COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF NORTH)	
NELSON WATER DISTRICT OF A WHOLESALE)	
WATER PURCHASE AGREEMENT WITH THE)	CASE NO.
CITY OF BARDSTOWN AND A TARIFF TO)	2024-00336
ESTABLISH A WHOLESALE RATE TO THE CITY)	
OF BARDSTOWN)	

ORDER

On September 26, 2024, North Nelson Water District (North Nelson District) filed a Wholesale Water Purchase Agreement (Agreement) with the city of Bardstown (Bardstown) and a tariff to establish a wholesale water rate to Bardstown. The Agreement indicates that it cannot become effective until the Commission has reviewed it and accepted it for filing. North Nelson District proposed an effective date for its wholesale tariff of November 1, 2024.

On October 4, 2024, Commission Staff requested information from North Nelson District regarding its Agreement and tariff filings. On October 10, 2024, North Nelson District responded to that request for information. The request and the responses are included as Appendix B to this Order.

LEGAL STANDARD

KRS 278.030 provides that a utility may collect fair, just and reasonable rates and that the service it provides must be adequate, efficient and reasonable. "When any utility files with the commission any schedule stating new rates, the commission may, upon its own motion, and upon reasonable notice, hold a hearing concerning the reasonableness

of the new rates."¹ Pending the final decision on a proposed schedule or rate, "... the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, for a period of up to five months beyond the time when it would otherwise go into effect if a historical test period is uses, and up to six months if a forward-looking test period is used.

Additionally, Kentucky law requires a Certificate of Public Convenience and Necessity (CPCN) for some utility construction projects. Specifically, KRS 278.020–KRS 278.020(1)(a) state, in relevant part, that:

[n]o person . . . shall commence providing utility service to or for the public or begin the construction of any plant . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.²

Need requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to

¹ KRS 278.190(1).

² Kentucky Utilities Co. v. Pub. Serv. Comm'n, 252 S.W.2d 885 (Ky. 1952).

establish an inability or unwillingness to render adequate service.³

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties."

However, if a utility is unsure whether a CPCN is required, the utility may request a declaratory order pursuant to 807 KAR 5:001 Section 19.

<u>DISCUSSION</u>

Having reviewed the proposed Agreement and tariff and being otherwise sufficiently advised, the Commission finds that an investigation is necessary to determine the reasonableness of the proposed Agreement and tariff and that such investigation cannot be completed by November 1, 2024. Pursuant to KRS 278.190(2), the Commission will, therefore, suspend the effective date of the proposed Agreement and tariff for five months, up to and including March 30, 2025.

In addition to North Nelson District's invocation of KRS 278.030, portions of its September 26, 2024, letter to Commission Staff asserts, citing Section 15 of 807 KAR 5:001, that the construction portion of the Agreement is exempt from Kentucky's requirements for a CPCN set forth in KRS 278.020.5 While North Nelson District correctly asserts that ordinary extensions of existing systems in the usual course of business is an exception to CPCN requirement, the determination of whether said construction falls within such as exception is ultimately within the jurisdiction of the Commission. While

³ Kentucky Utilities Co. v. Pub. Serv. Comm'n, 252 S.W.2d 885, 890 (Ky. 1952).

⁴ Kentucky Utilities Co. v. Pub. Serv. Comm'n, 252 S.W.2d 885, 890 (Ky. 1952).

⁵ TFS 2024-470, Cover Letter dated Sept. 26, 2024 at 3.

North Nelson District correctly cites matters in which the Commission has previously found proposals to be ordinary extensions in the usual course of business when the cost of the capital outlay was borne by an entity other than the utility, they have overlooked the plain language of the Order cited. Here, given the statements in the application and the lack of an application of the CPCN or a request for a declaratory order, it appears that North Nelson District will need to take additional regulatory steps. The Commission presumes North Nelson District is in the process of preparing an application to initiate those steps, if the utility wishes for the construction projects contemplated by the Agreement to be exempt from the CPCN process, or risk willfully violating applicable portions of KRS Chapter 278 and Chapter 005 of Title 807 of the Kentucky Administrative Regulations.

The Commission finds that North Nelson District should file an application for a CPCN or a request for a declaratory order that the projects contemplated in the Agreement are exempt from KRS 278.020. The Commission further finds that, given that material aspects of the Agreement hinges upon the construction implicating KRS 278.020, said application should be filed as soon as possible to allow for the issues to be considered simultaneously with the Agreement.

The Commission directs North Nelson District to the Commission's July 22, 2021 Order in Case No. 2020-00085⁶ in which the Commission mandated the use of electronic filing procedures listed in 807 KAR 5:001, Section 8. Consistent with the filing procedures

⁶ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID*-(Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after

19 (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

set forth in Case No. 2020-00085, the Commission finds that electronic filing procedures should be used.

The Commission further finds that a procedural schedule should be established to review the reasonableness of the proposed tariff. The procedural schedule is attached as Appendix A to this Order.

Additionally, any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing may be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing. Hearings are held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky. Witnesses who sponsor schedules, testimony, or responses to requests for information are expected to participate in person at a hearing.

IT IS THEREFORE ORDERED that:

- 1. This proceeding is established to investigate the reasonableness of the proposed Agreement and tariff.
- 2. North Nelson District's proposed Agreement and tariff are suspended for five months from November 1, 2024, up to and including March 30, 2025.
- 3. In compliance with KRS 278.020, North Nelson District shall file an application for a CPCN for the construction projects contemplated in the Agreement or a request for a Declaratory Order pursuant to 807 KAR 5:001 Section 19 exempting same

from KRS 278.020. Said applications shall be filed on or before November 11, 2024, to allow for the KRS 278.020 issues to be considered simultaneously with the Agreement.

- 4. North Nelson District shall, by counsel, enter an appearance in this proceeding within seven days of the date of service of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.
- 5. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.
- 6. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of the date of service of this Order, North Nelson District shall file by electronic means a written statement that it waives any right to service of Commission Orders by United States mail and that it or its authorized agent possess the facilities to receive electronic submissions.
- 7. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:
- a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and
- b. Within seven days of the date of service of an order of the Commission granting intervention, file with the Commission a written statement that:
- (1) It or its authorized agent possesses the facilities to receive electronic transmissions; and

- (2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.
- 8. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).
- 9. The procedural schedule set forth in Appendix A to this Order shall be followed.
- 10. North Nelson District shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.
- 11. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding, which is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding the potential impact of possible modification of rates will not be deemed sufficient to establish a special interest.

- 12. Any motion to intervene after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.
- 13. North Nelson District shall give notice of the hearing in accordance with the provisions set forth in 807 KAR 5:001, Section 9(2). In addition, the notice of the hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov" and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, psc.ky.gov." At the time publication is requested, North Nelson District shall forward a duplicate of the notice and request to the Commission.
- 14. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.
- 15. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.
- 16. Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.
- 17. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video recording shall be made of the hearing.

- 18. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of times with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.
- 19. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.
 - 20. The Executive Director shall serve a copy of this Order upon Bardstown.

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PUBLIC SERVIÇE COMMISSION

Chairman

Commissioner

Commissioner

ENTERED

OCT 25 2024

rcs

KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2024-00336 DATED OCT 25 2024

Requests for intervention shall be filed no later than
Initial requests for information to North Nelson District shall be filed no later than
North Nelson District shall file responses to initial requests for information no later than
All supplemental requests for information to North Nelson District shall be filed no later than
North Nelson District shall file responses to supplemental requests for information no later than
Intervenor testimony, if any, in verified prepared form shall be filed no later than
All requests for information to Intervenors shall be filed no later than
Intervenors shall file responses to requests for information no later than
North Nelson District shall file, in verified form, its rebuttal testimony no later than
North Nelson District or any Intervenor shall request either a hearing or that the case be submitted for a decision based on the record no later than

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2024-00336 DATED OCT 25 2024

THIRTY-ONE PAGES TO FOLLOW

Rogness, Benjamin (PSC)

From: Tina Frederick <tina.frederick@skofirm.com>
Sent: Thursday, October 10, 2024 1:02 PM
To: Hinton, Daniel E (PSC); Damon R. Talley

Cc: Rogness, Benjamin (PSC)

Subject: RE: KY-PSC Electronic Filing Center NotificationTFS2024-00470

Attachments: Response to Staff's Request - WPA.pdf; Response for WPA Table 8.pdf; MOA Nelson

County Water Supply Project- Executed (002).pdf; Supp MOA 7-19-22 Exec.pdf

CAUTION PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.

This Message Originated from Outside the Organization

This Message Is From an External Sender.

Report Suspicious

Daniel and Ben,

Attached to this email are four (4) documents:

- 1. North Nelson's narrative responses to the questions you sent last week,
- 2. Table 8, which provides the estimates requested in Item 8 in table form,
- 3. The December 21, 2021 Memorandum of Agreement, and
- 4. The July 19, 2022 Supplemental Memorandum of Agreement

I realize the signatures on the Supplemental MOA look odd. I believe this is due to this document being converted from Word to PDF or from PDF to Word at some point before I came into possession of it. If this presents a problem, just let me know and I will ask North Nelson if they have a better copy somewhere.

If you have any other questions, or if any of our responses are not clear, just let us know. We will be happy to provide whatever you need.

Sincerely,

Tina



Tina Frederick

Attorney

tina.frederick@skofirm.com Direct: 859.231.3951

Main: 859.231.3000

Stoll Keenon Ogden PLLC 300 W. Vine St., Suite 2100 Lexington, KY 40507 **Confidentiality Notice:** This e-mail message is for the sole use of the recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient(s), please contact the sender by reply e-mail and destroy all copies of the original message.

If you are a client of this firm, we respectfully remind you that to avoid waiver of the attorney-client privilege, you should not send, forward, or show this e-mail or attachments to anyone else. Thank you.

From: Hinton, Daniel E (PSC) <dehinton@ky.gov>

Sent: Friday, October 4, 2024 9:20 AM

To: Damon R. Talley <Damon.Talley@skofirm.com>; Tina Frederick <tina.frederick@skofirm.com>

Cc: Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>

Subject: KY-PSC Electronic Filing Center NotificationTFS2024-00470

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Tina/Damon,

Staff has a couple of requests regarding the North Nelson/Bardstown contract and tariff filings. Please see below.

- 1. Provide the December 21, 2021 Memorandum of Agreement between North Nelson, Nelson County, and Bardstown.
- 2. Explain how the ongoing annual operations and maintenance expense of the completed project will be paid for, and its impact, if any, to North Nelson and its finances.
- 3. Explain who will pay for the construction costs if such costs exceed the amount of grant funding.
- 4. Provide the annual depreciation expense for the new transmission main.
- 5. Provide the calculation and assumptions North Nelson used to arrive at the \$0.27 per 1,000 gallons transmission fee.
- 6. Refer to the statement indicating that the wholesale of water to Bardstown will pay the depreciation expense of the new transmission main. Explain whether that is referring to the \$0.27 per 1,000 gallons transmission fee or whether it is referring to the rate that will result from the cost-of-service study once the project is complete.
- 7. Explain whether North Nelson will continue purchasing water from Bardstown, and if so, explain at what rate.
- 8. For the period when additional water starts flowing to when the Louisville Water I-65 Improvements are completed, provide an estimate, by calendar year through the first full calendar year, of the number of gallons sold to Bardstown, North Nelson's purchased water cost from Louisville Water, and revenues from Bardstown broken down into the Louisville Water wholesale rate (at the current rate) and the transmission fee.

Please provide the information within 7 days of the date of this email. The responses can be emailed to us at the above addresses.

If you have any questions, please let us know.

Thanks.

Daniel

From: KY Public Service Commission <psc.tariffs@ky.gov>

Sent: Thursday, September 26, 2024 1:05:59 PM (UTC-05:00) Eastern Time (US & Canada)

To: tina.frederick@skofirm.com <tina.frederick@skofirm.com>

Cc: PSC Tariffs <psc.tariffs@ky.gov>

Subject: KY-PSC Electronic Filing Center NotificationTFS2024-00470

This notification has been sent to you regarding your recent Tariff filing: TFS2024-00470

file(s) have been transmitted successfully.

Documents received for Tariff filing: TFS2024-00470 for North Nelson Water District

9/26/2024 1:05:29 PM

File Summary:

File Name: Cover_Letter_for_Water_Purchase_Agreement_Filing.pdf

Description: Cover Letter

File Name: Executed_Water_Purchase_Agreement_NNWD_Bardstown_9-17-24_Executed.pdf

Description: Contract

Thank you.

North Nelson Water District's Response to Staff's Request for Information Dated October 4, 2024

1. Provide the December 21, 2021 Memorandum of Agreement between North Nelson, Nelson County, and Bardstown.

Response: North Nelson is providing the December 21, 2021 Memorandum of Agreement and the July 19, 2022 Supplemental Memorandum of Agreement as attachments.

2. Explain how the ongoing annual operations and maintenance expense of the completed project will be paid for, and its impact, if any, to North Nelson and its finances.

Response: Once the Nelson County Water Supply Project (approximately 8.75 miles of 24-inch diameter water transmission main from Bardstown to the Louisville Water master meter near the Nelson-Bullitt county line) has been completed on or before December 31, 2026, there will be **no** operational costs to North Nelson. Louisville Water will pump water from its infrastructure system through the 8.75 miles of new 24-inch water transmission main owned by North Nelson directly to Bardstown. The water will **not** flow through any of North Nelson's existing water lines **nor** through any of its storage tanks. North Nelson will **not** provide any booster pumping of the water. It will simply "wheel" the water through the new water transmission main from Louisville Water to Bardstown.

The depreciation expense allocated to Bardstown will be recovered through the transmission fee component of the wholesale water rate. While the Nelson County Water Supply Project (the "Project") is under construction, North Nelson will engage the services of a qualified rate consultant to perform a comprehensive Cost-of-Service Study ("COSS"). The consultant will complete the COSS, except for the actual cost of the Project, during construction. Once the actual cost of the construction is known, the consultant will simply need to compute the wholesale rate based upon the actual construction cost.

The sale of water to Bardstown will **not** have any negative impact upon North Nelson's financial condition. The wholesale rate will be a "cost-based" rate. These "costs" will include the annual depreciation expense of the 8.75 miles of newly constructed 24-inch water transmission main used to "wheel" water from Louisville Water to Bardstown. North Nelson will also greatly benefit from the Project in a non-financial way. It will have the ability to purchase additional water from Louisville Water and will create complete redundancy in the event that Bardstown's water treatment plant is temporarily out of service as it was twice during the past 12 months.

3. Explain who will pay for the construction costs if such costs exceed the amount of grant funding.

Response: Fortunately, the grant funds will far exceed the total Project Cost. Phase 1 of the Project has already been constructed. Bids for Phase 2 (the remaining portion) of the Project were opened on September 5, 2024. The contract was awarded to the low bidder on September 16, 2024 and the Notice to Proceed has been issued. The total Project Cost, including planning, engineering design, easements, construction, engineering inspection, legal, and a 10% contingency is \$16.6 million. Grant funds total \$17,837,040. This leaves a surplus of grant funds of over \$1.2 million.

4. Provide the annual depreciation expense for the new transmission main.

Response: The estimated annual depreciation expense for the entire 8.75 miles of new 24-inch diameter water transmission line will be \$221,333 per year (\$16,600,000 divided by 75 years = \$221,333). Since the water transmission main will be constructed with ductile iron pipe, the expected useful life will be 75 years or more. The exact amount of the annual depreciation expense will not be known until the project is completed on or before December 31, 2026.

5. Provide the calculation and assumptions North Nelson used to arrive at the \$0.27 per 1,000 gallons transmission fee.

Response: As stated in the September 26, 2024 letter to the PSC Executive Director, the transmission fee component of the temporary (initial) wholesale rate was the product of compromise. The following assumptions and calculations were used to arrive at a transmission fee of \$0.27 per 1,000 gallons:

Cost of Phase 1 of the Project: \$4,300,000 Useful Life of ductile iron pipe: 75 years

Annual Depreciation Expense: \$57,333 (\$4,300,000 divided by 75 years = \$57,333)

Bardstown's estimated annual purchases: 146,000,000 gallons (400,000) gallons per day x 365 days = 146,000,000 gallons)

Annual Depreciation Expense per 1,000 gallons: \$0.39 (\$57,333 divided by 146,000 thousand gallons = \$0.39)

Percentage of Depreciation Expense

Allocated to Bardstown: 60% (compromise percentage)

Depreciation Expense

Allocated to Bardstown: \$0.23 per 1,000 gallons

 $($0.39 \times 60\% = $0.23)$

Water Loss Included in Transmission Fee: \$0.04 per 1,000 gallons

(compromise amount)

Total Transmission Fee: \$0.27 per 1,000 gallons

6. Refer to the statement indicating that the wholesale of water to Bardstown will pay the depreciation expense of the new transmission main. Explain whether that is referring to the \$0.27 per 1,000 gallons transmission fee or whether it is referring to the rate that will result from the cost-of-service study once the project is complete.

Response: The statement "the wholesale of water to Bardstown will pay for the depreciation expense of the new water transmission main" is referring to the transmission fee component of the wholesale rate that will result from the COSS once the project is complete. This statement does **not** refer to the temporary (initial) \$0.27 per 1,000 gallons transmission fee.

7. Explain whether North Nelson will continue purchasing water from Bardstown, and if so, explain at what rate.

Response: Yes, North Nelson plans to continue purchasing water from Bardstown, but the amount will be less than the amount historically purchased. During the 12 month period ending in April, 2024, North Nelson purchased 91,111,700 gallons from Bardstown and 225,492,000 gallons from Louisville water. This equates to approximately 29% of its total purchases from Bardstown and approximately 71% of its total purchases from Louisville Water. By mutual agreement with Bardstown, the monthly purchases over the past several months have been reduced from approximately 7.6 million to 3.0 million gallons per month. Bardstown's wholesale rate to North Nelson is the same as Louisville Water's wholesale rate: \$2.72 per 1,000 gallons. Because of system hydraulics, it will be necessary for North Nelson to continue purchasing approximately 2 to 3 million gallons per month after the Nelson County Water Supply Project has been completed on or before December 31, 2026.

8. For the period when additional water starts flowing to when the Louisville Water I-65 Improvements are completed, provide an estimate, by calendar year, through the first full calendar year, of the number of gallons sold to Bardstown, North Nelson's purchased water cost from Louisville Water, and revenues from Bardstown broken down into the Louisville Water wholesale rate (at the current rate) and the transmission fee.

Response: See the attached Table 8 for the following: (1) estimated amount of water which Bardstown will purchase from North Nelson over the next few years; (2) North Nelson's purchased water cost from Louisville Water; and (3) the revenues North Nelson will receive from Bardstown. In preparing Table 8, a Transmission Fee of \$0.27 per 1,000 gallons was used for calendar years 2025 and 2026. For calendar years 2027 through 2031, a Transmission Fee of \$0.41 was assumed. Of course, the Transmission Fee for calendar years after 2026 will be based upon a Cost-of-Service Study and will need to be approved by the Public Service Commission.

TABLE 8 ESTIMATE OF SALES, PURCHASED WATER COSTS, AND REVENUES BY CALENDAR YEAR TFS 2024-00470

			Bardstown Payments to North Nelson	
Calendar Year	Gallons Sold To Bardstown (Estimated) (000 Gallons)	North Nelson's Purchased Water Cost (\$2.72 per 1,000)	Wholesale Cost Of Water	Transmission Fee (Estimated)
2025	146,000	\$ 397,120	\$ 397,120	\$ 39,420
2026	164,250	\$ 446,760	\$ 446,760	\$ 44,348
2027	730,000	\$ 1,985,600	\$ 1,985,600	\$ 299,300
2028	1,095,000	\$ 2,978,400	\$ 2,978,400	\$ 448,950
2029	1,277,500	\$ 3,474,800	\$ 3,474,800	\$ 523,775
2030	1,460,000	\$ 3,971,200	\$ 3,971,200	\$ 598,600
2031	1,642,500	\$ 4,467,600	\$ 4,467,600	\$ 673,425

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into on this 21st day of December 2021 (the "Effective Date") by and among the Nelson Fiscal Court (the "Fiscal Court"), the City of Bardstown, Kentucky ("Bardstown"), and North Nelson Water District (the "District").

WITNESSETH:

WHEREAS, Nelson County is well located, has a vibrant economy, and has a growing population;

WHEREAS, Bardstown currently provides potable water to a large portion of Nelson County by providing both retail and wholesale water service;

WHEREAS, the District currently provides potable water service to a large portion of Nelson County;

WHEREAS, the Fiscal Court, Bardstown, and the District have a shared interest in providing for the future water supply needs of Nelson County;

WHEREAS, Bardstown has extensively studied potential sources of both raw water and potable water to supplement the water supply needs of Bardstown and Nelson County;

WHEREAS, it appears that constructing a large diameter water transmission main along Kentucky Highway 245 from Bardstown to the existing master meter between the District and the Louisville Water Company ("LWC"),

which is located near the intersection of Kentucky Highway 1604 with Kentucky Highway 245, is the most feasible and cost-effective project for providing a supplemental source of water to Nelson County in the short-term;

WHEREAS, this water main transmission project ("Nelson County Water Supply Project" or the "Project") will benefit the entire county because Bardstown and the District will both utilize water delivered by the water transmission main to supplement the water supplied to their respective water transmission and distribution systems;

WHEREAS, the Fiscal Court plans to contribute approximately \$5,000,000 toward the Nelson County Water Supply Project;

WHEREAS, Bardstown and the District will utilize other available funds and grants to pay a portion of the Nelson County Water Supply Project, with the balance of the Project costs to be shared equally by Bardstown and the District; and,

WHEREAS, it is mutually advantageous for the Fiscal Court, Bardstown, and the District to enter into this MOA.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, it is hereby agreed as follows:

- 1. Recitals. The facts, recitals, and statements contained in the foregoing preamble of this MOA are true and correct, and are hereby affirmed and incorporated as a part of this MOA.
- 2. District's Obligations. The District shall be responsible for the following: (a) procuring the engineer to design the Nelson County Water Supply Project; (b) overseeing the engineering design of the Project; (c) bidding the Project; and (d) overseeing the construction of the Project. Following the completion of the Project, the District shall become the owner of the water transmission main and other improvements constructed as part of the Project. Thereafter, the District shall be solely responsible for maintaining and operating the water transmission main and other improvements constructed as part of the Project.
- 3. Fiscal Court's Contribution. The Fiscal Court shall contribute the sum of \$4,997,955.22 toward the cost of the Nelson County Water Supply Project. The Fiscal Court's contribution will be funded in the following manner: (a) the sum of \$3,300,000 will be funded from funds directly allocated to the Fiscal Court by the American Rescue Plan Act (the "ARPA"); and (b) the sum of \$1,697,955.22, which was appropriated for use in Nelson County by Senate Bill 36 passed by the 2021 Kentucky General Assembly, will be administered and distributed by the Kentucky Infrastructure Authority ("KIA") according to its

regulations, policies, and procedures. The \$3,300,000 direct contribution from the Fiscal Court shall be paid to the District as invoices are submitted for stored materials, completed work on the Project, engineering fees, or other Project costs. The Fiscal Court shall remit payment to the District within 15 days after the invoices are submitted to the Fiscal Court. It is the intention of the parties for the Fiscal Court's contribution to be the first funds expended for the Project.

- 4. Other Grant Funds. Bardstown and the District shall use their best efforts to obtain other grant funds to pay a portion of the Project costs. Bardstown and the District shall equally benefit from these grant funds regardless of whether the actual grantee for a specific grant is Bardstown, the District, or both Bardstown and the District.
- 5. Remainder of Project Costs. The remainder of the Project costs shall be split equally by Bardstown and the District. Once the funds directly provided by the Fiscal Court have been paid toward the Project costs, the funds administered by KIA have been paid toward the Project costs, and any other grant funds obtained by Bardstown or the District have been paid toward the Project costs, then the remainder of the Project costs shall be split equally by Bardstown and the District. It is contemplated that Bardstown shall contribute 50% of the cost of each pay request by paying those funds to the District to ensure the contractor, engineer, and other Project costs can be paid by the District in a timely manner.

The District shall contribute the remaining 50% of the cost of each pay request.

The District will then utilize the funds contributed by Bardstown and the District to see that the pay requests are paid in a timely manner.

- 6. Segregation of Funds. The District acknowledges that it will need to keep, and hereby agrees that it shall keep, all monies received from the Fiscal Court, KIA (Senate Bill 36 funds), Bardstown, any other grants that might be received for this Project, loan proceeds, and the funds that the District contributes to this Project, in a separate account from all other District funds. This will facilitate proper expenditure and oversight of the funds.
- 7. Single Audit. Because of the amount of federal funds that will be expended for this Project, Single Audit compliance and reporting under the federal Single Audit Act Amendments of 1996 will be required. The District hereby acknowledges and accepts this responsibility.
- 8. Project Design. Although the District shall ultimately be responsible for the design and construction of the Project, Bardstown shall be an active participant in the design process. It is contemplated that alternate bids for a 16-inch, a 20-inch, and, perhaps, a 24-inch diameter water transmission main shall be obtained. Then, Bardstown and the District shall jointly decide which diameter water transmission main shall be constructed after the alternate bids are obtained. Attached hereto as composite Exhibit 1 are Preliminary Project Cost Estimates

prepared by Kentucky Engineering Group, PLLC for a 16-inch, a 20-inch, and a 24-inch diameter water transmission main.

- 9. Water Purchase Agreement. The District and Bardstown shall negotiate the terms of a Water Purchase Agreement whereby the District shall provide wholesale water service to Bardstown at a delivery point near the Houglin-Greenwell Funeral Home. The master meter (delivery point) between the District and Bardstown will be located approximately 1,250 feet northwest of the intersection of Wilson Parkway with Kentucky Highway 245.
- 10. PSC Approval. It is understood by all parties that the District cannot commence construction of the Nelson County Water Supply Project without first obtaining a Certificate of Public Convenience and Necessity (the "CPCN") from the Kentucky Public Service Commission (the "PSC"). The cost of obtaining the necessary CPCN from the PSC shall be considered a Project cost.
- 11. Cooperation. Each of the parties agree to cooperate with the other parties in the timely execution of any documents necessary to effectuate the provisions of this MOA.

12. Assignment and Amendment.

A. This MOA and the rights of the Fiscal Court, or Bardstown, or the District shall not be conveyed, assigned, or transferred to any other person or entity without the prior written consent of all parties.

- **B.** This MOA shall not be amended or modified unless such amendment or modification is in writing and signed by all parties.
- 13. Entirety. The parties further agree that this MOA now constitutes the entire understanding of the Fiscal Court, Bardstown, and the District with respect to the transaction contemplated herein.
- 14. Counterparts. This MOA may be executed in multiple counterparts by the parties hereto. All of such counterparts shall be construed as if all signatures were appended to one document. The parties hereto agree that a facsimile or e-mail of a counterpart of this signed MOA constitutes an original counterpart, and shall be a valid and binding document for all legal and other purposes.
- 15. Severability. The invalidity or unenforceability of any provision of this MOA shall not affect the validity or enforceability of any other provision hereof, and any such invalid or unenforceable provision shall be deemed to be severable.
- **IN WITNESS WHEREOF,** this MOA has been executed in multiple counterparts, each of which is deemed to be an original, by the duly authorized officers and officials of the parties pursuant to authority granted by the governing body of each respective party, as of its Effective Date.

NELSON COUNTY FISCAL COURT

BY.

Dean Watts, County Judge/Executive

ATTEST:

Jeanette Sidebottom, Nelson County Clerk

CITY OF BARDSTOWN, KENTUCKY

BY:

J. Richard Heaton, Mayor

ATTEST:

Gary Little, City Clerk

NORTH NELSON WATER DISTRICT

BY:

Nicky Rapier, Chairman

ATTEST:

Don Mudd, Secretary

EXHIBIT 1

Project Cost Estimates

For

16 – Inch Diameter

20 - Inch Diameter

24 – Inch Diameter

Water Transmission Mains



Preliminary Project Cost Estimate

Project: The Nelson County Water Supply Project

 $\begin{array}{lll} \text{Date:} & 05/12/21 & \text{Job No.:} \\ \text{Revised:} & 12/08/21 & \text{Est. By: JCT} \end{array}$

TOTAL S	CYMMADY OF	OLI A NIMITINI				TOTAL
ITEM	SUMMARY OF:	QUANTITY	HAUTE	COCT DED		COST
NO.	North Nelson Water District Water System Improvements	NO. OF UNITS	UNIT MEAS.	COST PER UNIT		COST
	water system improvements	UNITS	MEAS.	UNII		
	16" D.I.P. Water Transmission Main including					
1	creek crossings, road/driveway crossings, etc.	46,000	LF	\$ 165.00	\$	7,590,000.00
2	16" Gate Valves	15	EA	\$ 12,500.00	\$	187,500.00
3	Flushing Hydrants	15	EA	\$ 5,000.00	\$	75,000.00
	7. 8 yr 1			7 3,000.00	,	
4	Control Valve Bldg.	1	LS	\$ 100,000.00	\$	100,000.00
5	Master Meter & Vault	1	LS	\$ 75,000.00	\$	75,000.00
J	Master Meter & Vauit	1	LO	\$ 73,000.00	4	73,000.00
6	Telemetry MTU and 4 Remote Sites	1	LS	\$ 85,000.00	\$	85,000.00
					\$	-
					\$	-
					\$	-
	SUBTOTAL AMOUNT				\$	8,112,500.00
10%	CONTINGENCY	T			\$	811,250.00
	PRELIMINARY ENGINEERING/PLANNING				\$	30,000.00
	ENGINEERING DESIGN				\$	475,000.00
	RESIDENT INSPECTION				\$	163,000.00
	RATE STUDY				\$	10,000.00
	ENVIRONMENTAL ASSESMENT				\$	15,000.00
	EASEMENTS/LAND ACQUISITION				\$	10,000.00
	LEGAL AND ADMINISTRATION				\$	15,000.00
	INTEREST				\$	75,000.00
	TOTAL ESTIMATED PROJECT COST				\$	9,716,750.00
	1017H ESTIMATED I ROJECT COST				Ą	7,7 10,7 30.00



Preliminary Project Cost Estimate

Project: The Nelson County Water Supply Project

 $\begin{array}{lll} \text{Date:} & 05/12/21 & \text{Job No.:} \\ \text{Revised:} & 12/08/21 & \text{Est. By: JCT} \end{array}$

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ITEM	SUMMARY OF:	QUANTITY			TOTAL
NO.	North Nelson Water District	NO. OF	UNIT	COST PER	COST
	Water System Improvements	UNITS	MEAS.	UNIT	
	20" D.I.P. Water Transmission Main including				
1	creek crossings, road/driveway crossings, etc.	46,000	LF	\$ 205.00	\$ 9,430,000.00
	DOUB III G W I	4.5		.	4 200,000,00
2	20" Butterfly Valves	15	EA	\$ 20,000.00	\$ 300,000.00
3	Flushing Hydrants	15	EA	\$ 5,000.00	\$ 75,000.00
4	Control Valve Bldg.	1	LS	\$ 100,000.00	\$ 100,000.00
4	Control valve Blug.	1	LO	\$ 100,000.00	\$ 100,000.00
5	Master Meter & Vault	1	LS	\$ 75,000.00	\$ 75,000.00
6	Telemetry MTU and 4 Remote Sites	1	LS	\$ 85,000.00	\$ 85,000.00
					-
					\$ -
	CUDTOTAL AMOUNT				
400/	SUBTOTAL AMOUNT				
10%	CONTINGENCY				\$ 1,006,500.00
					4 20,000,00
	PRELIMINARY ENGINEERING/PLANNING				\$ 30,000.00
	ENGINEERING DESIGN				\$ 589,000.00
	RESIDENT INSPECTION				\$ 202,000.00
	RATE STUDY				\$ 10,000.00
	ENVIRONMENTAL ASSESMENT				\$ 15,000.00
	EASEMENTS/LAND ACQUISITION				\$ 10,000.00
	LEGAL AND ADMINISTRATION				\$ 15,000.00
	INTEREST				\$ 75,000.00
	TOTAL ECTIMATED DROIECT COCT				¢ 12.017.500.00
<u></u>	TOTAL ESTIMATED PROJECT COST				\$ 12,017,500.00



Preliminary Project Cost Estimate

Project: The Nelson County Water Supply Project

 $\begin{array}{lll} \text{Date:} & 05/12/21 & \text{Job No.:} \\ \text{Revised:} & 12/08/21 & \text{Est. By: JCT} \end{array}$

				1		
ITEM	SUMMARY OF:	QUANTITY				TOTAL
NO.	North Nelson Water District	NO. OF	UNIT	COST PER		COST
	Water System Improvements	UNITS	MEAS.	UNIT	_	
	2411 D.I.D.IAI.					
1	24" D.I.P. Water Transmission Main including creek crossings, road/driveway crossings, etc.	46,000	LF	\$ 225.00	\$	10,350,000.00
1	erective coomings, round, arrive may erecomings, etc.	10,000	ш	Ψ 223.00	Ψ	10,330,000.00
2	24" Butterfly Valves	15	EA	\$ 22,500.00	\$	337,500.00
3	Flushing Hydrants	15	EA	\$ 5,000.00	\$	75,000.00
	Trashing flydranes	15	LA	3,000.00	Ψ	73,000.00
4	Control Valve Bldg.	1	LS	\$ 100,000.00	\$	100,000.00
5	Master Meter & Vault	1	LS	\$ 75,000.00	\$	75,000.00
				, , , , , , , , , , , , , , , , , , , ,		,
6	Telemetry MTU and 4 Remote Sites	1	LS	\$ 85,000.00	\$	85,000.00
					\$	_
					4	
					\$	-
					\$	-
	SUBTOTAL AMOUNT				\$	11,022,500.00
10%	CONTINGENCY				\$	1,102,250.00
1070					-	1,102,200,00
	PRELIMINARY ENGINEERING/PLANNING				\$	30,000.00
	ENGINEERING DESIGN				\$	645,000.00
	RESIDENT INSPECTION				\$	225,000.00
	RATE STUDY ENVIDONMENTAL ASSESMENT				\$	10,000.00
	ENVIRONMENTAL ASSESMENT				\$	15,000.00
	EASEMENTS/LAND ACQUISITION				\$	10,000.00
	LEGAL AND ADMINISTRATION				\$	15,000.00
	INTEREST				\$	75,000.00
	TOTAL ESTIMATED PROJECT COST				\$	13,149,750.00
	TO THE ESTIMATED I ROJECT COST				Ψ	13,177,730.00

SUPPLEMENTAL MEMORANDUM OF AGREEMENT

THIS SUPPLEMENTAL MEMORANDUM OF AGREEMENT ("Supplemental MOA") is made and entered into on this 19th day of July 2022 (the "Effective Date") by and among the Nelson Fiscal Court (the "Fiscal Court"), the City of Bardstown, Kentucky ("Bardstown"), and North Nelson Water District (the "District").

WITNESSETH:

WHEREAS, the Fiscal Court, Bardstown, and the District previously executed a Memorandum of Agreement ("MOA"), which has an Effective Date of December 21, 2021;

WHEREAS, the purpose of the MOA is to facilitate the construction of a large diameter water transmission main along Kentucky Highway 245 to serve as a regional transmission water supply line. This regional project is identified in the MOA as the "Nelson County Water Supply Project" or the "Project";

WHEREAS, the Parties have been seeking additional grants to supplement the funds itemized and allocated for the Project in the MOA;

WHEREAS, the Parties' efforts have been exceptionally successful;

WHEREAS, the Fiscal Court has been allocated the sum of \$10,000,000 by the Kentucky General Assembly for this Project. This allocation is contained in House Bill 1, which is the State Executive Branch Budget for Fiscal Years 2022-

2023 and 2023-2024, adopted by the 2022 General Assembly, and it shall be referenced as the "2022 State Budget Allocation";

WHEREAS, as set forth in House Bill 1, Section 1, Part I, A. General Government, 5(6)(d), the purpose of the 2022 State Budget Allocation is for "regional water supply infrastructure projects," including "regional water supply lines";

WHEREAS, the Parties desire for the 2022 State Budget Allocation to be utilized as part of the funding for the Project;

WHEREAS, it is mutually advantageous for the Fiscal Court, Bardstown, and the District to enter into this Supplemental MOA; and

WHEREAS, the Parties desire to supplement the MOA as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, it is hereby agreed as follows:

- 1. Recitals. The facts, recitals, and statements contained in the MOA and in the foregoing preamble of this Supplemental MOA are true and correct, and are hereby affirmed and incorporated as a part of this Supplemental MOA.
- 2. MOA Still in Effect. Each and every provision of the MOA, as supplemented by this Supplemental MOA, shall continue to remain in full force and effect.

- **3.** Additional Fiscal Court Contribution. In addition to the contributions of the Fiscal Court set forth in paragraph 3 of the MOA, the Fiscal Court shall also contribute the 2022 State Budget Allocation in the amount of \$10,000,000 to the Project.
- **4. Water Main Size**. The water transmission main shall either be a 20-inch or a 24-inch diameter ductile iron pipe based upon the bids received and the available Project funding. Both diameter sizes shall be bid.
- **5. Bid Alternates**. The Project shall be advertised for bid with the following bid alternates or options:
 - A. Bid Option 1: 20-inch diameter water transmission main extending from Kentucky Highway 1604 to Houghlin Funeral Home.
 - B. Bid Option 1-A: 24-inch diameter water transmission main extending from Kentucky Highway 1604 to Houghlin Funeral Home.
 - C. Bid Option 2: 20-inch diameter water transmission main extending from Houghlin Funeral Home to Bardstown's Withrow Court Water Storage Tank (the "Bardstown Interconnect Portion of Project").
 - D. Bid Option 2-A: 24-inch diameter water transmission main extending from Houghlin Funeral Home to Bardstown's Withrow Court Water Storage Tank (the "Bardstown Interconnect Portion of Project").

- **6. Order of Funding**. All funds described in the MOA and in this Supplemental MOA shall be prioritized and spent in the following order:
 - A. First: Fully fund Bid Option 1 or 1-A.
 - B. Second: Fund Bid Option 2 or 2-A. Any grants for the Water infrastructure projects in this Supplemental MOA that are applicable to any cost sharing agreements related to local Distillery expansions will be used to lower those costs by the appropriate percentages agreed upon by those agreements.
 - C. Third: Any remaining funds shall be allocated to the Bardstown East Side Water System Improvements.
- 7. Cooperation. Each of the Parties agree to cooperate with the other parties in the timely execution of any documents necessary to effectuate the provisions of the MOA and this Supplemental MOA.

8. Assignment and Amendment.

- A. This Supplemental MOA and the rights of the Fiscal Court, or Bardstown, or the District shall not be conveyed, assigned, or transferred to any other person or entity without the prior written consent of all Parties.
- B. This Supplemental MOA shall not be amended or modified unless such amendment or modification is in writing and signed by all Parties.
- **9. Entirety.** The Parties further agree that the MOA, as supplemented by this Supplemental MOA, now constitutes the entire understanding of the Fiscal

Court, Bardstown, and the District with respect to the transaction contemplated therein.

10. Counterparts. This Supplemental MOA may be executed in multiple counterparts by the Parties hereto. All of such counterparts shall be construed as if all signatures were appended to one document. The Parties hereto agree that a facsimile or e-mail of a counterpart of this signed Supplemental MOA constitutes an original counterpart, and shall be a valid and binding document for all legal and other purposes.

11. Severability. The invalidity or unenforceability of any provision of this Supplemental MOA shall not affect the validity or enforceability of any other provision hereof, and any such invalid or unenforceable provision shall be deemed to be severable.

IN WITNESS WHEREOF, this Supplemental MOA has been executed in multiple counterparts, each of which is deemed to be an original, by the duly authorized officers and officials of the Parties pursuant to authority granted by the governing body of each respective Party, as of its Effective Date.

[signature pages to follow]

NELSON COUNTY FISCAL COURT

	~~	
BY:	land Bright	
	Dean Watts~ounty	

ATTEST:

Jeanette Sidebottom, Nelson County Clerk

CITY OF BARDSTOWN, KENTUCKY

BM RHan Myor

ATTEST:

-7-

NORTH NELSON WATER DISTRICT

BY: Nky 1-

ATTEST:

Don Mudd, Secretary

*Honorable Damon R Talley Attorney at Law STOLL KEENON OGDEN PLLC 300 West Vine Street Suite 2100 Lexington, KENTUCKY 40507-1801

*North Nelson Water District 5555 Louisville Road P. O. Box 25 Cox's Creek, KY 40013

*Tina C. Frederick STOLL KEENON OGDEN PLLC 300 West Vine Street Suite 2100 Lexington, KENTUCKY 40507-1801