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PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Alleged Failure of the City of Danville to Comply with KRS 278.160 and 278.180 and the Commission's Order of August 10, 1994 in Administrative Case No. 351	**Case No. 2008-00176**

City of Danville's Response to the Allegations of the Commission's Order dated May 22, 2008

The Commission's 7/11/08 Order (p.1 ¶3) directs that the City of Danville ("Danville") file "any additional response to all allegations set forth in the Commission's Order of May 22, 2008" initiating this proceeding, and that any allegations not expressly admitted be deemed denied. In a Request for Informal Conference and Extension of Time received by the Commission on May 29, 2008, Danville provided some response to the allegations in the 5/22/08 Order and supplements its response to the factual allegations as follows:

1. Danville is without sufficient information to admit or deny the facts alleged in the initial three paragraphs of the 5/22/08 Order (pp.1-2) about Garrard County Water Association ("GCWA"), Parksville Water District ("Parksville"), and Lake Village Water Association ("Lake Village"). Danville does not, however, have any present reason to believe that the facts alleged are inaccurate.

2. Danville admits the factual allegations in the fourth paragraph (p.3).

3. The fifth, sixth, seventh, eight, ninth and tenth paragraphs (pp.2-4) do not contain factual allegations, and either quote from statutes, a court decision, or a Commission Order or comment upon them.

4. Of the factual allegations in the eleventh paragraph and footnote 14 (pp.4-5), Danville admits that it executed a water purchase contract with GCWA as of July 23, 1999; that the contract provides for Danville to sell treated water to GCWA on certain terms and conditions; and that the terms of the contract include, *inter alia*, declining block rates and a 20% surcharge. Danville notes that the Commission's 2/14/00 Order in Case No. 1999-00353 simply states that the contract between Danville and GCWA is approved. Danville was not a party to Case No. 2008-00109 and has no direct knowledge of what was stated therein, and does not

know all the information encompassed by or reflected in the Commission's records. Danville states affirmatively that — although it has no "per 1000 gallons" rates and the use of average rates is inappropriate with a declining-block rate structure (because the average varies with usage) — the rates stated in the 7/23/99 contract exceed $1.60 per 1000 gallons for the first three blocks (up to 200,000 cubic feet).

5. Of the factual allegations in the twelfth paragraph and footnote 15 (p.5), Danville admits that the terms of the 7/23/99 contract with GCWA include, *inter alia*, a provision for assessment of a 20% surcharge; and that a monthly billing statement Danville provided GCWA in early 2008 contained charges of $10,585.20 for water usage, $2117.04 as a surcharge, and $160.83 for Kentucky River Authority fees. Danville does not have sufficient information to admit or deny what the Commission examined and does not know how it calculated the amount that is stated as what Danville "should have billed" GCWA.

6. Of the factual allegations in the thirteenth paragraph (pp.5-6), Danville admits that Parksville's complaint initiating Case No. 2007-00405 may be characterized as alleging that "on or after August 2005 Danville began billing at a rate for wholesale water service that deviated from its filed contract rate"; and that, in Item 2 of its Response to discovery requests propounded by Parksville in that proceeding, it provided dates during September 2005 and 2006 and August 2007 on which it calculated increases to rates and which were the starting delivery dates for those rates. Danville does not know all the information encompassed by or reflected in the Commission's records, and does not know to what is referred by "the required notice to the Commission of these revisions." Danville denied in Case No. 2007-00405 that it charged a rate to Parksville that was "void" or "deviated from the contract rate," and it here reiterates that denial.

More generally, Danville states that it provides treated water to each of the three other parties pursuant to contract and denies that its charges to any of them have been in excess of (or deviated from) the respective contract. Danville denies that it has violated (or failed to comply with) applicable Kentucky statutes or regulations or the 8/11/94 Order in Administrative Case No. 351 — and states that it is unclear how any of the actions or omissions alleged (or reported as alleged) in the 5/22/08 Order would constitute a violation of applicable Kentucky statutes or

regulations or of the 8/11/94 Order. Furthermore, Danville certainly did not intend to engage in any violation (or failure to comply), and any such that might be found or held to have occurred was completely inadvertent.

As a matter of law, Danville contends that the decision in *Simpsonville County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994), was in error and should be overturned. Furthermore, since the *Simpsonville* decision, there has been no regulation or even Administrative Case order by the Commission giving due notice to Danville that any provision in KRS Chapter 273 or 807 KAR 5 imposing requirements or sanctions on a "utility" (other than that rates schedules submitted conform to 807 KAR 5:011) was applicable to it or any aspect of its operations and, as a matter of law and policy, Danville does not think that any such provision should be so applied. This includes KRS 278.990(1). Even if Danville were a "utility" as expressly defined in KRS 278.010(3), it should not be subject to the penalties described in KRS 278.990(1) because there has been no predicate violation, prohibited act, or failure by Danville and, even if such were to be found or held to have occurred, it was not willful.

Finally, Danville disputes the authority and basis for the cease-and-desist mandate in the 5/22/08 Order (p.7, ordering ¶3); for example, it is unclear, even if Danville were a "utility" as expressly defined in KRS 278.010(3), whether the Commission may order a change in the rates charged before a hearing had on reasonable notice. *See* KRS 278.270. Nonetheless, and although it was not charging the other parties any "rates that differ from those set forth in its water purchase contract[s] with those customers," Danville has reduced the basic rates on the bills issued to the other three parties, and presently is not seeking to collect for usage at the rates most-recently charged. It has done this as a good-faith measure to facilitate discussion and possible resolution of the Commission's and other parties' concerns — and without waiver of its contract rights, due-process challenges, and any right or allowance to bill and seek collection of the difference from one or more of the other parties at some point in the future.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 18th day of July, 2008, the original and ten (10) copies of the foregoing were filed with the Commission by hand delivery, a conformed copy was emailed to Commission counsel Virginia W. Gregg, and a copy was sent by first-class U.S. mail for service on:

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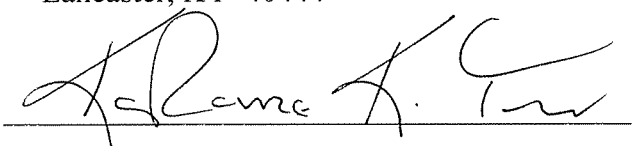

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