, over time, in an effective rate of \$2.06 per 100 cubic feet to East Clark. The actual rate paid changes from month-to-month due to imposition of a declining block rate on six service connections. Moreover, the City’s departure from the parties’ contract requiring water to be sold to East Clark on a wholesale basis required, as a matter of practicality as well as equity, reciprocal increases to the City. Had Mr. Ballard not believed that reciprocal retail rates would be paid by Winchester, he would not have acquiesced in the imposition of Winchester’s retail rate upon East Clark.

b. (1) If yes, identify the legal authority that prevented such sales.

RESPONSE: Not applicable.

(2) If no, state the reasons why WMU's termination of its wholesale rate prevented East Clark District from continuing to use its wholesale service rate.

RESPONSE: See answer to A, above.

4. In his letter of November 29, 2004, Mr. Ballard stated that WMU did not object to East Clark District discontinuing its wholesale rate and charging for water service at its retail rates.

a. State the basis for Mr. Ballard's statement.

RESPONSE: Mr. Ballard acquiesced in the imposition of the retail rate by Winchester because he understood that Winchester would not object to East Clark's reciprocal imposition of its retail rate. He also understood that East Clark had little choice, short of litigating Winchester's rate proposal to the Commission - an expensive and time-consuming proposition. Consequently, he sought to achieve an agreement whereby East Clark could remain financially whole without the necessity of litigating Winchester's rate case. He thought he had accomplished his goal in a meeting held on November 15, 2004 at the Winchester Municipal Utilities Office.

In attendance at this meeting, to the best of Mr. Ballard's recollection, were Mr. Ballard, Fred Farris, Ron Toler, Vernon Azevedo, Mike Flynn, WMU Commissioner Gerry Yeiser, Janice Eldridge, and John Rompf. Rates were generally discussed, and Mr. Azevedo was given a copy of the Public Notice of increase to all users that East Clark planned to have printed in the newspaper. He looked at it and set it aside, asking no further questions. At that meeting, those present also discussed the need for an additional 100,000 gallons to be added to ECCWD daily allotment of 400,000 gallons.

Winchester representatives did not see any problem with providing the additional water, but said that East Clark would need to pay System Development Charges. Ron and Fred stated that they would agree to charges approved by the Public Service Commission.

b. Provide all memoranda, correspondence, and electronic mail messages in which East Clark District and WMU discussed East Clark District's proposed discontinuance of its wholesale water service rate.

RESPONSE: No such documents exist.

c. Describe all telephone conversations between East Clark District and WMU regarding East Clark District's proposed discontinuance of its wholesale water service rate. This description should include the date of the conversations, the persons involved in the conversation, and the title or position of the persons conversing.

RESPONSE: No telephone conversations on this subject took place.

5. State the number of delivery points through which East Clark District purchases water from WMU.

RESPONSE: Six.

6. State the number of delivery points through which East Clark District sells water to WMU.

RESPONSE: Two.

7. If East Clark District sells water to WMU through multiple metering points, describe how, prior to January 1, 2005, East Clark District billed WMU for water sold.

RESPONSE: Prior to Commission approval of its rates proposed in this case, East Clark sold water to Winchester at a flat rate of \$2.03 per thousand gallons.

8. If East Clark District sells water to WMU through multiple metering points, describe how East Clark District currently bills WMU for water sold. More specifically, state whether East Clark District aggregates water usage to determine the total bill or determines a bill for each delivery point.

RESPONSE: East Clark bills Winchester as Winchester bills East Clark – at a declining block retail rate for each delivery point.

9. Describe how East Clark District converted WMU's purchases under a wholesale rate to purchases under the new 4-inch meter retail rate. Show all calculations and state all assumptions used to make this conversion.

RESPONSE: The calculations are shown in the purchased water adjustment application. The sheet "Calculation of Purchased Water Adjustment" shows the total sales to Winchester and uses 24 bills (Winchester purchases at two metering points) to allocate the usage into the rate increments. The usage is then transferred to the rate table and the East Clark's retail rates are shown as the rates to be charged to Winchester.

10. Describe how WMU billed East Clark District for water service prior to January 1, 2005. More specifically, state whether WMU aggregates water usage to determine the total bill or determines a bill for each delivery point.

RESPONSE: Prior to its decision to treat East Clark as a retail customer subject to a declining-block retail rate for all six service connections, Winchester sent East Clark six bills per month, one for each meter. However the rate in all six was a flat wholesale rate of \$1.18 per 100 cubic feet.

11. Describe how WMU currently bills East Clark District for water service. More specifically, state whether WMU aggregates water usage to determine the total bill or determines a bill for each delivery point and combines these bills.

RESPONSE: Winchester sends six bills, one per meter. It does not aggregate water usage. Each bill is calculated at its out-of-city, declining block, retail rate.

12. The table below compares East Clark District's water purchases for the period from November 1, 2003 to October 31, 2004, as listed in its annual reports and in its application for purchased water adjustment. For each month in which a discrepancy exists, explain the discrepancy.

EAST CLARK DISTRICT'S WATER PURCHASES		
Month	Annual Report	PWA Application
November 2003	11,025,000	11,648,665
December 2003	10,839,000	10,392,605
January 2004	11,066,000	12,809,716
February 2004	10,940,000	10,934,230
March 2004	11,147,000	9,811,332
April 2004	11,223,000	11,251,424
May 2004	12,794,000	11,761,628
June 2004	12,186,000	12,571,072
July 2004	12,465,000	9,217,340
August 2004	11,927,000	9,509,847
September 2004	11,159,000	8,979,444
October 2004	11,222,000	8,248,550
Total (gallons)	137,993,000	127,135,853
Total (Cu. Ft.)	18,445,796	16,994,500

RESPONSE: The annual report numbers were obtained from the monthly operating reports from the water plant. Winchester reads the meters on a staggered basis

during each month. For example, one meter may be read on the 3rd of the month and another meter read on the 20th of the month.

In reviewing the invoices it has been noted that the cubic feet listed in the purchase water adjustment do not reflect the purchases listed on the invoices from Winchester for the last 3 months of the test period. We believe this is due to both East Clark and Winchester reading the meters but at different times and the use of data to calculate the purchase water adjustment that had not been updated to reflect the actual invoices received from Winchester.

A spreadsheet is attached showing the cubic feet used in the purchased water adjustment and the cubic feet billed by Winchester. The highlighted numbers are those that are different from those used in the calculation of the purchased water adjustment.

13. State whether East Clark District agrees with the statement that Administrative Regulation 807 KAR 5:066 does not authorize a water utility to make changes in its rate design as part of a purchased water adjustment proceeding. If East Clark District does not agree, explain why it does not.

RESPONSE: East Clark acknowledges 807 KAR 5:066 and the content thereof. However, there are unique circumstance in this case. The sole customer whose rate design changed is the sole supplier of water to the utility increasing its rate. In addition, that customer/supplier imposed such an outrageous increase that, absent reciprocal imposition of retail rates, other customers would pay disproportionately. Accordingly, East Clark sought settlement with Winchester which, though it changed East Clark's rate design, is nevertheless the sort of agreement the Commission is generally willing to accept.

In addition, East Clark respectfully suggests that other provisions of law, as well as the parties' contract, are also relevant to the issues here.

14. Complete the table below to indicate the amount of monthly sales that East Clark District used to calculate its proposed purchased water adjustment.

EAST CLARK DISTRICT'S WATER PURCHASES		
Month	Annual Report	PWA Application
November 2003	9,753,000	
December 2003	9,803,000	
January 2004	9,376,000	
February 2004	10,333,000	
March 2004	9,255,000	
April 2004	9,783,000	
May 2004	10,851,000	
June 2004	12,176,000	
July 2004	10,572,000	
August 2004	11,146,000	
September 2004	10,666,000	
October 2004	9,679,000	
Total (gallons)	123,393,000	
Total (Cu. Ft.)	16,494,185	

Response: Please see attached spreadsheet.

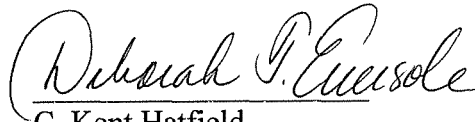
CONCLUSION

Although it is certainly imperative that the Commission grant interim relief for East Clark and its customers, and East Clark appreciates the Commission's action indicating that it intends to do so, that relief should be enforcement of the rates already approved in this case. Scarce resources are better expended through enforcement of the December and January orders herein while the Commission investigates the unlawful rate

charged by Winchester to East Clark. *See* Verified Complaint of East Clark, filed August 1, 2005, in *East Clark County Water District v. City of Winchester, Acting By and through Winchester Municipal Utilities Commission*, PSC Case No. 2005-00322. If the Commission grants the rate relief requested by East Clark in Case No. 2005-00322, setting a reasonable wholesale rate to be charged by Winchester to East Clark, the rates at issue in this proceeding will, as a matter of course, be recalculated on a going-forward basis to reflect East Clark's reduced cost of water.

However, if the Commission takes retroactive action, it should reconsider its approval of the rate charged to East Clark by Winchester as well as its approval of the rate charged to Winchester by East Clark.

Respectfully submitted,



C. Kent Hatfield
Deborah T. Eversole
STOLL, KEENON & PARK, LLP
2650 AEGON Center
400 West Market Street
Louisville, Kentucky 40202
Telephone: (502) 568-9100
Facsimile: (502) 568-5700

Counsel to East Clark County
Water District

CERTIFICATE OF SERVICE

I hereby certify that, on September 26, 2005, a complete and accurate copy of the foregoing was sent by First Class Mail, postage prepaid, to Vernon Azevedo, General Manager, Winchester Municipal Utilities Commission, 150 N. Main Street, P.O. Box 4177, Winchester, Kentucky, 40392-4177, and John Rompf, Esq., White, McCann & Stewart, PLLC, 125 South Main Street, P.O. Box 578, Winchester, KY 40392-0578.


Deborah T. Eversole

RESPONSE TO QUESTION 12

2004 PWA

	Elkin	Paris	KY AM	Flanagan	Two Mile	Ecton	Hughes	Ford			
Nov-03	22,000			250,800	7,900	861,600	414,800		1,557,100	7.481	11,648,665
Dec-03	20,400			177,900	1,000	683,400	506,500		1,389,200	7.481	10,392,605
Jan-04	24,600	19,200		320,800	500	889,100	458,100		1,712,300	7.481	12,809,716
Feb-04	28,600	40,100	1,500	201,800	500	738,800	450,300		1,461,600	7.481	10,934,230
Mar-04	26,800	44,700	300	155,000	1,400	690,000	393,300		1,311,500	7.481	9,811,332
Apr-04	25,200	52,700	400	240,500	300	673,200	511,700		1,504,000	7.481	11,251,424
May-04	23,200	49,300	400	174,300	900	819,700	504,400		1,572,200	7.481	11,761,628
Jun-04	30,000	29,100		213,400	1,200	786,100	620,400	200	1,680,400	7.481	12,571,072
Jul-04	16,800	43,100		133,500	300	579,700	458,100	600	1,232,100	7.481	9,217,340
Aug-04	16,200	70,100		167,300	7,600	572,600	437,000	400	1,271,200	7.481	9,509,847
Sep-04	19,800	59,700		307,400	14,200	563,800	235,000	400	1,200,300	7.481	8,979,444
Oct-04	17,700	55,000		322,700	20,500	484,000	202,000	700	1,102,600	7.481	8,248,551
									16,994,500	7.481	127,135,855

2004 PWA corrected from spreadsheets of water invoices

	Elkin	Paris	KY AM	Flanagan	Two Mile	Ecton	Hughes	Ford			
Nov-03	22,000			250,800	7,900	861,600	414,800		1,557,100	7.481	11,648,665
Dec-03	20,400			177,900	1,000	683,400	506,500		1,389,200	7.481	10,392,605
Jan-04	24,600	19,200		320,800	500	889,100	458,100		1,712,300	7.481	12,809,716
Feb-04	28,600	40,100	1,500	201,800	500	738,800	450,300		1,461,600	7.481	10,934,230
Mar-04	26,800	44,700	300	155,000	1,400	690,000	393,300		1,311,500	7.481	9,811,332
Apr-04	25,200	52,700	400	240,500	300	673,200	511,700		1,504,000	7.481	11,251,424
May-04	23,200	49,300	400	174,300	900	819,700	504,400		1,572,200	7.481	11,761,628
Jun-04	30,000	48,500		213,400	1,200	786,100	620,400	400	1,700,000	7.481	12,717,700
Jul-04	23,900	62,700		181,100	300	884,400	590,800	300	1,743,500	7.481	13,043,124
Aug-04	24,000	85,700		333,500	11,000	665,100	609,200	2,000	1,730,500	7.481	12,945,871
Sep-04	22,700	91,900		413,200	18,100	827,700	305,200	2,100	1,680,900	7.481	12,574,813
Oct-04	26,200	70,400		464,100	27,600	606,800	272,500	1,800	1,469,400	7.481	10,992,581
									18,832,200	7.481	140,883,688

RESPONSE TO QUESTION 14

Water Purchases						
	Monthly Operating Report	Annual report	PWA	PWA -REVISED		
Nov-03	10,959,098	11,025,000	11,648,665	11,648,665		
Dec-03	11,001,883	10,839,000	10,392,605	10,392,605		
Jan-04	11,065,688	11,066,000	12,809,716	12,809,716		
Feb-04	10,939,650	10,940,000	10,934,230	10,934,230		
Mar-04	11,147,145	11,147,000	9,811,332	9,811,332		
Apr-04	11,222,955	11,223,000	11,251,424	11,251,424		
May-04	12,794,241	12,794,000	11,761,628	11,761,628		
Jun-04	12,186,416	12,186,000	12,571,072	12,717,700		
Jul-04	12,464,672	12,465,000	9,217,340	13,043,124		
Aug-04	11,926,935	11,927,000	9,509,847	12,945,871		
Sep-04	11,158,664	11,159,000	8,979,444	12,574,813		
Oct-04	11,221,945	11,222,000	8,248,550	10,992,581		
TOTALS	138,089,292	137,993,000	127,135,853	140,883,689		
	Annual report	Total Sales	Loading Stations	Customer Sales Analysis	Total Resale	Total Res. Cust.
Nov-03	9,753,000	9,753,200				
Dec-03	9,803,000	9,803,000	77,800	9,675,400	1,527,400	8,148,000
Jan-04	9,376,000	9,376,200	74,700	9,728,300	1,372,100	8,356,200
Feb-04	10,333,000	10,333,300	66,600	9,309,600	1,242,800	8,066,800
Mar-04	9,255,000	9,255,100	74,300	10,259,000	1,317,700	8,941,300
Apr-04	9,783,000	9,783,100	87,300	9,167,800	1,480,800	7,687,000
May-04	10,851,000	10,851,300	112,000	9,671,100	1,315,715	8,355,385
Jun-04	12,176,000	12,312,700	105,800	10,745,500	1,421,100	9,324,400
Jul-04	10,572,000	10,572,300	136,400	12,176,300	1,682,800	10,493,500
Aug-04	11,146,000	11,217,900	80,500	10,491,800	1,416,200	9,075,600
Sep-04	10,666,000	10,665,600	72,000	11,145,900	1,499,000	9,646,900
Oct-04	9,679,000	9,679,400	69,800	10,595,800	1,453,700	9,211,900
Nov-04		10,166,900	85,500	9,593,900	1,390,700	8,203,200
Dec-04		9,918,800	57,100	10,109,800	1,353,300	8,756,500
Jan-05		9,681,300	64,300	9,854,500	1,330,600	8,523,900
Feb-05		10,649,800	55,500	9,625,800	1,307,300	8,318,500
Mar-05		8,851,100	59,400	10,590,400	1,460,500	9,129,900
Apr-05		9,809,400	57,200	8,793,900	1,401,100	7,392,800
May-05		10,802,100	79,900	9,729,500	1,342,500	8,387,000
Jun-05		13,082,800	85,900	10,716,200	1,419,200	9,297,000
Jul-05		12,348,200	135,300	12,947,500	1,501,900	11,445,600
Aug-05		13,877,800	131,300	12,216,900	1,316,100	10,900,800
			140,900	13,736,900	1,769,500	11,967,400