

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2009-00247

RECEIVED
FEB 26 2010
PUBLIC SERVICE
COMMISSION
COMPLAINANT

SOUTH SHORE WATERWORKS CO.

VS.

CITY OF GREENUP, KENTUCKY

DEFENDANT

ANSWER

The Defendant, City of Greenup, Kentucky, by and through counsel, hereby answers the Complaint of the Complainant:

FIRST DEFENSE

The Defendant admits numerical paragraph numbers 1, 2, 7, 8, 21 and 22 of the Complaint.

SECOND DEFENSE

The Defendant denies numerical paragraph number 3 of the Complaint and raises as an affirmative defense the fact that (a) the Complainant has no contract with the Defendant and (b) the Public Service Commission has no jurisdiction over the Defendant.

THIRD DEFENSE

The Defendant denies numerical paragraph numbers 4, 5, 6, 17, 18, 20, 24, 25, 26, 27, 28, 29, 31, 32, 35, 37, 41, 43, 44, 45, 46 and 47 of the Complaint.

FOURTH DEFENSE

The Defendant admits so much of the Complaint as states a dispute arose between the Plaintiff and the Defendant; however, the Defendant continues to deny there is any contract between the Plaintiff and the Defendant.

FIFTH DEFENSE

In regard to numerical paragraph number 9 of the Amended Complaint, the City admits the Commission entered such an Order but would state that said Order was overturned and held null and void by the later decision of the Kentucky Court of Appeals mentioned in the Answer, Complaint and Amended Complaint to this action.

SIXTH DEFENSE

The Defendant admits numerical paragraph number 10 of the Complaint but would state that those rates filed were done under protest and those rates have changed. The Defendant raises as an affirmative defense, to this paragraph and to the entire Complaint, *res judicata* and/or collateral estoppel.

SEVENTH DEFENSE

The Defendant admits so much of numerical paragraph number 11 of the Complaint as alleges that, by order of the Public Service Commission while the case was ongoing, the Defendant did provide water service to the Complainant.

EIGHTH DEFENSE

The Defendant admits numerical paragraph number 12 of the Complaint with the exception of the statement that the issuance of the opinion had no impact on the ongoing dispute between the Defendant and the Complainant. In fact, that opinion made clear there was no contract between the Defendant and the Complainant and that the Defendant was under no obligation to sell water to the Complainant and the Public Service Commission, absent a contract, had no jurisdiction.

The Defendant would specifically admit, however, that it has provided water to the Complainant on occasions subsequent to the issuance of the opinion.

NINTH DEFENSE

In regards to numerical paragraph number 13 of the Complaint, the Defendant would admit that it raised its monthly bill to \$28.50 on or about August 2007 and did not provide this rate increase to the Commission. However, the Defendant would state that it was under no obligation to do so as a contract was still not, and has yet to this day, been signed by its Mayor. The Defendant admits that the Complainant continued to pay the bill on a monthly basis.

TENTH DEFENSE

With regard to numerical paragraph number 14 of the Complaint, the Defendant would admit that on or about September 2008 the Defendant did increase its monthly bill to \$491.07. The Defendant would admit that it did not provide the Commission notice of the rate increase. However, the Defendant would deny, with all due respect, that it had any obligation to notify the Commission. The Defendant would admit that the Complainant has continued to pay the bill up until the Complaint was filed.

ELEVENTH DEFENSE

With regard to numerical paragraph number 15 of the Complaint, the Defendant denies the 1st, 3rd, 4th and 5th literary sentences. The Defendant admits the 2nd literary sentence of the Complaint.

TWELFTH DEFENSE

In regards to numerical paragraph number 16 of the Complaint, the Defendant would admit only that it did understand the Complainant lost the ability to operate its pumps for some period of time due to an electrical outage. The Defendant would also admit that it denied a request from the Complainant to sell water at that time. However, the Defendant would deny there was anything unjust, unreasonable, inadequate or insufficient or any wrongful act on behalf of the Defendant at all. In fact, the Defendant would affirmatively state that its information led it

to believe that at all times adequate water supply was available to the customers of the Complainant.

THIRTEENTH DEFENSE

As to numerical paragraph number 19 of the Complaint, the Defendant would admit so much of the allegation that the Complainant's customers must pay for the Defendant's water and states that the rest of paragraph does not bear any relevance to the Complaint of the Complainant at all. At no time was the Complainant in any sort of true "emergency" situation. The Defendant, through its Mayor, maintained close tabs on the situation through contact with local elected officials and emergency officials to ensure that if emergency water had been needed, the Defendant would have known.

FOURTEENTH DEFENSE

The Defendant denies numerical paragraph number 33, 34, 38 and 39 of the Complaint and states specifically that the rates filed on August 2002 are null and void as set forth on their face.

FIFTEENTH DEFENSE

In regard to numerical paragraph number 40 of the Complaint, the Defendant would admit that the bills to South Shore Waterworks has changed over the years. The City attaches as Exhibit 1 to this Answer a complete billing history of the City of South Shore account, including billings and payments and would state that this represents an accurate depiction of what South Shore has been billed and paid over the years.

SIXTEENTH DEFENSE

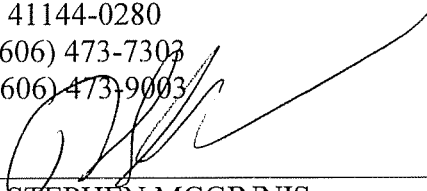
The Defendant raises as affirmative defenses the lack of personal and subject matter jurisdiction on the part of the Commission, *res judicata*, collateral estoppel, law of the case and any and every other affirmative defense which may be made apparent through discovery in this

proceeding. The Defendant specifically raises as a defense the prior case and attaches a copy of same for ease of reference of the Commission.

SEVENTEENTH DEFENSE

The Defendant states as an affirmative defense that no contract exists between the Defendant and the Complainant. The Defendant states that no signed contract exists by any Mayor of the Defendant.

MCBRAYER, MCGINNIS, LESLIE & KIRKLAND
P. O. Box 280
Greenup, KY 41144-0280
Telephone: (606) 473-7303
Telecopier: (606) 473-9003

BY: 

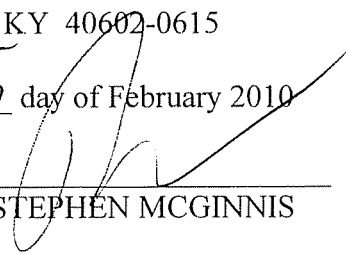
HON. R. STEPHEN MCGINNIS
Attorney for Defendant

I do hereby certify that a true and correct copy of the foregoing has been mailed to:

Hon. R. Benjamin Crittenden
Stites & Harbison, PLLC
P. O. Box 634
Frankfort, KY 40602-0634

Mr. Jeffrey Derouen
Executive Director
Public Service Commission
P. O. Box 615
Frankfort, KY 40602-0615

This 25 day of February 2010



HON. R. STEPHEN MCGINNIS

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CITY OF GREENUP
CUSTOMER FILE LIST

PAGE 1
PERIOD 1

THE FOLLOWING RUN OPTIONS HAVE BEEN SELECTED:

STARTING BOOK:	00037	ENDING BOOK:	00037
STARTING ACCOUNT:	0006506000	ENDING ACCOUNT:	0006506000
STATUS SELECTION:	ACTIVE INACTIVE	FINAL BILL DELETED	PENDING MOVE OUT PENDING MOVE IN
	PENDING ACTIVE SEASONAL	DISCONNECTED PROBLEM ACCOUNT	ARCHIVED EQUIPMENT

RATE CODE TYPES: METERED AND UNMETERED

FROM RATE CODE: 0
TO RATE CODE: 99999

DATA TO BE PRINTED: BILL TO DATA
PAYMENT HISTORY STARTING DATE: 01-01-2002 ENDING DATE: 12-31-2010
USAGE HISTORY STARTING DATE: 01-01-2002 ENDING DATE: 02-24-2010

SERVICE DATA SELECTION: WATER
SEWER
GAS
ELECTRIC
ELECTRIC DEMAND
UNMETERED
OTHER1
OTHER2
OTHER3
INSTALLMENT

USAGE SERVICE SELECTION: WATER
SEWER
GAS
ELECTRIC
ELECTRIC DEMAND
OTHER1
OTHER2
OTHER3

NUMBER OF NOTE LINES: 10 FROM NOTE DATE: 01-01-2010 TO NOTE DATE: 12-31-2010

TYPE SELECTION: RESIDENTIAL COMMERCIAL INDUSTRIAL INSTITUTIONAL AGRICULTURAL MUNICIPAL OTHER

*** BOOK: 37 ACCOUNT: 6506000 LAST FILE MAINTENANCE DATE: 02-24-2010 STATUS: ACTIVE TYPE: RESIDENTIAL ***

BILL TO: NAME: SOUTH SHORE WATER, CARRIER ROUTE: SOC SEC NO:
 ADDRESS(1): P.O. BOX 485, TENANT/OWNER: Y DRIVERS LICENSE #:
 ADDRESS(2): %JOE HANNAH
 ADDRESS(3): ADDRESS(4):
 CITY: SOUTH SHORE CASS APPLY: N ACCOUNT BAL: MISCL. BAL:
 STATE: KY ZIP CODE: 41175 INSTALLMENT BALANCE: TOTAL ACCOUNT BAL:
 LEVEL BILLING: N LEVEL BILL ADJ: LEVEL BILL AMT: MULTI-PROPERTY: NO TOTAL DEPOSITS:
 E-MAIL: E-BILL: PAPER COMMENTS:

- P A Y M E N T H I S T O R Y -

STATUS: ACTIVE ***

-DATE-	-TYPE-	-AMOUNT-	-INVOICE-	-BALANCE-	-DATE-	-TYPE-	-AMOUNT-	-INVOICE-	-BALANCE-
02-06-2010	R	637.41	497570		10-09-2006	B	19.95	341168	19.95
01-29-2010	B	637.41	497570	637.41	09-20-2006	R	19.95	337274	
01-15-2010	R	491.07	493977		09-06-2006	B	19.95	337274	19.95
01-14-2010	B	491.07	493977	491.07	08-17-2006	R	19.95	333380	
12-07-2009	R	624.80	489630		07-31-2006	B	19.95	333380	19.95
11-30-2009	B	624.80	489630	624.80	07-17-2006	R	19.95	329506	
10-29-2009	A	-61.58	482032		07-05-2006	B	19.95	329506	19.95
10-28-2009	A	-404.84	481998	61.58	06-16-2006	R	273.98	325620	
10-12-2009	P	61.58	481591	466.42	06-05-2006	B	273.98	325620	273.98
10-03-2009	R	491.07	481591	404.84	05-17-2006	R	19.95	321770	
09-30-2009	B	662.70	481591	895.91	04-27-2006	B	19.95	321770	19.95
09-10-2009	P	61.58	477562	233.21	04-07-2006	R	19.95	317953	
08-29-2009	R	491.07	477562	171.63	04-04-2006	B	19.95	317953	19.95
08-10-2009	R	491.07	477562	662.70	03-16-2006	R	19.95	314123	
07-31-2009	B	491.07	473573		03-07-2006	B	19.95	314123	19.95
07-06-2009	R	491.07	469543		02-15-2006	R	19.95	310182	
06-29-2009	B	491.07	469543	491.07	02-06-2006	B	19.95	310182	19.95
06-06-2009	R	536.45	465531		01-16-2006	R	19.95	306329	
05-29-2009	B	491.07	465531	536.45	01-05-2006	B	19.95	306329	19.95
05-15-2009	R	491.07	461856	45.38	12-15-2005	R	19.95	302503	
05-11-2009	P	45.38	461856	536.45	12-02-2005	B	19.95	302503	19.95
04-30-2009	B	491.07	461856	491.07	11-17-2005	R	19.95	298662	
04-02-2009	R	491.07	457901		11-08-2005	B	19.95	298662	19.95
03-31-2009	B	491.07	457901	491.07	10-24-2005	R	441.29	294819	
03-07-2009	R	491.07	453921		10-12-2005	B	441.29	294819	441.29
02-28-2009	B	491.07	453921	491.07	09-14-2005	R	1835.15	290982	
02-09-2009	R	719.14	449932		09-02-2005	B	1835.15	290982	1835.15
01-30-2009	B	719.14	449932	719.14	08-23-2005	R	1876.06	287176	
01-03-2009	R	491.07	445955		08-17-2005	B	1989.98	287176	1876.06
12-31-2008	B	491.07	445955	491.07	07-02-2005	B	145.86	283376	-113.92
12-08-2008	R	491.07	442995		06-10-2005	B	19.95	279614	-259.78
11-26-2008	B	491.07	442995	491.07	05-13-2005	B	19.95	275849	-279.73
11-08-2008	R	491.07	439022		04-05-2005	B	19.95	272123	-299.68
10-31-2008	B	491.07	439022	491.07	03-04-2005	B	93.02	268383	-319.63
10-06-2008	R	491.07	434998		02-08-2005	B	19.95	264673	-412.65
09-29-2008	B	491.07	434998	491.07	01-13-2005	B	19.95	261012	-432.60
09-08-2008	R	491.07	430992		12-07-2004	B	19.95	257437	-452.55
08-29-2008	B	491.07	430992	491.07	11-11-2004	B	19.95	253958	-472.50
					10-11-2004	B	-492.45	250407	-492.45

*** Continued ***

- PAYMENT HISTORY -

STATUS: ACTIVE

DATE	TYPE	AMOUNT	INVOICE	BALANCE	DATE	TYPE	AMOUNT	INVOICE	BALANCE
08-07-2008	R	737.00	429239		09-21-2004	R	532.35	246934	
07-31-2008	B	737.00	429239	737.00	09-14-2004	B	532.35	246934	532.35
07-05-2008	R	28.50	425206		08-17-2004	R	970.52	243413	
06-27-2008	B	28.50	425206	28.50	08-06-2004	B	970.52	243413	970.52
06-07-2008	R	28.50	421153		07-19-2004	R	1781.52	239904	
05-30-2008	B	28.50	421153	28.50	07-08-2004	B	1781.52	239904	1781.52
05-10-2008	R	28.50	419690		06-22-2004	R	19.95	236452	
04-29-2008	B	28.50	419690	28.50	06-14-2004	B	19.95	236452	19.95
04-07-2008	R	30.35	415765		05-25-2004	R	19.95	233023	
03-31-2008	B	28.50	415765	30.35	05-11-2004	B	19.95	233023	19.95
03-15-2008	R	28.50	411813	1.85	05-05-2004	R	19.95	229602	
03-14-2008	P	1.85	411813	30.35	04-21-2004	B	19.95	229602	19.95
03-02-2008	B	28.50	411813	28.50	03-27-2004	R	18.95	226004	
02-11-2008	R	28.50	407862		03-16-2004	B	19.95	226004	18.95
02-01-2008	B	28.50	407862	28.50	02-29-2004	R	20.95	222589	-1.00
01-14-2008	R	28.50	404187		02-17-2004	B	19.95	222589	19.95
12-31-2007	B	28.50	404187	28.50	01-21-2004	R	19.95	218447	
12-10-2007	R	28.50	399975		01-12-2004	B	19.95	218447	19.95
12-02-2007	B	28.50	399975	28.50	12-19-2003	R	33.87	215022	
11-12-2007	R	28.50	395982		12-10-2003	B	33.87	215022	33.87
10-31-2007	B	28.50	395982	28.50	11-25-2003	R	19.95	211589	
10-12-2007	R	28.50	391403		11-17-2003	B	19.95	211589	19.95
10-01-2007	B	28.50	391403	28.50	10-20-2003	R	19.95	208157	
09-10-2007	R	28.50	388055		10-02-2003	B	19.95	208157	19.95
08-31-2007	B	28.50	388055	28.50	09-18-2003	R	171.02	204748	
08-06-2007	R	28.50	384067		09-12-2003	B	171.02	204748	171.02
07-31-2007	B	28.50	384067	28.50	08-29-2003	R	19.95	201328	
06-29-2007	B	24.19	380113		08-18-2003	B	19.95	201328	19.95
06-14-2007	R	28.50	376050	24.19	07-16-2003	R	19.95	196500	
06-11-2007	P	1.85	376050	30.35	07-02-2003	B	19.95	196500	19.95
05-31-2007	B	28.50	376050	28.50	06-25-2003	R	-19.95	194003	
05-07-2007	R	19.95	372211		06-12-2003	B	19.95	194003	19.95
04-30-2007	B	28.50	372211	19.95	05-19-2003	R	19.95	190637	
04-19-2007	A	-8.55	368345	-8.55	05-03-2003	B	19.95	190637	19.95
04-08-2007	R	28.50	364503		04-21-2003	R	19.95	187292	
03-30-2007	B	28.50	364503	28.50	04-04-2003	B	19.95	187292	19.95
03-12-2007	R	19.95	360612		03-18-2003	R	300.38	183947	
02-28-2007	B	19.95	360612	19.95	03-03-2003	B	331.31	183947	300.38
02-05-2007	R	19.95	356746		02-06-2003	B	19.95	180273	-30.93
01-31-2007	B	19.95	356746	19.95	01-02-2003	B	19.95	177366	-50.88
01-16-2007	R	19.95	352797		12-31-2002	A	-10.01	174120	-70.83
12-29-2006	B	19.95	352797	19.95	12-03-2002	B	35.30	174029	-60.82
12-17-2006	R	19.95	348920		11-01-2002	B	161.66	170623	-96.12
12-04-2006	B	19.95	348920	19.95	10-15-2002	R	173.03		-257.78
11-16-2006	R	19.95	345021		09-22-2002	A	-217.15	164142	-84.75
11-06-2006	B	19.95	345021	19.95	09-19-2002	R	3713.90	163944	132.40
10-17-2006	R	19.95	341168		09-03-2002	B	3846.30	163944	3846.30

- SERVICE DATA : WATER -

STATUS: INACTIVE ***

RATE CODE/SEQ:	111 01	BALANCE:	REG.MTR MULT:	100.0000	UNITS:	1	DEPOSIT DATE:	
FINAL BILL:	N	DEPOSIT AMT:	DEM.MTR MULT:	1.0000	UNIT/MEAS:	GAL	LST READ DATE:	07-20-2008
PENALTY FLAG:	N	INTEREST AMT:	SUM. EST:		TYPE:	C	LAST DUE DATE:	07-10-2008
TAX FLAG:	Y	CURR. READ:	WIN. EST:		NO OF DIALS:		DTE LST MAINT:	
SEWER FLAG:	P	PREV. READ:	METER NUMBER:		METER SIZE:	1	MTR INSTALLED:	

** Continued **

- SERVICE DATA : WATER -

STATUS: INACTIVE ***

CYCLE CODE: CURR/EST USE:
METER LOC: 3" TAP
SERIAL NUMBER:

HANDHELD ID:

INTEREST DATE:

COMMENTS: 3" WATER TAP

RATE CODE/SEQ:	315 02	BALANCE:	-6.47	REG.MTR MULT:	100.0000	UNITS:	1	DEPOSIT DATE:	
FINAL BILL:	N	DEPOSIT AMT:		DEM.MTR MULT:	1.0000	UNIT/MEAS:	CUFT	LST READ DATE:	09-20-2009
PENALTY FLAG:	N	INTEREST AMT:		SUM. EST:		TYPE:	C	LAST DUE DATE:	10-10-2009
TAX FLAG:	N	CURR. READ:	62760	WIN. EST:		NO OF DIALS:		DTE LST MAINT:	
SPECIAL SEWER FLAG:	P	PREV. READ:	62760	METER NUMBER:	65060000B	METER SIZE:	1	MTR INSTALLED:	
CYCLE CODE:		CURR/EST USE:		HANDHELD ID:				INTEREST DATE:	
METER LOC:								COMMENTS:	
SERIAL NUMBER:									

RATE CODE/SEQ:	316 03	BALANCE:	6.35	REG.MTR MULT:	100.0000	UNITS:	1	DEPOSIT DATE:	
FINAL BILL:	N	DEPOSIT AMT:		DEM.MTR MULT:	1.0000	UNIT/MEAS:	CUFT	LST READ DATE:	01-20-2010
PENALTY FLAG:	N	INTEREST AMT:		SUM. EST:		TYPE:	C	LAST DUE DATE:	02-10-2010
TAX FLAG:	N	CURR. READ:	64908	WIN. EST:		NO OF DIALS:		DTE LST MAINT:	
SPECIAL SEWER FLAG:	P	PREV. READ:	62760	METER NUMBER:		METER SIZE:	1	MTR INSTALLED:	
CYCLE CODE:		CURR/EST USE:	214800	HANDHELD ID:				INTEREST DATE:	
METER LOC:								COMMENTS:	
SERIAL NUMBER:									

- SERVICE DATA : UNMETERED -

RATE CODE/SEQ:	501 01	CYCLE CODE:		FINAL BILL:	N	STATUS:	ACTIVE	BILL DATE:	01-20-2010
UNITS:	1	BALANCE:	.12	TAX FLAG:	N	PENALTY FLAG:	N	DUE DATE:	02-10-2010
DEPOSIT AMT:		DEPOSIT DATE:		DEPOSIT RATE:		INTEREST AMT:		INTEREST DATE:	

- USAGE HISTORY : WATER -

SEQ: 01 STATUS: ACTIVE ***

-READ DTE-	-CURR/EST USE-	-TYPE-	-READ DTE-	-CURR/EST USE-	-TYPE-	-READ DTE-	-CURR/EST USE-	-TYPE-	-READ DTE-	-CURR/EST USE-	-TYPE-
07-20-2008		C	05-25-2008		C	04-20-2008		C	03-27-2008		E
02-27-2008		C	01-20-2008	600	E	12-26-2007		E	11-27-2007	2000	E
10-25-2007		C	09-24-2007		C	08-20-2007		C	07-18-2007		C
06-25-2007		C	05-22-2007		C	04-20-2007		C	03-20-2007	600	E
02-23-2007	2000	E	01-19-2007		C	12-20-2006		C	11-21-2006		C
10-24-2006		C	09-25-2006		C	08-21-2006		C	07-17-2006		C
06-20-2006		C	05-19-2006	117500	C	04-24-2006		C	03-17-2006		C
02-20-2006		C	01-18-2006		C	12-20-2005		C	11-17-2005		C
10-25-2005		C	09-20-2005	203300	C	08-25-2005	918100	C	07-27-2005	997500	C
06-25-2005	51800	C	05-20-2005		C	04-22-2005		C	03-22-2005		C
02-17-2005	24700	C	12-22-2004		E	12-20-2004		E	11-18-2004	1000	C
10-22-2004		C	09-25-2004	-247400	C	08-24-2004	250000	E	07-20-2004	474700	C
06-20-2004	890600	C	05-20-2004		E	04-22-2004		C	03-24-2004		C
02-27-2004		C	01-19-2004		E	12-20-2003		E	11-19-2003	5200	E
10-20-2003		C	09-26-2003		C	08-28-2003	64700	C	07-28-2003		C
06-24-2003		C	05-29-2003		C	04-21-2003		C	03-17-2003		C
02-24-2003	146900	C	01-24-2003		C	12-23-2002		C	11-22-2002	5200	C
10-25-2002	55500	C	08-20-2002	1838100	C						

- USAGE HISTORY : WATER -

SEQ: 02 STATUS: ACTIVE ***

-READ DTE-	-CURR/EST USE-	-TYPE-	-READ DTE-	-CURR/EST USE-	-TYPE-	-READ DTE-	-CURR/EST USE-	-TYPE-	-READ DTE-	-CURR/EST USE-	-TYPE-
09-20-2009		C	08-20-2009		C	07-20-2009		C	06-20-2009		C
05-20-2009		C	04-20-2009		C	03-20-2009		C	02-18-2009	68400	E
01-20-2009	205300	C	12-20-2008		C	11-17-2008		C	10-20-2008		C
09-24-2008		C	08-21-2008		C	07-24-2008	210100	C			

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CITY OF GREENUP
CUSTOMER FILE LIST

PAGE 5
PERIOD 1

- USAGE HISTORY : WATER - SEQ: 03 STATUS: ACTIVE ***

READ DTE--CURR/EST USE--TYPE-	READ DTE--CURR/EST USE--TYPE-	READ DTE--CURR/EST USE--TYPE-	READ DTE--CURR/EST USE--TYPE-
01-20-2010 214800 C	12-22-2009 C	11-19-2009 C	

ALS :

RATE	ABBR	COUNT	METER SIZES	COUNT	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
00111	WA1	1			1																			
00315	WA1	1			1																			
00316	WA1	1			1																			
00501	SC1	1																						

00111
00315
00316
00501
00111
00315
00316
00501