

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SANDY VALLEY WATER DISTRICT)	
)	
COMPLAINANT)	
v.)	CASE NO. 96-161
)	
CITY OF PRESTONSBURG AND)	
PRESTONSBURG CITY'S UTILITY)	
COMMISSION)	

ORDER TO SATISFY OR ANSWER


The City of Prestonsburg and the Prestonsburg City's Utility Commission ("Prestonsburg") is hereby notified that it has been named as defendant in a formal complaint filed on August 1, 1996, a copy of which is attached hereto.


Pursuant to 807 KAR 5:001, Section 12, Prestonsburg is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

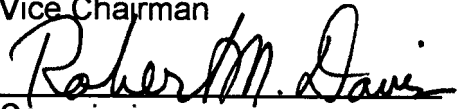
Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 13th day of August, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

Case No. 96-161

RECEIVED

COMMONWEALTH OF KENTUCKY

AUG - 1 1996

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

SANDY VALLEY WATER DISTRICT

COMPLAINANT

v.

COMPLAINT

CITY OF PRESTONSBURG AND PRESTONSBURG
CITY'S UTILITIES COMMISSION

RESPONDENT

* * * * *

Comes the Complainant, Sandy Valley Water District (hereinafter "Sandy Valley") and for its Complaint against the City of Prestonsburg and the Prestonsburg City's Utilities Commission (hereinafter "Prestonsburg"), states and alleges as follows:

1. Sandy Valley is a water utility authorized and created pursuant to the Kentucky Revised Statutes which provides retail water service to customers in Floyd County, Kentucky. Sandy Valley is regulated by and subject to the jurisdiction of the Kentucky Public Service Commission.

2. The Prestonsburg City's Utilities Commission is a commission authorized and created by the City of Prestonsburg and in that capacity serves as a retail water utility and provides both retail water service to citizens of the City of Prestonsburg and wholesale water service to several water associations (including Sandy Valley) and private utility companies in adjacent and contiguous territory.

3. This dispute concerns the provision of wholesale water service to Sandy Valley by Prestonsburg pursuant to a wholesale water contract entered into between the parties on March 19, 1981, a copy of which is attached hereto as Exhibit 1.

4. This Commission has jurisdiction over the instant dispute pursuant to the recent Kentucky Supreme Court case of Simpson County Water District v. City of Franklin, 872 S.W.2d 460 (Ky. 1994).

5. Under paragraph B(1)(c) of the contract attached hereto as Exhibit 1, the wholesale water rate to be charged by Prestonsburg to Sandy Valley was \$1.35 per 1,000 gallons. Sandy Valley purchased water from Prestonsburg at that rate until sometime in 1988.

6. In 1988, Prestonsburg, without the knowledge or consent of Sandy Valley, increased Sandy Valley's wholesale water rate from \$1.35 per 1,000 gallons to \$1.77 per 1,000 gallons.

7. The increase in wholesale water rates by Prestonsburg in 1988 was contrary to and in conflict with paragraph A(5) and paragraph B(1-E) of the Wholesale Water Purchase Contract, which contract restricted Prestonsburg's ability to impose such a rate increase on Sandy Valley. Without regard to the illegality of the 1988 rate increase, Sandy Valley paid and remitted the \$1.77 rate to Prestonsburg from 1988 to date.

8. In May 1993, Prestonsburg issued a notice to Sandy Valley that the wholesale water rate to be charged by Prestonsburg to Sandy Valley was to be increased from \$1.77 per 1,000 gallons to \$2.12 per 1,000 gallons.

9. After issuance of the notice, Prestonsburg did not in fact show an increase in wholesale water rates on their wholesale water bill to Sandy Valley until August 1994.

10. The wholesale water rate increase sought to be implemented by Prestonsburg against Sandy Valley by raising the rate from \$1.77 to \$2.12 per 1,000 gallons is unlawful and a violation of paragraph A(5) and paragraph B(1-E) the Wholesale Water Purchase Contract attached hereto as Exhibit 1.

11. Sandy Valley did not pay \$2.12 per 1,000 gallons wholesale water rate sought to be charged by Prestonsburg for May 1993 through August 1994. Also, Sandy Valley further has not paid the full increased water rate from August 1994 to date for charges which were subsequently included on Prestonsburg wholesale water bills.

12. Sandy Valley refused to pay this increase because the increase is in violation of the contract attached hereto as Exhibit 1 and constitutes rates which are unfair, unjust and unreasonable in violation of KRS 278.190.

13. This Commission should set and impose upon Prestonsburg a wholesale water rate of \$1.35 per 1,000 gallons as set forth in the contract attached hereto as Exhibit 1 or, in the alternative, set such rates as the

Commission deems to be fair, just and reasonable under the circumstances as mandated by KRS 278.190.

14. The Commission should require Prestonsburg City's Utilities Commission to give notice to its customers, both wholesale and retail, of the nature of this complaint, as well as the possibility that Prestonsburg's wholesale water rates to Sandy Valley might be affected or changed as a result of this proceeding, and giving those parties seeking to intervene in this proceeding the opportunity to do so.

WHEREFORE, Sandy Valley Water District prays for an order from this Commission:

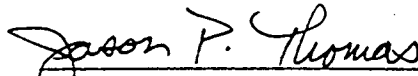
(1) Declaring and adjudging that a wholesale water rate of \$1.35 per 1,000 gallons is the lawful, fair, just and reasonable rate pursuant to KRS 278.190 for Prestonsburg to charge Sandy Valley Water District.

(2) In the alternative, for the Commission to set a fair, just and reasonable wholesale water rate pursuant to KRS 278.190 which Prestonsburg may lawfully charge Sandy Valley Water District.

(3) For an Order declaring and adjudging that any deficiency currently being alleged by Prestonsburg to be owed by Sandy Valley is erroneous because (a) the amount was not billed by Prestonsburg in due course; (b) the amount was

calculated using rates that were not authorized or approved by the Commission and were based upon rates which are unjust, unfair, and unreasonable, in violation of KRS 278.190.

Respectfully submitted,



Bruce F. Clark
Jason P. Thomas
STITES & HARBISON
421 West Main Street
P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477
COUNSEL FOR COMPLAINANT,
SANDY VALLEY WATER DISTRICT

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 19th day of March,
1981, between the Prestonsburg City's Utilities Commission
P. O. Box 468, Prestonsburg, Kentucky 41653
(Address)

hereinafter referred to as the "Seller" and the Sandy Valley Water District
P. O. Box 248, Betsy Layne, Kentucky 41605
(Address)

hereinafter referred to as the "Purchaser",

WITNESSETH:

Whereas, the Purchaser is organized and established under the provisions of KRS 273 of the
Code of Kentucky, for the purpose of constructing and operating a water supply distribution
system serving water users within the area described in plans now on file in the office of the Purchaser and to accomplish
this purpose, the Purchaser will require a supply of treated water, and

Whereas, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the
present customers of the Seller's system and the estimated number of water users to be served by the said Purchaser as shown
in the plans of the system now on file in the office of the Purchaser, and

Whereas, by Resolution No. _____ enacted on the 19th day
of March, 1981, by the Seller, the sale of water to the Purchaser in accordance
with the provisions of the said Resolution was approved, and the execution of this contract
carrying out the said Resolution by the Prestonsburg City's Utilities Commis.
and attested by the Secretary, was duly authorized, and

Whereas, by Resolution of the Board of Directors
of the Purchaser, enacted on the _____ day of _____, 19____,
the purchase of water from the Seller in accordance with the terms set forth in the said Contract
was approved, and the execution of this contract by the Chairman, and
attested by the Secretary was duly authorized;

Now, therefore, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. The Seller Agrees:

1. (Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the term of
this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the
Kentucky Health Department

in such quantity as may be required by the Purchaser ^{a minimum of} ~~not to exceed~~ 3,000,000 gallons per month. The upper limit
of 3,000,000 gallons per month may subsequently be increased by agreement
between the parties,

FHA 442-30 (Rev. 4-19-72)

It is further mutually agreed between the Seller and the Purchaser as follows:

1. (Term of Contract) That this contract shall extend for a term of 40 years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser and, hereafter may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and Purchaser.

2. (Delivery of Water) That 30 days prior to the estimated date of completion of construction of the Seller's water supply distribution system, the Seller will notify the Purchaser in writing the date for the initial delivery of water.

3. (Water for Testing) When requested by the Purchaser the Seller will make available to the contractor at the point of delivery, or other point reasonably close thereto, water sufficient for testing, flushing, and trench filling the system of the Purchaser during construction, irrespective of whether the metering equipment has been installed at that time, at a

\$1.35 Per Thousand
flat charge of \$ Gallons which will be paid by the contractor or, on his failure to pay, by the Purchaser.

4. (Failure to Deliver) That the Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.

5. (Modification of Contract) That the provisions of this contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification at the end of every 1 year period. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder, but such costs shall not include increased capitalization of the Seller's system. Other provisions of this contract may be modified or altered by mutual agreement. Or at anytime rates are increased to the citizens within the corporate limits of the City of Prestonsburg. *FOR DECREASED (RITA) (344)*

6. (Regulatory Agencies) That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

7. (Miscellaneous) That the construction of the water supply distribution system by the ^{Seller} Purchaser is being financed by a loan made or insured by, and/or a grant from, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Purchaser are conditioned upon the approval, in writing, of the State Director of the Farmers Home Administration.

8. (Successor to the Purchaser) That in the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Purchaser hereunder.

9. In the event chlorination of water referred to in this agreement should be required beyond the metering equipment provided in paragraph A.3 such treatment shall be the responsibility of purchaser.

2. (Point of Delivery and Pressure) That water will be furnished at a reasonable constant pressure calculated

40 P.S.I. from an ~~8" main~~ 8" main to be constructed ~~at a point located~~

near the Mouth of Mare Creek, Floyd Co., Ky., & Blackburn's Greenhouse
 if a greater pressure than that normally available at the point of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.

3. (Metering Equipment) To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the Purchaser and to calibrate such metering equipment whenever requested by the Purchaser but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate

shall be corrected for the Three (3) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless Seller

and Purchaser shall agree upon a different amount. The metering equipment shall be read ~~at~~ Between 1-5 day of month. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings.

4. (Billing Procedure) To furnish the Purchaser at the above address not later than the 10th day of each month, with an itemized statement of the amount of water furnished the Purchaser during the preceding month.

B. The Purchaser Agrees:

1. (Rates and Payment Date) To pay the Seller, not later than the 20th day of each month, for water delivered in accordance with the following schedule of rates:

a. \$ 4,141.75 for the first 3,000,000 gallons, which amount shall also be the minimum rate per month.

~~XX~~

~~XX~~

c. \$ 1.35 cents per 1000 gallons for water in excess of 3,000,000 gallons.

- 1-A If booster pumps shall be required by purchaser to increase the P.S.I. for its system, said pumps shall be furnished by purchaser but shall, in no event, exceed 100 gallons per minute capacity.
- 1-B The purchaser agrees to purchase a minimum of 3,000,000 gallons of water per month at Prestonsburg City's Utilities Commission outside Corporation water rates, for a period of forty (40) years.
- 1-C No water for fire protection is guaranteed under this contract.
- 1-D In the event of a future rate change, the buyer will be notified in writing, by Seller, ninety days before putting new rate into effect.
- 1-E All subsequent rate changes will be of the same percentage of change as applied to all the customers in the city limits of Prestonsburg.

2. (Connection Fee) To pay an agreed cost, a connection fee to connect the Seller's system with the system of the Purchaser, the sum of N/A dollars which shall cover any and all costs of the Seller for installation

of the metering equipment and Booster Pump & Meter Equipment to be supplied by Prestonsburg City's Utilities Commission, not to exceed 5" water meter and 100 gallon a minute booster pump.

Witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in five (5) counterparts, each of which shall constitute an original.

Seller:

Prestonsburg City's Utilities Commission

By C. J. McVally

Title Chairman

Attest:

Philip W. [Signature]
Secretary

[Signature]

Purchaser:

Sandy Valley Water District

By J. H. Meyer, Jr.

Title Chairman

Attest:

[Signature]
Secretary

This contract is approved on behalf of the Farmers Home Administration this _____ day of _____,

19 _____

By _____

Title _____