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Governor

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Protection Cabinet

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Commonwealth of Kentucky
Public Service Commission
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Mark David Goss
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Teresa J. Hill
Vice Chairman

Gregory Coker
Commissioner

February 7, 2006

Mr. William Ballard
East Clark County Water District
P. O. Box 112
Winchester, Kentucky 40391

John H. Rompf, Jr., Esq.
White, McCann & Stewart PLLC
P. O. Box 578
Winchester, Kentucky 40392-0578

Deborah Eversole, Esq.
Kent Hatfield, Esq.
Stoll, Keenon and Ogden LLP
2650 Aegon Center
400 West Market Street
Louisville, Kentucky 40202-3377

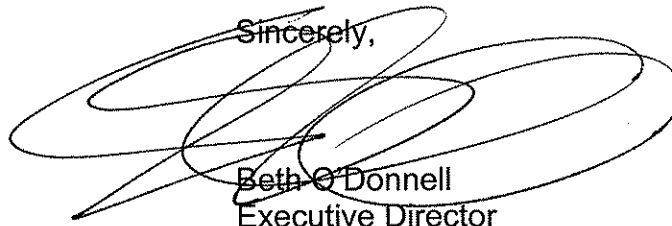
Mr. Vernon Azevedo
Winchester Municipal Utilities
P.O. Box 4177
Winchester, Kentucky 40392-4177

Re: Case No. 2004-00455
East Clark County Water District

Ms. Eversole and Gentlemen:

The enclosed memorandum has been filed in the record of the above-referenced case. Any comments regarding this memorandum's contents should be submitted to the Commission within five days of receipt of this letter. Any questions regarding this memorandum should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,



Beth O'Donnell
Executive Director

gw
Enclosure

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File No. 2004-00455
Case File No. 2005-00264
Case File No. 2005-00322

FROM: Gerald Wuetcher *GW*
Assistant General Counsel

DATE: February 6, 2006

RE: Telephone Conference Call of January 18, 2005

On January 18, 2006, Commission Staff held a telephone conference call in these cases. Participating in this telephone conference call were:

William Ballard	-	East Clark County Water District
Deborah Eversole	-	East Clark County Water District
Kent Hatfield	-	East Clark County Water District
Vernon Azevedo	-	Winchester Municipal Utilities
John Rompf	-	Winchester Municipal Utilities
Jason Green	-	Commission Staff
Scott Lawless	-	Commission Staff
Sam Reid	-	Commission Staff
Jess Thompson	-	Commission Staff
Gerald Wuetcher	-	Commission Staff

Commission Staff requested the conference to discuss a proposed procedural schedule in Cases No. 2005-00264 and No. 2005-00322 and East Clark County Water District's ("ECCWD") response to Commission Staff's proposal to resolve Case No. 2004-00455.

Prior to the conference call, ECCWD's counsel submitted a list of issues for discussion during the conference call. This list and the responses to this proposal are attached. (See Attachments 1 - 4.)

Beginning the conference, Mr. Wuetcher stated that Commission Staff would prepare minutes of the conference for the case record, that a copy of these minutes would be provided to all parties, and that all parties would be given an opportunity to submit written comments upon those minutes.

Mr. Wuetcher noted that the purpose for this conference call was to discuss possible resolution of Case No. 2004-00455 and a procedural schedule for Cases No. 2005-00264 and No. 2005-00322. He further noted that ECCWD had submitted a list of additional issues to discuss. Commission Staff, Mr. Wuetcher stated, was willing to

discuss these issues if time permitted and neither party objected to the discussion. Mr. Rompf noted WMU's objection to the discussion of these issues. Mr. Hatfield and Ms. Eversole responded that the issues set forth in ECCWD's list are linked to the issues in Case No. 2004-00455 and a discussion of those issues could not easily be avoided. Following this conference call, Ms. Eversole further clarified in writing ECCWD's response to Mr. Rompf's objection. (See Attachment 5.)

Mr. Wuetcher briefly reviewed ECCWD's response to Commission Staff's proposal. He noted Commission Staff's concern that use of a wholesale rate for Winchester Municipal Utilities ("WMU") other than \$3.39 per 1,000 gallons appeared inconsistent with the provisions of Administrative 807 KAR 5:068. That regulation, Mr. Wuetcher stated, provides a strict formula for calculating a purchase water adjustment factor and does not provide for any deviation. The formula will not produce the rate that ECCWD proposes to assess.

In response to Mr. Wuetcher's questioning, Mr. Hatfield stated that ECCWD is of the opinion that the purchase water contract contains an automatic adjustment clause and that this clause supersedes the purchase water adjustment ("PWA") procedures set forth in KRS 278.015 and Administrative Regulation 807 KAR 5:068. Assuming that Commission Staff's calculations are correct and consistent with Administrative Regulation 807 KAR 5:068, Mr. Hatfield noted, Commission Staff's proposed rate as applied to ECCWD's sales to WMU is still not the appropriate rate. Mr. Hatfield further noted that the purchase water contract provided for the assessment of a higher rate. He further stated that ECCWD did not wish to pursue any surcharge on its retail customers to recover any undercharges that were not collected as a result of the erroneous calculation of ECCWD's PWA.

Mr. Wuetcher asked how a revised rate for WMU would be calculated under the terms of the purchase water contract. He noted that the contract provides that water that WMU repurchases "shall be increased or decreased at the same time and in the same proportion that the price paid by ECCWD to WMU for water under . . . [the contract] is increased or decreased." Mr. Hatfield and Mr. Rompf provided different methods for calculating the revision.

Mr. Wuetcher suggested that the appropriate application of the contract terms fell outside Case No. 2004-00455. He suggested that Case No. 2004-00455 be resolved by application of the procedures set forth in Administrative Regulation 807 KAR 5:068 and that the parties raise their arguments regarding the adjustment mechanism within the contract in Case No. 2005-00322. Mr. Rompf stated that WMU did not object to this proposal since its proposed method for calculating ECCWD's resale rate produces a result relatively close to the result that the purchase water adjustment mechanism produced. Mr. Hatfield stated that ECCWD did not object provided that the use of PWA result was not considered final and that the Commission's final decision in No. 2005-

00322 would be considered effective as of January 1, 2005. Mr. Rompf stated that WMU's agreement to the PWA rate was based upon the same condition.

Both counsel inquired why, if the parties agreed to this arrangement, any Commission action was required. Mr. Wuetcher stated Commission Staff's concern that the assessment of a rate that differed from a Commission-ordered rate or one continued in ECCWD's filed tariff would be inconsistent with KRS 278.160. He further stated that Commission approval of the parties' arrangement pending completion of Case No. 2005-00322 might eliminate these concerns.

Mr. Wuetcher raised the issue of a procedural schedule for Case No. 2005-00322. Mr. Rompf and Mr. Hatfield stated that a procedural schedule would depend upon the Commission's decision on ECCWD's request for the preparation of a cost-of-service study. Mr. Wuetcher asked if, since ECCWD was the complainant and thus had the burden of proof, ECCWD should not prepare the cost-of-service study. Mr. Hatfield responded that the purchase water contract requires the rates to be based upon a cost-of-service study and therefore required that WMU perform such study. Mr. Rompf stated that such a study had been performed in 1999 and that to undertake another study would be expensive and time consuming. Mr. Hatfield stated that ECCWD took issue with the 1999 cost-of-service study and questioned its reliability and accuracy. After Mr. Wuetcher noted a request in ECCWD's complaint that Commission Staff prepare such a study, Mr. Hatfield stated that Commission Staff preparation of such study was acceptable to ECCWD. Mr. Rompf stated that WMU would perform such a study if the Commission directed but expected ECCWD to reimburse at least a portion of its cost. Mr. Wuetcher stated that Commission Staff would advise the Commission of this issue and seek a ruling as soon as possible.

Mr. Wuetcher then asked about the status of Case No. 2005-00264. He noted that a decision on ECCWD's proposed rate decision change was required no later than April 2006. He inquired if ECCWD desired an expedited procedural schedule in that proceeding or would be willing to withdraw the proposed design revision pending a final decision in Case No. 2005-00322. Mr. Hatfield stated that ECCWD would consider the question and advise Commission Staff.

Mr. Hatfield inquired about the establishment of a tariff rider to collect from all ECCWD customers the cost of any Kentucky River Authority Withdrawal Fees. Mr. Rompf and Mr. Azevedo stated that WMU assessed such fees to ECCWD as a separate line item, not as part of the cost of water. Commission Staff stated that the Commission has generally permitted such a tariff rider and suggested that ECCWD review Kentucky-American Water Company's filed tariff, which contained such a rider.

The conference then adjourned.

5 Attachments

Wuetcher, Jerry (PSC)

From: Deborah Eversole [Deborah.Eversole@skofirm.com]
Sent: Wednesday, January 18, 2006 1:46 PM
To: Wuetcher, Jerry (PSC); John Rompf
Cc: Kent Hatfield
Subject: List of issues for today's call
Attachments: ISSUES FOR DISCUSSION.doc

Attached is a list of the issues we hope at least to touch on during today's conference call. Jerry, if you could pass this on to Staff who will be on the call, we would appreciate it.

We recognize, of course, that time may not permit full discussion of all issues.

Thanks.

Attachment 1

ISSUES FOR DISCUSSION IN
TELEPHONIC CONFERENCE OF JANUARY 18, 2006
SUBMITTED BY EAST CLARK COUNTY WATER DISTRICT

PSC CASE NOS. 2005-00322, 2005-00264, 2004-00455

I. RATE ISSUES:

1. *The rate to be charged by Winchester Municipal Utilities ("WMU") to East Clark County Water District ("East Clark")*

- The parties' contract specifies a cost based, volumetric rate.¹
- The current rate, approved without review of any cost support, is not cost based. It includes allocation of expenses not related to serving East Clark, including local distribution and fire protection and unreasonably high peaking factors, given that East Clark maintains its own water storage.
- The current rate is not a volumetric, wholesale rate. It is Winchester's out-of-city, retail rate, a declining block rate that is higher than that charged to Winchester's retail city customers and that is charged to East Clark at six separate meters even though quantity of use is no indicator of load characteristics of a wholesale customer.
- ***Comparison of WMU Retail Rates And WMU's Alleged "Wholesale" Rates to East Clark:***

Winchester retail customers		East Clark
First 100 cubic feet	\$3.37	\$4.37
Next 400 cubic feet	2.46	3.24
Next 1,500 cubic feet	2.32	3.03
Next 15,000 cubic feet	2.20	2.88
Next 333,000 cubic feet	1.71	2.19
Over 350,000 cubic feet	1.05	1.54

- From January through July of 2005, East Clark was charged an average rate over the six separate connections of \$2.06 per 100 cubic feet. Prior to January 2005, the wholesale rate charged by WMU to East Clark was \$1.18 per 100 cubic feet.

¹ Contract at 6 [Exhibit A to East Clark Complaint filed August 1, 2005] ("After five years, the rate will be adjusted to the then current cost-of-service volumetric rate and adjusted biannually according to cost-of-service methodology.").

2. *The rate to be charged by East Clark to WMU*
 - Per the parties' contract, this rate must be calculated immediately and proportionately to any WMU increase.²
 - Prior to WMU's decision to charge East Clark its out-of-county retail rate at six locations, a procedure which results in a different actual volumetric rate every month, East Clark charged WMU its wholesale cost of water plus 29%, the percentage markup set in 1999.
3. *Procedures going forward on rate issues before the Commission*
 - Consolidation of cases into a single Commission investigation
 - Procedural Schedule
 - Necessity of a cost of service study showing the actual cost to WMU of serving East Clark as first step in the investigation of WMU's rates
4. *Interim Relief for East Clark's current and ongoing under-recovery that includes, at a minimum, payment by WMU of a rate that is 29% above East Clark's actual cost of water purchased from WMU.*

II. OTHER ISSUES FOR DISCUSSION (IF TIME PERMITS):

- WMU's demand that East Clark waive its right to participate in any PSC proceeding setting WMU's system development charge to be charged to East Clark.
- WMU's refusal to permit East Clark to purchase sufficient water to serve its customers on reasonable terms and conditions, even as it claims East Clark is not permitted to purchase elsewhere.
- WMU's assertion of a right to take East Clark's existing customers and facilities at its discretion, despite East Clark's status as a federally-indebted utility under 7 U.S.C. §1926(b).

² Contract at 10 (WMU is to pay to East Clark a rate that is "increased or decreased at the same time and in the same proportion that the price paid by ECCWD to WMU for water under Paragraph 6 of this Agreement is increased or decreased.").

Wuetcher, Jerry (PSC)

From: John Rompf [jhrumpf@winchester-law.com]
Sent: Wednesday, January 18, 2006 2:19 PM
To: Wuetcher, Jerry (PSC)
Cc: deborah.eversole@skp.com; Azevedo, Vernon
Subject: Re: Informal Conference

I have not been informed about the reason for the conference call now scheduled for 4 pm today but based upon the "List of Issues...." just provided to me (which appears to be more of a brief than a list) I feel like I need further time to prepare....that is I cannot file a counterstatement of issues to correct the MANY mistatements of FACTS contained in Debbie's attachment. Quite frankly it violates everything I know about ethics to discuss settlement negotiations between parties with the trier of fact prior to a hearing and especially to misrepresent the negotiations. To say the least I would ask that ex parte communications cease.

----- Original Message -----

From: Wuetcher, Jerry (PSC)
To: John Rompf ; Kent Hatfield ; Deborah Eversole (Deborah.Eversole@skp.com)
Sent: Tuesday, January 17, 2006 9:09 AM
Subject: Informal Conference

Ms. Eversole and Gentlemen:


Based upon your responses, it appears that the earliest time that is convenient to all parties is 4:00 p.m. on January 18, 2006. I will make arrangements for a conference call bridge. Please call into the Commission (502-564-3940) and request extension 7098.

A formal notice of conference will be issued later today. I will e-mail you a copy as soon as the notice is released.

If you have any questions, please contact me.

Sincerely,

Gerald E. Wuetcher
Assistant General Counsel
Public Service Commission of Kentucky
(502) 564-3940, Extension 259
gerald.wuetcher@ky.gov



Attachment 2

Wuetcher, Jerry (PSC)

From: Wuetcher, Jerry (PSC)
Sent: Wednesday, January 18, 2006 2:34 PM
To: 'John Rompf'
Cc: deborah.eversole@skp.com; Azevedo, Vernon; Kent Hatfield
Subject: RE: Informal Conference

Tracking: Recipient	Read
'John Rompf'	
deborah.eversole@skp.com	
Azevedo, Vernon	
Kent Hatfield	
Reid, Sam H (PSC)	Read: 1/18/06 2:35 PM
Green, Jason L (PSC)	Read: 1/18/06 2:38 PM

TO ALL CONCERNED:

I have just received Ms. Eversole's message. I suggest that we continue with the call. If there are issues that WMU believes are inappropriate or should be deferred, Commission Staff will agree to defer. Commission Staff intended the call to primarily discuss the PWA issue and a procedural schedule for the other two cases.

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gerald.wuetcher@ky.gov

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Wuetcher, Jerry (PSC)

From: John Rompf [jhrumpf@winchester-law.com]
Sent: Wednesday, January 18, 2006 2:43 PM
To: Wuetcher, Jerry (PSC)
Cc: Azevedo, Vernon; deborah.eversole@skp.com
Subject: Re: Informal Conference

Great!

----- Original Message -----

From: Wuetcher, Jerry (PSC)
To: 'John Rompf'
Cc: deborah.eversole@skp.com ; Azevedo, Vernon ; Kent Hatfield
Sent: Wednesday, January 18, 2006 2:34 PM
Subject: RE: Informal Conference

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To: John Rompf ; Kent Hatfield ; [Deborah Eversole \(Deborah.Eversole@skp.com\)](mailto:Deborah Eversole (Deborah.Eversole@skp.com))
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gerald.wuetcher@ky.gov

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Wuetcher, Jerry (PSC)

From: Deborah Eversole [Deborah.Eversole@skofirm.com]
Sent: Wednesday, January 18, 2006 6:44 PM
To: Wuetcher, Jerry (PSC); John Rompf
Cc: Azevedo, Vernon; Kent Hatfield
Subject: RE: Informal Conference

Although I believe the issues raised by Mr. Rompf below were dealt with during the conference call, I do wish briefly to respond in writing. First, as I explained on the conference call this afternoon, the list of issues sent previously to Mr. Rompf and Mr. Wuetcher is essentially a summary of the complaint filed almost six months ago rather than any characterization or alleged "mischaracterization" of the parties' settlement discussions. Second, the list of issues was sent to Mr. Rompf at the same time it was sent to Commission staff. Accordingly, the communication was not ex parte. As a final matter, I would note that the Commissioners, not the Commission Staff, are the triers of fact in a Commission case, and that, per regulation, Commission staff routinely handles settlement conferences. That, in a limited sense, is what we all participated in today.

From: Wuetcher, Jerry (PSC) [mailto:JWuetcher@ky.gov]
Sent: Wednesday, January 18, 2006 2:34 PM
To: 'John Rompf'
Cc: Deborah Eversole; Azevedo, Vernon; Kent Hatfield
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