

**DAMON R. TALLEY, P.S.C.**

112 N. LINCOLN BLVD.  
P.O. BOX 150  
HODGENVILLE, KENTUCKY 42748

TEL. (270) 358-3187  
FAX (270) 358-9560

DAMON R. TALLEY

ATTORNEY AT LAW

October 19, 2009

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
PO Box 615  
Frankfort, KY 40602

RECEIVED

OCT 19 2009  
PUBLIC SERVICE  
COMMISSION

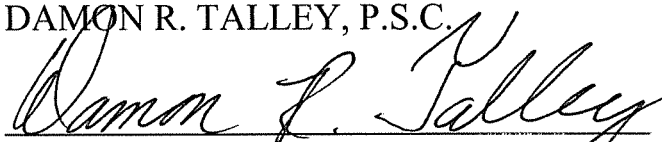
RE: Case No. 2009-00373  
Hopkinsville Water Environment Authority

Dear Mr. Derouen:

Enclosed for filing are the original and ten (10) copies of the Hopkinsville Water Environment Authority's Motion to Schedule Informal Conference and for an Extension of Time.

Yours truly,

DAMON R. TALLEY, P.S.C.



DAMON R. TALLEY, Counsel For  
Hopkinsville Water Environment Authority

DRT:ms

Enclosures

cc: Hon Jack Hughes, Attorney for CCWD  
James Owen, General Manager, CCWD  
Hopkinsville Water Environment Authority

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE ) CASE NO.  
SERVICE RATES OF HOPKINSVILLE WATER ) 2009-00373  
ENVIRONMENT AUTHORITY )

\*\*\*\*\*

**HOPKINSVILLE WATER ENVIRONMENT AUTHORITY'S  
MOTION TO SCHEDULE INFORMAL CONFERENCE  
AND  
MOTION FOR AN EXTENSION OF TIME**

\*\*\*\*\*

Comes the Hopkinsville Water Environment Authority (“HWEA”), by Counsel, and moves the Public Service Commission (“Commission”) to schedule an Informal Conference and to grant HWEA a reasonable extension of time in which to file its responses to the Commission’s Information Request set forth in Appendix A to the Commission’s Order dated September 28,2009. For cause, HWEA states as follows:

1. HWEA believes an Informal Conference is necessary to resolve a threshold legal issue which is critical to these proceedings. The legal issue is:

In determining wholesale rate increases, are HWEA and Christian County Water District contractually, or otherwise, obligated to utilize the method set forth in the Settlement Agreement reached in the prior rate case?

2. Perhaps, some background information will be helpful. In the prior proceeding between HWEA and the Christian County Water District (“Christian District”), PSC Case No. 2005-00174, the Parties reached a Settlement Agreement dated December 8, 2005 (“Settlement Agreement”) which not only established wholesale rates for Case No. 2005-00174, but also set forth the methodology for establishing future wholesale water rates.

3. The Settlement Agreement was filed with the Commission on December 8, 2005 and served as the basis for the Commission’s February 9, 2006 Order which approved the wholesale rates set forth in the Settlement Agreement. A copy of the Settlement Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

4. In the Settlement Agreement, HWEA and Christian District agreed that the wholesale rates to be charged Christian District would be the same as the rates that HWEA charged its Hopkinsville city retail customers.

5. Both Parties believed that the HWEA “City Rates” closely approximated HWEA’s actual cost of producing and delivering water to Christian District.<sup>1</sup>

---

<sup>1</sup> See Settlement Agreement dated December 8, 2005, paragraph 2.

6. The Parties also agreed that future wholesale rate increases would be governed and determined by the Settlement Agreement.

7. Paragraph 4 of the Settlement Agreement provides as follows:

The Parties agree that this will be the method used to determine future wholesale water rates.

8. The “method” to be used was simple, swift, and sensible. If the Hopkinsville City Council increased the city retail rates by a certain percentage, then the wholesale rates to be charged Christian District would increase by the same percentage.

9. By using this “method”, both Parties could avoid the expense of hiring experts to perform Cost of Service studies and the lengthy, expensive process of obtaining Commission approval in a contested rate case.

10. HWEA has relied upon the “method” set forth in the Settlement Agreement and has acted accordingly. Since reaching the 2005 Settlement Agreement, HWEA has been operating under the premise that future wholesale rates would be increased by the same percentage as city retail rates are increased.

11. In the summer of 2009, HWEA determined that it needed to increase its water revenues by approximately 37%. It proceeded to propose rates which would generate approximately 37% more revenue from its city customers and approximately 37% more revenue from its wholesale customer, Christian District.

HWEA did not engage the services of a rate expert to perform a Cost of Service study because it was relying upon the terms of the Settlement Agreement.

12. Based upon the Information Request, it appears that the Commission is ignoring the terms of the Settlement Agreement that was approved by the Commission. It also appears that HWEA will be required to engage the services of a rate expert to perform a Cost of Service study.

13. When HWEA filed its tariff for wholesale water service with the Commission, HWEA expected that it would need to demonstrate that the proposed wholesale rate was calculated according to the method set forth in the Settlement Agreement (i.e. wholesale rate was increased by same percentage as city retail rates). HWEA did not expect to receive, and was overwhelmed by, the comprehensive Information Request set forth in Appendix A to the Commission's September 28, 2009 Order (the "First Information Request").

14. Therefore, HWEA respectfully moves the Commission to schedule an Informal Conference in order to resolve the threshold legal issue set forth in paragraph 1. The Commission's resolution of this issue will dictate how HWEA and Christian District proceed in this case.

15. Because Hopkinsville and Christian County are approximately 200 miles from Frankfort, HWEA requests that the Commission make provisions for

the Parties to participate in the Informal Conference by telephone rather than in person.

16. HWEA also moves for an extension of time in which to file its responses to the Commission's First Information Request.

17. Since receiving the First Information Request, HWEA staff and its attorney have been diligently working to compile the necessary information, but have not yet completed the task.

18. In addition, if the Commission determines that the Parties are contractually obligated by the rate adjustment "method" contained in the Settlement Agreement, then much of the information requested by the Commission will not be relevant and it will be unnecessary to compile and provide the irrelevant information. In this event, the Commission Staff will likely need additional information and will need to revise the First Information Request.

19. Therefore, HWEA respectfully requests that the deadline for responding to the First Information Request be extended until two (2) weeks following the Informal Conference and subsequent ruling by the Commission on the legal issue set forth in paragraph 1 of this Motion.

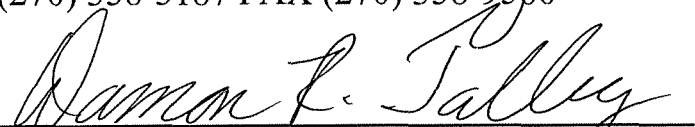
WHEREFORE, for the foregoing reasons, HWEA respectfully requests the Commission to take the following actions:

1. Schedule an Informal Conference and provide that any participant may choose to participate by telephone rather than attending in person;
2. Extend the deadline for HWEA to respond to the First Information Request until at least two (2) weeks following the Informal Conference; and
3. Any other appropriate relief to which HWEA may be entitled.

Respectfully Submitted,

This 19<sup>th</sup> day of October, 2009.

DAMON R. TALLEY, P.S.C.  
P. O. BOX 150  
HODGENVILLE, KY 42748-0150  
drtalley@windstream.net  
(270) 358-3187 FAX (270) 358-9560

  
\_\_\_\_\_  
DAMON R. TALLEY  
ATTORNEY FOR HOPKINSVILLE  
WATER ENVIRONMENT AUTHORITY

# **EXHIBIT A**



COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSSION OF KENTUCKY

In the Matter of:

INVESTIGATION OF THE HOPKINSVILLE	)	
WATER ENVIRONMENT AUTHORITY'S	)	CASE NO.
WHOLESALE RATE TO CHRISTIAN COUNTY	)	2005-00174
WATER DISTRICT	)	

\*\*\* \*\* \*\*\* \*\* \*\*\* \*\* \*\*\* \*\* \*\*\*  
SETTLEMENT AGREEMENT 1-2005

\*\*\* \*\* \*\*\* \*\* \*\*\* \*\* \*\*\* \*\* \*\*\*

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of the 8<sup>th</sup> day of December, 2005, by and between the Hopkinsville Water Environment Authority ("HWEA") and the Christian County Water District ("CCWD"), both of whom are collectively referred as the "Parties",

**WITNESSETH:**

WHEREAS, on June 28, 1973, the City of Hopkinsville, acting by and through its duly authorized agency, the Hopkinsville Sewerage and Water Works Commission (now known as Hopkinsville Water Environment Authority or HWEA), entered into a Water Purchase Contract ("Contract") with the CCWD;

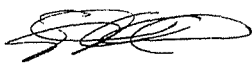
WHEREAS, there have been multiple amendments, extensions and addendums to the Contract during the past 30 years;

WHEREAS, HWEA has provided wholesale water service to the CCWD for the past 32 years pursuant to the terms of the Contract, as amended and extended;

WHEREAS, a dispute has arisen between the Parties concerning the wholesale rate to be charged to the CCWD;

WHEREAS, on June 15, 2005, the Public Service Commission ("Commission") established this proceeding to investigate the reasonableness of the new wholesale water rate proposed by HWEA to the CCWD; and

PUBLIC SERVICE COMMISSION  
 OF KENTUCKY  
 EFFECTIVE  
 2/9/2006  
 PURSUANT TO 807 KAR 5:011  
 SECTION 9 (1)

By   
 Executive Director

WHEREAS, the Parties have engaged in good faith settlement negotiations which have produced this Agreement;

NOW THEREFORE, HWEA and the CCWD agree as follows:

1. The wholesale water rates that HWEA shall charge the CCWD shall be in accordance with the current Hopkinsville Division water rates (City rates) approved by the Hopkinsville City Council. Based upon the current "City Rates," the wholesale rates that HWEA shall charge the CCWD are set forth in Schedule 1 which is attached hereto and incorporated herein by reference.

2. Based upon the available information, both HWEA and the CCWD believe that the rates set forth in Schedule 1 closely approximate HWEA's actual cost of producing and delivering water to the CCWD. Both Parties are satisfied that the proposed wholesale rates are fair, just and reasonable.

3. The Parties request the Commission to enter an Order finding that the rates set forth in Schedule 1 are fair, just and reasonable and approving the rates set forth in Schedule 1.

4. The Parties agree that this will be the method used to determine future wholesale water rates.

5. The Parties also agree that the new rate will not go into effect until 6 months after the Hopkinsville City Council has approved the new "City Rates."

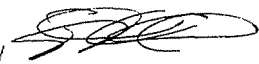
6. HWEA will give formal written notice of a proposed water rate increase at least one week prior to first reading of the rate ordinance before the Hopkinsville City Council.

7. Each Party pledges to use its best efforts to help expedite the approval of the Agreement by the Commission.

8. It is understood by the Parties that this Agreement is subject to the acceptance of, and approval by, the Commission and is not binding upon the Commission.

9. If the Commission adopts this Agreement in its entirety, each party agrees that it will not bring an action for review of the Commission's ~~final order in this case in the Franklin Circuit Court.~~

10. If the Commission does not adopt this Agreement in its entirety, each Party reserves the right to withdraw from the Agreement, to request that Case 2005-00174 proceed as if no Agreement had been executed, and to request a formal hearing in this proceeding. In such

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
FILED  
2/9/2006  
PURSUANT TO 807 KAR 5:01  
SECTION 1(4)  
By   
Executive Director

event, this Agreement shall not be binding upon any of the Parties and shall not be admitted into evidence or relied upon in any manner by either of the Parties, the Commission, or its Staff.

IN WITNESS WHEREOF, each of the Parties, by its duly authorized Chairman and attorney, has executed this Agreement as of the date first above written.

HOPKINSVILLE WATER ENVIRONMENT AUTHORITY

BY: Robert C. Carter  
ROBERT C. CARTER, CHAIRMAN

HOPKINSVILLE WATER ENVIRONMENT AUTHORITY

BY: Andrew C. Self  
ANDREW C. SELF, ATTORNEY

BY: H. N. McTyeire, III  
HOLLAND McTYEIRE, III, ATTORNEY

CHRISTIAN COUNTY WATER DISTRICT

BY: Ashbel Brunson III SH  
ASHBEL BRUNSON, CHAIRMAN

CHRISTIAN COUNTY WATER DISTRICT  
Have Seen and Approved as to Form and Legality

BY: J. Michael Foster  
J. MICHAEL FOSTER, CHRISTIAN CO. ATTORNEY

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
2/9/2006  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

By: [Signature]  
Executive Director

**Wholesale Water Rate for Christian County Water District**

**December 5, 2005**

	<b><u>Rate/100 CF</u></b>	<b><u>Equivalent Rate/1000 Gals</u></b>
<b>First 3000 CF</b>	<b>\$2.16</b>	<b>\$2.89</b>
<b>Next 3,000 CF</b>	<b>\$1.89</b>	<b>\$2.53</b>
<b>All Over 6,000 CF</b>	<b>\$1.37</b>	<b>\$1.83</b>

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
2/9/2006  
PURSUANT TO 807 KAR 5.011  
SECTION 9 (1)

By   
Executive Director