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FEB 23 2018

PUBLIC SERVICE
COMMISSION



BRIAN CUMBO
ATTORNEY AT LAW

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Inez, KY 41224
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cumbolaw@cumbolaw.com

ADMITTED IN KY AND WV

February 20, 2018

Public Service Commission
ATTN: Jeb Pinney
P.O. Box 615
Frankfort, KY 40602

RE: Martin County Water District
PSC Case No. 2016-00142

Dear Mr. Spenard:

Enclosed please find original and six (6) copies of Second Amended Witness & Exhibit List regarding the above captioned matter.

Thank you for your attention to this matter.

Very truly yours,

BRIAN CUMBO

BC/ld
Enclosure
cc: Martin County Water District

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FEB 23 2018

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE OPERATING)	
CAPACITY OF MARTIN COUNTY WATER)	CASE NO. 2016-00142
DISTRICT PURSUANT TO KRS 278.280)	

SECOND AMENDED WITNESS & EXHIBIT LIST

Comes the Martin County Water District (District), by counsel, and hereby state that they will call the following witnesses and introduce the following exhibits at the hearing in this matter.

WITNESS LIST

1. John Horn.
2. Greg C. Heitzman of BlueWater Kentucky (CV previously provided).
3. Kelly E. Callaham, Martin County Judge Executive.
4. Larry James, Superintendent, Martin County Schools.
5. The District reserves the right to amend this Witness List as necessary.

EXHIBIT LIST

1. Final draft of proposed Lease and Emergency Water Supply Agreement with PCUC (previously provided).
2. Draft of report prepared by Blue Water Kentucky (previously provided).

3. Notice of Breach of Joint Operation Agreement letter from Prestonsburg City's Utilities Commission dated February 15, 2018 (attached).
4. Martin Water District's Response dated February 16, 2018 to PCUC Notice of Breach letter (attached).
5. The District reserves the right to amend this Exhibit List as necessary.



BRIAN CUMBO
COUNSEL FOR MARTIN COUNTY
WATER DISTRICT
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INEZ, KY 41224
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EMAIL: cumbolaw@cumbolaw.com

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing was mailed & emailed, postage paid, on this the 20 day of February, 2018, to the following:

Public Service Commission
ATTN: Jeb Pinney
P.O. Box 615
Frankfort, KY 40602

Hon. Mary Varson Cromer
Appalachian Citizens' Law Center, Inc.
317 Main Street
Whitesburg, KY 41858

M. Todd Osterioh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Ste. 1400
Lexington, KY 40507

James Wilson Gardner
jameswilsongardner@gmail.com



BRIAN CUMBO

Prestonsburg City's Utilities Commission

Water, Waste Water and Natural Gas System
(Municipally Owned)
2560 South Lake Drive
Prestonsburg, Kentucky 41653-1048
Phone (606) 886-6871 • Fax (606) 886-8779
TDD: Ky Relay #711

February 15, 2018

John Horn, Chairman
Martin County Water District
HC 69, Box 875
Inez, Kentucky 41224

Re: Notice of Breach of
Joint Operation Agreement

Dear Mr. Horn:

Pursuant to the Joint Operation Agreement dated July 3, 2000, as amended by the First Amendment dated the 1st day of January, 2017 (collectively, the "Agreements"), the parties agreed to the joint operation of certain waterworks facilities in the Honey Branch Park located in Martin County. In addition, the Agreements provided that Prestonsburg City's Utilities ("PCUC") would provide "... emergency backup water service of a non-recurring nature to the District." PCUC has provided such service on a recurring basis during the term of the Agreements. During the previous three (3) months the District has delivered 1,293,000 gallons to the jointly operated facilities, while PCUC has delivered 32,580,000 gallons. Clearly, the District has not provided fifty percent (50%) of the waterworks facilities' requirements. The District took delivery of 8,336,000 gallons of water for delivery to its customers for which PCUC has not been paid.

The Agreements provide that the District shall make payment within ten (10) working days from the date of PCUC's invoice for backup emergency water service. The following invoices to the District have not been paid and are, now, overdue:

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>
1130 2017	December 1, 2017	\$ 5,603.00
1231 2017	January 1, 2018	13,151.50
0131 2018	February 1, 2018	<u>44,291.00</u>
	TOTAL	<u>\$63,045.50</u>

Since you have not given us the courtesy of a call relating to the status of the above unpaid invoices, we have no choice, but to request full payment in writing. We have gone above and beyond our usual billing/service disruption policies to lessen the suffering of the customers of the District. Without any communication, we do not know when to expect payment for the increasing, outstanding debt owed to PCUC. We are willing to discuss alternatives, please contact me.

If the District does not pay its past due bills and any other amount due, if any, within fourteen (14) calendar days of the date of this letter, PCUC will restrict the water from flowing into the District's eight inch water main located along Kentucky Route 3. The water restriction will be implemented on a phased-in basis by ten percent (10%) per week, during the period of non-payment.

The Commissioners of PCUC are reluctant to enter into the Tank Lease for the following reasons:


1. The Commissioners of PCUC do not want to enter into an agreement to pay the District a monthly sum, while the District is refusing to pay for water supplied by PCUC.

2. The terms of the Tank Lease as proposed by the District, by and through its attorney, were not acceptable to the Commissioners of PCUC. Of note, is that the District expressly rejected the right of "offset" requested by PCUC.

3. Due to the public comments that were made by the District's representatives that are demeaning, negative, derogatory and false, the Commissioners of PCUC do not want to enter into another long-term agreement with the District that has repeatedly failed to honor its contractual obligations. The fact is that PCUC has continued to provide a substantial portion of the District's immediate and critical need for potable water, and in return PCUC has been publicly criticized.

If you have any questions regarding this letter, please contact me.

Sincerely,



Turner E. Campbell, Superintendent

Copy: Les Stapleton, Mayor
PCUC Board of Commissioners

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 1312018

February 1, 2018

Martin County Water and Sewer District
387 East Main Street
Suite 140
Inez, KY 41224

Water Provided to Martin County December 26, 2017 through January 26, 2018

Total Provided	5,782,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>43,942.50</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 44,291.00</u>

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 12312017

January 1, 2018

Martin County Water and Sewer District
387 East Main Street
Suite 140
Inez, KY 41224

Water Provided to Martin County November 27, 2017 through December 26, 2017

Total Provided	1,764,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>12,803.00</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 13,151.50</u>

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 11302017

December 1, 2017

Martin County Water and Sewer District
387 East Main Street
Suite 140
Inez, KY 41224

Water Provided to Martin County October 26, 2017 through November 27, 2017

Total Provided	790,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>5,254.50</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 5,603.00</u>

MARTIN COUNTY UTILITY BOARD

387 East Main Street Suite 140
INEZ, KY 41224

606-298-3885 OFFICE

606-298-4913 Fax

February 16, 2018

Mr. Turner E. Campbell, Superintendent
Prestonsburg City Utilities Commission
2560 South Lake Drive
Prestonsburg, KY 41653

Dear Mr. Campbell:

Thank you for your letter delivered through email by Mr. Kipley McNally to Mr. Brian Cumbo dated February 15, 2018. As you know, the Martin County Water District has been in a state of emergency the last 8 weeks, recovering from severe weather. Our water main and service line failures and associated leakage were placing additional water demand on the treatment plant and we were not able to keep an adequate supply of source water in our reservoir. During this emergency, we thank you for providing an additional supply of water to Martin County. This emergency supply reduced the number of water outages in the County.

Your letter has several points that I would like to address:

1. I was not aware of the balance owed to Prestonsburg Utilities, having just received the December, January and February invoices on February 15, 2018. Although we do not have sufficient funds to pay the full amount, a good faith payment of \$12,000 is enclosed and we hope that you will allow us to set up a monthly payment plan until such time we can make payment in full. As you are aware, the District is in dire financial condition, with over \$900,000 in accounts payable due to creditors. We have applied for an emergency rate increase of 49.5% to the Kentucky PSC and expect to hear soon regarding approval. These additional funds from a rate increase will help us begin to pay our creditors. In addition, with the winter weather past us, we expect our water supply need from Prestonsburg to return to normal levels.
2. The tank lease was negotiated in good faith by the former Board Chair, Bill Harvey with representatives of Prestonsburg Utilities. Our respective attorneys have been working over five months on the lease agreement. Our understanding of the basic elements of the lease are as follows:
 - monthly lease fee of \$15,000 for use of the tank and supply lines
 - 625,000 gallons of water at no charge to supply District customers in the industrial park area.
 - a reduction in the water purchase rate from \$7.95 per 1000 gallons to \$3.05 per 1000 gallons
 - a five year term with ability to renew an additional five years by mutual agreement
 - the ability for Prestonsburg to receive all of the water revenue from the Federal Prison at a rate of \$7.75 per 1000 gallons.
 - An emergency supply of water, if needed at a cost of \$4.00 per 1000 gallons.

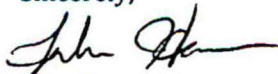
The intention was to have this lease signed in November and become effective December 1 2017. The previous District board members resigned on November 28, 2017 and a new board was promptly appointed by Judge Callahan. One of the first actions taken by the new Board on January 4 was to approve and sign the Tank Lease agreement prepared and agreed upon by our respective attorneys. We have been disappointed Prestonsburg has not approved the agreement to help us in such an emergency situation that impacts public health and safety in Martin County. This arrangement, if executed in January, would have provided a significant boost to cash flow for the District. Just two months of this Agreement would provide a a combined income and water purchase savings of approximately \$40,000, significantly negating the amount owed to the Prestonsburg.

3. Regarding the "offset" referenced in your letter, let me provide my understanding of why this was removed from the lease agreement. The original draft of the agreement included both the tank lease and the water supply in a single contract document. At the request of your attorney, a separate Emergency Water Supply Agreement was proposed, and since there are two separate agreements, we felt it appropriate to separate the lease fee and the payment for water purchased. The tank lease agreement is for five years and the water supply agreement extends beyond five years. We can certainly reconsider a billing offset, if this is all that stands in the way of executing these two contracts. We wish this concern was relayed to us months ago, as this single item is not a significant issue, and could have been resolved. I will direct our attorney to modify the lease language and include the ability for Prestonsburg to offset the tank lease payment with any funds owed, including the current balance owed to Prestonsburg.

In closing, I want to ask for your help, in partnership, to assist in bringing the District out of both a financial crisis and operational emergency. Our new Board is resolved to address the long standing issues with the District. We have taken some key steps to turn the District around, including: changing our treatment process and now meeting all EPA drinking water standards; applying for and receiving a \$1.2 million grant to replace leaking service lines; an application for an emergency rate increase from the PSC; and a recent decision to hire a General Manager to provide much needed leadership for the District on a day-to-day basis. We are requesting and hoping that Prestonsburg can be part of the solution, by executing the lease agreement and continuing to provide water through the Water Supply agreement. An additional \$180,000 a year will go a long way to helping the District achieve financial stability.

Without support from you and others, the District will essentially fail, the public safety and health of Martin County will suffer, and a receiver will be appointed by the State, likely taking years to sort this out. Our current plan to restore the District is very close to being a reality, and we hope you can join us, by working together and executing the Tank Lease agreement. I will call you to arrange a meeting with you and your attorney to resolve our issues on a timely basis.

Sincerely,



John Horn
Chair, Martin County Water District.

Copy: Judge Kelley Callahan
Mayor Stapleton
Martin County Water District Board

Enclosure: \$12,000 payment for emergency water use, December 2017 to February, 2018.