

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

WILLIAM C. HILL)	
)	
COMPLAINANT)	CASE NO.
)	2017-00316
v.)	
)	
MUHLENBERG COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

**WILLIAM C. HILL'S RESPONSE TO
COMMISSION STAFF'S POST CONFERENCE REQUEST FOR INFORMATION**

Filed: August 8, 2018

William C. Hill
Case No. 2017-00316
Commission Staff's Post Conference Request for Information

1. Provide the recorded easements referred to in discussion at the formal conference and a copy of any deed or deeds related to the easements and the subject property.

Response:

Please see Page 3 through Page 17 of this Response.

Please also note Muhlenberg County Water District's Tariff, Rules and Regulations, Section N, Access to Property, which is substantially similar to Commission regulation 807 KAR 5:006, Section 6(3). Section N(2) of the tariff states unequivocally that "[o]btaining easements and right-of-ways [*sic*] necessary to extend service will be the responsibility of the utility." Additionally, Section N(4) of the Tariff states as follows:

The utility cannot require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. However, the cost of obtaining easements or rights-of-way will be included in the total per foot cost of an extension, and will be apportioned among the utility and customer in accordance with the applicable extension administrative regulation.

Of course, as evidenced by the remaining pages of this Response, Mr. Hill has proactively obtained various easements, at his sole expense, as part of his construction of Forest Hills Lane and his efforts to prepare his property for further development.¹ Further, Mr. Hill acknowledges and accepts his responsibility, under Section N(3) of the Tariff, to grant Muhlenberg County Water District such easements and rights-of-way across the property he owns or controls that are necessary for the Water District to provide service.

¹ As discussed during the formal prehearing conference held in this matter on July 5, 2018, Forest Hills Lane is a private road which intersects McPherson Road and runs generally north, approximately 1.2 miles across three (3) neighboring properties before terminating shortly beyond the home presently existing on Mr. Hill's property. The proposed water line extension at issue in this proceeding, as designed by McGhee Engineering, Inc., runs primarily along this road. Mr. Hill believes the easements he has obtained will allow Muhlenberg County Water District to extend its system with minimal (if any) property-related expense; though Forest Hills Lane (and Mr. Hill's easements) begin approximately 400 feet away from the present point of termination of the nearby Todd County Water District line, one can reasonably anticipate that Muhlenberg County Water District will have no issue obtaining an easement along that short stretch of McPherson Road (which, upon information and belief, is a county road).

THIS DEED made and entered into this the 31st day of August, 1998, by and between Ralph D. Vick and wife, Ramona S. Vick, P. O. Box 349, Greenville, Kentucky 42345, Parties of the First Part, and William C. Hill, 107 North Main Street, Greenville, Muhlenberg County, Kentucky 42345, Party of the Second Part,

WITNESSETH: That for and in consideration of the sum of Sixty-five Thousand Dollars (\$65,000.00), cash in hand paid, the receipt of which is hereby acknowledged, the Parties of the First Part have bargained and sold and do by these presents hereby bargain, sell, alien and convey unto the Party of the Second Part, his heirs and assigns, the following described property lying and being situated in Muhlenberg County, Kentucky, to-wit:

Beginning on the edge of the waters of Lake Malone; thence S 34-08-32 W 950 feet to a three pronged dead elm, 8 inch white oak marked; thence S 49-19-53 E 855.07 feet to a 24 inch marked beech; thence N 37-33-06 E 1051.40 feet to an 18 inch marked black gum 8 feet Northwest of old white oak stump; thence S 27-05-59 E 1560.05 feet to an iron pin and stone, set; thence N 54-13-26 E 1078.61 feet to an iron pin and stone set in remains of triple white oak stump; thence N 42-13-26 E 790 feet to the waters of Lake Malone; thence with the waters of Lake Malone to the beginning, containing 75 acres, pursuant to survey by Larry T. Hill, R.L.S. #2925, dated April 30, 1993.

Notwithstanding the foregoing description, it is the express intention of First Parties to convey to Second Party, any and all contiguous or adjoining property.

There is also conveyed herein that roadway easement dated March 16, 1993, from Frankie Mayes, et al., of record in Deed Book 420, page 390, in the Office of the Muhlenberg County Clerk, constituting access to the above described property.

The above being the same property conveyed to Ralph D. Vick and wife, Ramona S. Vick, or survivor, by Leonard Pendley and wife, DeLisa Pendley, by deed dated July 6, 1993, and now of record in the Office of the Clerk of Muhlenberg County, Kentucky, in Deed Book 422, page 124.

CONSIDERATION CERTIFICATE: The undersigned, First Parties and Second Party, certify that the consideration reflected in this deed is the full consideration paid and the Second Party joins in this deed only for the purpose of certifying the consideration pursuant to statute.

TO HAVE AND TO HOLD the above described property, together with the appurtenances thereunto belonging, unto the Party of

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42345

the Second Part, his heirs and assigns, forever, with Covenant of General Warranty.

IN TESTIMONY WHEREOF the parties have hereunto affixed their signatures, this the date first above written.

Ralph D Vick
Ralph D. Vick

Ramona S. Vick
Ramona S. Vick

William C Hill
William C. Hill

STATE OF KENTUCKY
COUNTY OF MUHLENBERG

The foregoing Deed with Consideration Certificate was duly acknowledged and sworn to before me this 31st day of August, 1998, by Ralph D. Vick and wife, Ramona S. Vick.

[Signature]
Notary Public, Muhlenberg
County, Kentucky

My commission expires:
2/3/2001

STATE OF KENTUCKY
COUNTY OF MUHLENBERG

The foregoing Deed with Consideration Certificate was duly acknowledged and sworn to before me this 31st day of August, 1998, by William C. Hill.

[Signature]
Notary Public, Muhlenberg
County, Kentucky 8-27-99

My commission expires:
8-27-99

This instrument prepared by:
Ralph D Vick
Donan & Vick, Attorneys
110 East Court Square
Greenville, Kentucky

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110 E. COURT SQUARE
GREENVILLE, KY.
42345

DOCUMENT NO: 99912
RECORDED ON: JUNE 13, 2000 03:12:57PM
TOTAL FEES: \$12.00
TRANSFER TAX: \$65.00
COUNTY CLERK: GAYLAN SPURLIN
COUNTY: MUHLENBERG COUNTY
DEPUTY CLERK: KATHY SADDLER

ROADWAY EASEMENT

BOOK 420 PAGE 390

THIS ROADWAY EASEMENT made and entered into this the 16th day of March, 1993, by and between Frankie Mayes and wife, Agnes Pauline Mayes, 320 Stevens Road, Lewisburg, Kentucky 42256, and Mary Elaine Coursey, a widow, by Alvin Coursey, 10411 St. Joseph Avenue, Evansville, Indiana 47720, Parties of the First Part, and Leonard Pendley and wife, DeLisa Pendley, or survivor, 1001 Huntsville-Quality Road, Morgantown, Butler County, Kentucky 42261, Parties of the Second Part,

WITNESSETH: The Parties of the First Part and the Parties of the Second Part are the owners of adjoining property located in Muhlenberg County, Kentucky, being more particularly described as follows, the Parties of the Second Part's property lying North and West of First Parties' property;

AND WHEREAS for many years, there has been in existence an old roadway running on and over the property of First Parties, to the property of Second Parties, said roadway constituting the sole means of ingress and egress to the property of Second Parties;

AND WHEREAS said roadway easement over the property of First Parties, by reason of said prior use and providing access to the property of Second Parties constitutes an easement for the benefit of the property owned by Second Parties;

AND WHEREAS it is now desired that said roadway easement be placed of record;

NOW, THEREFORE, for and in consideration of the above premises and for the express purposes of confirming said roadway easement for the benefit of the property described hereinbelow owned by Second Parties, the Parties of the First Part do hereby grant and convey unto the Parties of the Second Part, and in the event of the death of either of them, then to the survivor of them, their heirs and assigns, and their agents, servants, tenants, visitors, licensees, and all other persons for the advantage of Second Parties, an easement and right of way twenty (20) feet in width on and over the

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42345

following described property owned by the Parties of the First Part:

Tract #1: Beginning at a rock corner to the main survey, thence S 60 E 136 poles to two sassafrasses and a rock; thence N 25 E 126 poles to a white oak; thence N 51 W 136 poles to three sassafrasses; thence S 25 W 138 poles to the beginning and containing 109 acres, more or less.

Tract #2: Beginning at O. W. Strader's corner N 12 E 18 poles to a rock; thence N 70 W 10 poles to a rock; thence N 18 E 11 poles to a rock; thence S 65 E 72 poles to an elm and hickory; thence S 20 W 41 1/2 poles to a rock West or nearly so, 44 poles running with the Martin lane to a rock, the beginning corner, containing ten acres, more or less.

The above being the same property conveyed to Noble C. Coursey and wife, Mary Elaine Coursey, or survivor, and Agnes Pauline Mayes and husband, Frankie Mayes, or survivor, by deed dated July 3, 1974, from Noble C. Coursey and wife, Mary Elaine Coursey, and Agnes Pauline Mayes and husband, Frankie Mayes, of record in Deed Book 303, page 144, in the Office of the Muhlenberg County Clerk. Noble C. Coursey is deceased and First Party, Mary Elaine Coursey, acquired said decedent's interest by virtue of said survivorship provisions. First Party, Alvin Coursey, executes this roadway easement for First Party, Mary Elaine Coursey, pursuant to Power of Attorney of record in Deed Book 402, page 330, in the Office of the Muhlenberg County Clerk.

The roadway easement and right of way granted herein is for the benefit of Second Parties, their successors and assigns, as the owners of that property acquired by deed dated September 30, 1992, from William A. Cole, single, of record in Deed Book 417, page 273, in the Office of the Muhlenberg County Clerk.

The roadway easement and right of way granted herein runs from the end of McPherson Road, to the above referenced property owned by Second Parties.

TO HAVE AND TO HOLD the above described roadway easement and right of way, unto the Parties of the Second Part, for the use and benefit of the above described property owned by the Parties of the Second Part, their successors and assigns.

IN TESTIMONY WHEREOF witness the signature of the Parties of the First Part, on this the date first above written.

Frankie Mayes
Frankie Mayes

Agnes Pauline Mayes
Agnes Pauline Mayes

Mary Elaine Coursey
Mary Elaine Coursey

By: Alvin Coursey p.o.a.
Alvin Coursey

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42345

BOOK 420 PAGE 392

STATE OF KENTUCKY
COUNTY OF MUHLENBERG

I, the undersigned Notary Public, in and for the County and State aforesaid, do hereby certify that the foregoing Roadway Easement was this day produced to me in my county and state and was duly acknowledged before me by Frankie Mayes and wife, Agnes Pauline Mayes, to be their acts and deeds for the purposes therein stated.

Given under my hand and seal of office, this the 16th day of March, 1993.

Ralph D. Vick
Notary Public, Muhlenberg
County, Kentucky

My commission expires:
8-11-96

STATE OF INDIANA
COUNTY OF VANDERBURGH

I, the undersigned Notary Public, in and for the County and State aforesaid, do hereby certify that the foregoing Roadway Easement was this day produced to me in my county and state and was duly acknowledged before me by Mary Elaine Coursey, by Alvin Coursey, pursuant to Power of Attorney, to be her act and deed for the purposes therein stated.

Given under my hand and seal of office, this the 26th day of March, 1993.

Judith S. Klupnagel
Notary Public, Vanderburgh
County, Indiana

My commission expires:
2-14-95

Resident of Warrick County

This instrument prepared by:

Ralph D. Vick
Donan & Vick, Attorneys
110 East Court Square
Greenville, Kentucky

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110 E. COURT SQUARE
GREENVILLE, KY.
42345

State of Kentucky, SCT
Muhlenberg County
I Gaylon L. Spurlin, Clerk of Muhlenberg County, certify that the foregoing Easement was legally lodged in my office for record 4-19-93 IN 33 A and the same, the foregoing, And this certificate have been duly recorded therein.

Given under my hand this the 20 day of April 1993

Clerk Gaylon Spurlin
By Angie Wyatt o.c.

RIGHT OF WAY AND UTILITY EASEMENT

THIS RIGHT OF WAY AND UTILITY EASEMENT made and entered into this the 26th day of October, 1998, by and between Frankie Mayes and wife, Agnes Pauline Mayes, 320 Stevens Road, Lewisburg, Kentucky 42256, Parties of the First Part, and William C. Hill, 107 North Main Street, Greenville, Muhlenberg County, Kentucky 42345, Party of the Second Part,

WITNESSETH: The Parties of the First Part are the owners of the property described hereinbelow, located in Muhlenberg County, Kentucky, over which property exists a right of way for the benefit of the property of Second Party, described hereinbelow;

AND WHEREAS First Parties have agreed to grant the Party of the Second Part an enlargement of said existing right of way and further, the right to install and construct utilities on said right of way for the benefit of the Second Party's property described hereinbelow;

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Parties of the First Part, the Parties of the First Part do hereby grant and convey unto the Party of the Second Part, for the benefit of the property of the Party of the Second Part described hereinbelow, an easement and right of way thirty (30) feet in width over and across the following described property owned by the Parties of the First Part, to-wit:

Tract #1: Beginning at a rock corner to the main survey, thence S 60 E 136 poles to two sassafrasses and a rock; thence N 25 E 126 poles to a white oak; thence N 51 W 136 poles to three sassafrasses; thence S 25 W 138 poles to the beginning, and containing 109 acres, more or less.

Tract #2: Beginning at O. W. Strader's corner N 12 E 18 poles to a rock; thence N 70 W 10 poles to a rock; thence N 18 E 11 poles to a rock; thence S 65 E 72 poles to an elm and hickory; thence S 20 W 41 1/2 poles to a rock West or nearly so, 44 poles running with the Martin lane to a rock, the beginning corner, containing ten acres, more or less.

There is further granted to the Party of the Second Part for the benefit of the property of the Party

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of the Second Part, the right to construct and install on said roadway easement herein, utilities, including, without limitation, water, gas, sewer and electricity, for the benefit of Second Party's property described hereinbelow. The location of said easement granted herein shall include that 20 foot right of way granted by roadway easement dated March 16, 1993, of record in Deed Book 420, page 390, in the Office of the Muhlenberg County Clerk.

The above being the same property conveyed to First Parties by deed dated October 5, 1995, from Alvin Coursey, et al., of record in Deed Book 440, page 237, in the Office aforesaid.

The easement and right of way granted herein is for the benefit of that property owned by Second Party on the waters of Lake Malone.

The Party of the Second Part shall not have any right to place any sign or obstruction on the easement granted herein.

CONSIDERATION CERTIFICATE: The undersigned, First Parties and Second Party, certify that no consideration was paid for the foregoing conveyance and the estimated fair market value of same is \$ 500.00, Second Party joins in this conveyance only for the purpose of certifying the consideration pursuant to statute.

TO HAVE AND TO HOLD the above described right of way and utility easement, unto the Party of the Second Part, for the use and benefit of the above described property owned by the Party of the Second Part, his successors and assigns.

IN TESTIMONY WHEREOF witness the signature of the parties hereto, on this the date first above written.

Frankie Mayes
Frankie Mayes

Agnes Pauline Mayes
Agnes Pauline Mayes

William C Hill
William C. Hill

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110 E. COURT SQUARE
GREENVILLE, KY.
42345

STATE OF KENTUCKY

COUNTY OF Muhlenberg

I, the undersigned Notary Public, in and for the County and State aforesaid, do hereby certify that the foregoing Right of Way and Utility Easement was this day produced to me in my county and state and was duly acknowledged before me by Frankie Mayes and wife, Agnes Pauline Mayes, to be their acts and deeds for the purposes therein stated.

Given under my hand and seal of office, this the 26th day of October, 1998.

Ralph D. Vick
Notary Public, Muhlenberg
County, Kentucky

My commission expires:

8-11-2000

STATE OF KENTUCKY

COUNTY OF MUHLENBERG

I, the undersigned Notary Public, in and for the County and State aforesaid, do hereby certify that the foregoing Right of Way and Utility Easement was this day produced to me in my county and state and was duly acknowledged before me by William C. Hill, to be his act and deed for the purposes therein stated.

Given under my hand and seal of office, this the 26th day of October, 1998.

Conrad D. Lay
Notary Public, Muhlenberg
County, Kentucky

My commission expires:

4-25-01

This instrument prepared by:

Ralph D. Vick
Donan & Vick, Attorneys
110 East Court Square
Greenville, Kentucky

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110 E. COURT SQUARE
GREENVILLE, KY.
42345

DOCUMENT NO: 90149
RECORDED ON: OCTOBER 28, 1998 09:37:18A
TOTAL FEES: \$12.00
COUNTY CLERK: GAYLAN SPURLIN
COUNTY: MUHLENBERG COUNTY
DEPUTY CLERK: KATHY SADDLER

BOOK D462 PAGES 591 - 593

MUHLENBERG COUNTY
D506 Pg 357

DEED OF EASEMENT AND OPTION TO PURCHASE

This Deed of Easement and Option to Purchase, made this 12 day of October, 2004, by and between SUSAN FAE WILKINSON, formerly Cisney, and husband, GLENN WILKINSON, 337 McElvain Lane, Lebanon Junction, Kentucky 40150, parties of the First Part, and WILLIAM C. HILL, 900 Malone Farm Lane, Belton, Kentucky 42324, party of the Second Part.

WITNESSETH:

Recitals:

1. The parties of the First Part, Susan Fae Wilkinson, formerly Cisney, and husband, Glenn Wilkinson, are the owners of certain real property conveyed to Susan Fae Cisney from Rhondell Cisney and wife, Betty Cisney, by deed dated June 23, 1983, of record in Deed Book 386, page 647, in the office of the Muhlenberg County Clerk.
2. The party of the Second Part is the owner of certain real property conveyed to William C. Hill from Ralph D. Vick and wife, Ramona S. Vick, by deed dated August 31, 1998, of record in Deed Book 476, page 064, in the office of the Muhlenberg County Clerk.
3. The parties hereto have agreed upon the location and size of an easement to cross the property of the parties of the First Part; and, the parties have further agreed that the party of the Second Part shall be granted an exclusive option

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to purchase the fee simple interest in the property which shall comprise the easement.

NOW, THEREFORE, in consideration of the sum of Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00), cash in hand paid, the receipt of which is hereby acknowledged, and in consideration of the mutual promises contained herein, it is agreed:

1. Parties of the First Part hereby grant and convey to the party of the Second Part, and his heirs, grantees, and assigns, an easement over and across the property of the parties of the First Part described in Deed Book 386, page 647, in the office of the Muhlenberg County Clerk; said easement to be thirty (30) feet in width, for the purpose of ingress and egress, and for construction, repair, replacement, and operation of drainage ditches, and utilities. Said easement shall begin at the Mayes-Wilkinson property line and proceed northerly within the TVA right of way until the old road enters the woods, at which point the 30-foot easement leaves the old road and continues northerly, remaining within the TVA right of way, until it passes the wooded area, and thence connects with the extension of the old logging road on the property of the party of the Second Part. The parties of the First Part further grant to the party of the Second Part a temporary easement for the purpose of construction of the roadway and ditches, and for the accommodation of construction equipment, materials, and excavated earth, over and across the property of the parties of the First Part. Immediately following the construction referred to herein, the party of

MUHLENBERG COUNTY
D506 Pg 359

the Second Part shall remove all debris, surplus material, and construction equipment. The party of the Second Part shall be liable for property damage caused by the construction of the roadway and ditches and also for trees which may be lost as a result of the construction.

2. The party of the Second Part shall maintain the easement. The roadway shall be of rock, asphalt, or concrete. The party of the Second Part shall indemnify the parties of the First Part against any claims by third parties which may arise from the use of the easement.

3. The parties of the First Part shall have the right to use said easement.

4. The party of the Second Part shall leave or construct a culvert on either side of the easement to the property of the parties of the Second Part.

5. Option to Purchase: In consideration of the amounts paid to the parties of the First Part hereunder, the parties of the First Part grant to the party of the Second Part, his heirs, grantees, and assigns, the exclusive option to purchase the property described herein as the easement, in fee simple. The party of the Second Part shall have prepared a general warranty deed and upon presentation of said deed to the parties of the First Part, they shall execute and deliver same to the party of the Second Part. The costs of the deed preparation shall be paid by the party of the Second Part.

MUHLENBERG COUNTY
D506 PG 360

Susan Fae Wilkinson
Susan Fae Wilkinson

Glenn Wilkinson
Glenn Wilkinson

William C Hill
William C. Hill

COMMONWEALTH OF KENTUCKY,
COUNTY OF Harrison, SS:

The foregoing Deed of Easement and Option to Purchase was signed and acknowledged before me this 8th day of October, 2004, by Susan Fae Wilkinson and husband, Glenn Wilkinson.

Carole Perkins
Notary Public
My commission expires: 6-8-2005

COMMONWEALTH OF KENTUCKY,
COUNTY OF MUHLENBERG, SS:

The foregoing Deed of Easement and Option to Purchase was signed and acknowledged before me this 12th day of October, 2004, by William C. Hill.

Lisa Hill Payne
Notary Public
My commission expires: 10-7-2007

Prepared by:

James Tardio
James Tardio
P. O. Box 569
Greenville, Kentucky 42345

DOCUMENT NO: 130219
RECORDED ON: OCTOBER 12, 2004 02:58:50PM
TOTAL FEES: \$14.00
COUNTY CLERK: GAYLAN SPURLIN
COUNTY: MUHLENBERG COUNTY
DEPUTY CLERK: REGINA JONES

DEED OF EASEMENT AND AGREEMENT

MUHLENBERG COUNTY
D505 Pg 206

This Deed of Easement and Agreement, made this 24th day of August, 2004, by and between FRANCES BAKER, a single person, P. O. Box 566, Greenville, Kentucky 42325, party of the First Part, and WILLIAM C. HILL, 900 Malone Farm Lane, Belton, Kentucky 42324, party of the Second Part.

WITNESSETH:

Recitals:

1. The party of the First Part is the owner of certain real property described in Deed Book 254, page 287, in the office of the Muhlenberg County Clerk;
2. The party of the Second Part is the owner of certain real property described in Deed Book 476, page 064, in the office of the Muhlenberg County Clerk, which property is adjacent to the property of the party of the First Part referenced herein.
3. The Muhlenberg Circuit Court has, by its Order of August 19, 1998, in Civil Action 97CI-00297, declared that the access to the property of the party of the Second Part shall be over a public roadway located on the east side of the property of the party of the Second Part.
4. The parties hereto wish to define the easement for all intents and purposes as being 30 feet in width and located at the present site of said roadway.

NOW, THEREFORE, in consideration of the premises and to define the roadway easement from McPherson Road over and through the properties of the parties, it is agreed:

1. Party of the First Part hereby grants and conveys to the party of the Second Part, and his heirs, grantees, and assigns, an easement over the property of the party of the

MUHLENBERG COUNTY
D505 Pg 207

First Part described in Deed Book 254, page 287, in the office of the Muhlenberg County Clerk, thirty (30) feet in width, for the purposes of ingress and egress, and for construction, repair, replacement, and operation of drainage ditches, and utilities, and which shall include sixteen (16) feet of road surface, or such greater width as may be required by County road department regulations. Said easement is located on the present site of the roadway from McPherson Lane to the property of the party of the Second Part, and as shown on the attached aerial photograph. The party of the First Part further grants to the party of the Second Part a temporary easement for the purpose of construction of said roadway and ditches, and for the accommodation of construction equipment, materials, and excavated earth, over and across the property of the party of the First Part. Immediately following the construction referred to herein, the party of the Second Part shall remove all debris, surplus material, and construction equipment. In the event fences or other structures are damaged by the party of the Second Part, or his agents, the party of the Second Part shall repair or restore said fences or structures to the condition existing before construction operations were commenced.

2. The parties of the First Part acquired title to the property affected by this easement by deed of record in Deed Book 254, page 287, in the office of the Muhlenberg County Clerk.

3. This grant of easement and agreement shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their respective heirs, grantees, and assigns.

MUHENBERG COUNTY
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Frances Baker
Frances Baker

William C Hill
William C. Hill

COMMONWEALTH OF KENTUCKY,
COUNTY OF MUHENBERG, SS:

The foregoing Deed of Easement and Agreement was signed and acknowledged before me this 24 day of ~~July~~, 2004, by Frances Baker.
AUGUST

Laura Jane Armstrong
Notary Public
My commission expires: 10-6-05

COMMONWEALTH OF KENTUCKY,
COUNTY OF MUHENBERG, SS:

The foregoing Deed of Easement and Agreement was signed and acknowledged before me this 27 day of July, 2004, by William C. Hill.

Laura Jane Armstrong
Notary Public
My commission expires: 10-6-05

Prepared by:

✓ James Tardio
James Tardio
118 O'Bryan Street
P. O. Box 569
Greenville, Kentucky 42345

DOCUMENT NO: 129186
RECORDED ON: AUGUST 24, 2004 03:33:15PM
TOTAL FEES: \$12.00
COUNTY CLERK: GAYLAN SPURLIN
COUNTY: MUHENBERG COUNTY
DEPUTY CLERK: KATHY SADDLER

BOOK D505 PAGES 206 - 208

William C. Hill
Case No. 2017-00316
Commission Staff's Post Conference Request for Information

2. Provide the legal argument and support for a water district providing water service to a subdivision when one does not exist and include factors to indicate that a subdivision is substantially underway.

Response:

Muhlenberg County Water District is a water district organized under KRS Chapter 74 and subject to the jurisdiction of the Commission under KRS 278.010(3)(d) and KRS 278.015. The Commission has exclusive jurisdiction over the rates charged and service provided by the Water District, and the Water District must comply with applicable statutes and the Commission's rules, regulations, and Orders. KRS 278.040(2) & (3). The Water District must also comply with its filed tariff, KRS 278.160, and is not permitted to "give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions." KRS 278.170(1).

KRS 278.030(2) requires all utilities to render "adequate, efficient and reasonable service," and the Water District has a duty to reasonably extend its system to serve prospective customers desiring potable water. *See, e.g., City of Bardstown v. Louisville Gas & Elec. Co.*, 383 S.W.2d 918, 920 (Ky. 1964) ("We conceive that the duty of a public utility under the general public utility

statutes is to render adequate, efficient and reasonable service ... within the scope or area of service provided for in its certificate of convenience and necessity It can be compelled to make any reasonable extension of its service facilities within its certificated scope or area of service.”); *see also In the Matter of Wilmer and Pauline Conn v. Fleming County Water Association*, Case No. 2010-00049, Order at p. 18 (Ky. P.S.C. June 21, 2011) (wherein the Commission rejected a proposed extension due to concerns over radioactive contamination along the route, but stated that its decision did “...not relieve FCWA of its duty to extend service to the Conns’ property. FCWA must still comply with the provisions of 807 KAR 5:066, Section 11.”). KRS 278.280(3) permits the Commission to order reasonable extensions of service when a utility refuses.

Pursuant to KRS 278.280(2), the Commission has promulgated 807 KAR 5:066, Section 11, which addresses extensions of service by water utilities. Section 11(3) of the regulation specifically discusses extensions “to a proposed real estate subdivision” and states that the applicant/developer “may be required to pay the entire cost of the extension.” The regulation subsection also provides a framework by which the applicant/developer is to obtain refunds from the utility of the amounts he paid for the extension based on future customers that connect to the extension over the next ten (10) (or more) years.² The regulation’s language is substantially duplicated in Muhlenberg County Water District’s Tariff, Rules and Regulations, Section Z.

² 807 KAR 5:066 Section 12(3) states, in full, as follows: “An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.”

Clearly, the relevant regulation, as written, contemplates that real estate subdivisions develop over years and may, at the time when water line extensions are made, be merely “proposed” and thus not yet underway or complete. Neither the regulation nor the tariff requires an applicant to make any affirmative showing with respect to the anticipated development of the property to be served, but instead require the cost of the extension (and thus substantial risk) to be fully borne, at least initially, by the applicant/developer. To the extent Muhlenberg County Water District requires developers to satisfy other requirements, not prescribed or consistently applied, to obtain service for a new proposed subdivision, those requirements—as well as what evidence or payments are required to satisfy them—remain entirely unclear.

Of course, should Mr. Hill be required (by some unknown standard) to convince the Water District that his planned subdivision is substantially underway and will actually be pursued in order to obtain service, the facts of this case reasonably (and, arguably, overwhelmingly) already satisfy any such requirement. Mr. Hill has obtained easements and constructed a road to serve the planned subdivision, electric and phone service have been extended to the property, and hundreds of thousands of dollars have been invested in the property to date. Although a subdivision plat is not required under local law and has not yet been filed of record (in part, to first ensure the property will be served by the Water District, as well as to permit flexibility in the ultimate division of the property), the planned subdivision has been staked and surveyed. Moreover, Mr. Hill has an extensive history of developing property in Muhlenberg County—including the subdivisions of

North Woods, North Woods Addition One, North Woods Addition Two, Millpond Subdivision (on Nebo Cemetery Road), and Sherwood Meadows Subdivision (off Sherwood Point Lane)—all of which included Mr. Hill funding and constructing extensions of the Water District's system. The property in question includes in total approximately 100 acres and 1.5 miles of shoreline on Lake Malone, of substantial natural and monetary value, which Mr. Hill has affirmatively stated he intends to responsibly subdivide and sell. Finally, the fact that Mr. Hill even undertook and continues this process, not only paying approximately \$1,800 for engineering plans related to the extension (at the Water District's direction) but also reluctantly partaking in this lengthy and expensive ongoing dispute, clearly evidences that Mr. Hill's planned subdivision is a substantial reality. Put simply, it is entirely reasonable to conclude that the contemplated extension of the Water District's system will result in numerous customers added thereto, and the Water District's apparent belief otherwise is unfounded and unsupported by evidence.

Relevant, also, are the practices employed by Muhlenberg County Water District in the past, particularly with respect to system extensions to serve proposed subdivisions surrounding Lake Malone. These extensions are the subject of requests for information propounded upon the Water District (particularly regarding Deep Water Estates, Malone Meadows, and the property of Mr. Rocky Cisney) which have not yet been answered; however, it appears clear that the Water District is attempting to apply a completely different set of rules to Mr. Hill than to other developers. Upon information and belief, in each of those previous instances, the Water District agreed to extend its system without first requiring a certain number of homes to be constructed and consuming water,

without requiring payment of any flushing or maintenance-related costs for any period of time, and without the various other unreasonable and otherwise-unwritten requirements the Water District has attempted to impose upon Mr. Hill.

The Water District's actions, *inter alia*, are inconsistent with the Filed Rate Doctrine embodied in KRS 278.160, the anti-discrimination provisions of KRS 278.170, and 807 KAR 5:006, Section 6(2) ("Unless specifically authorized by this administrative regulation, a utility shall not deny or refuse service to a customer who has complied with all conditions of service established in the utility's tariff on file with the commission."). The relevant facts and law support the relief requested by Mr. Hill, and the Water District should be compelled to extend the service it provides to his existing house and planned subdivision, as proposed.

William C. Hill
Case No. 2017-00316
Commission Staff's Post Conference Request for Information

3. Provide the legal argument and support for Muhlenberg District not charging you flushing costs.

Response:

Muhlenberg County Water District's flushing practices are the subject of requests for information propounded upon the Water District, but responses to those inquiries have not yet been provided.

Upon information and belief, the Water District and all water utilities flush their water lines to clear those lines of sediment, air, and unacceptable levels of chlorine or disinfection by-products, among other reasons. Presumably, the amount of flushing that occurs varies across the Water District's system, though all water lines are subject to flushing on a recurring basis (believed to be twice per year). While the Water District has made apparent its fear that the proposed water line in this proceeding may, at least initially, require more flushing than some other lines, it remains unclear what the Water District anticipates those costs will actually be or why they necessarily render the proposed extension unreasonable.

At the outset, it is imperative to note that Muhlenberg District does charge its customers, including Mr. Hill, flushing costs. Flushing is essentially an operation and maintenance expense, and the costs of flushing are included in the rates charged by the Water District. Although the volume of

water flushed annually from some portions or facilities within Muhlenberg County Water District's system may be greater than from others (due to lack of water turnover, frequency of leaks/breaks, system design, or other reason(s)), the costs associated with that flushing is appropriately recovered through the utility's uniform rates and not through special, customer-specific surcharges.

Of course, Muhlenberg County Water District's filed Tariff does not mention the flushing charges the Water District is attempting to impose upon Mr. Hill. Further, upon information and belief, no developer or customer of Muhlenberg County Water District has ever been required to pay flushing charges related to a particular water line. Finally, whatever incremental (and likely temporary) flushing costs which the Water District may incur as a consequence of extending its system to serve the planned subdivision (to include nineteen (19) initial lots with a total of more than forty (40) already staked and surveyed) certainly do not render the proposed extension unreasonable. This is particularly true because the Water District will secure a brand-new, Kentucky Division of Water-approved 1.2 mile 3" water line at no cost, thereby making available the services of the County Water District to an entire area of Muhlenberg County on the south side of Lake Malone that desperately needs it.³ Quite simply, and again, the Water District's actions, *inter alia*, are inconsistent with the Filed Rate Doctrine (embodied in KRS 278.160), the anti-discrimination provisions of KRS 278.170, 807 KAR 5:006, Section 6(2), and the reasonable operation of a public utility.

³ It appears uncontested that the quality of the water presently available to Mr. Hill via a well on his property is exceedingly poor.

William C. Hill
Case No. 2017-00316
Commission Staff's Post Conference Request for Information

4. Provide the legal argument and support or dissent for placing the meter at the “main road” or McPherson Road.

Response:

As discussed in Response to Item 2 of this Request for Information, Muhlenberg County Water District is obligated under law to reasonably extend its system to serve prospective customers and subdivisions. Mr. Hill, based on direction received from the Water District, engaged an engineer to prepare plans for a proposed extension of the Water District's system to serve a planned subdivision of his property. Mr. Hill's proposal involves Muhlenberg County Water District's wholesale purchase of water from Todd County Water District via the latter's existing 3" line on McPherson Road in Muhlenberg County.⁴ From the point of connection between Todd County Water District and Muhlenberg County Water District to a point along Forest Hills Lane slightly north of the existing house on Mr. Hill's property, Mr. Hill proposes to construct and pay for a 1.2-mile, 3" water line to which new homes could be connected and served by Muhlenberg County Water District. In order to properly effectuate this proposal—or essentially any proposal that

⁴ As mentioned previously, Todd County Water District's existing 3" line presently terminates approximately 400 feet from the intersection of McPherson Road and Forest Hills Lane, which is the private road constructed to serve Mr. Hill's planned subdivision. Upon information and belief, Todd County Water District presently serves approximately six (6) customers in Muhlenberg County from its existing 3" line. It remains unclear, however, whether Todd County Water District and/or Muhlenberg County Water District complied with statute (specifically, KRS 74.110, KRS 74.115, or KRS 74.414) and other law such that Todd County Water District's existing service in Muhlenberg County is appropriate.

involves Muhlenberg County Water District's wholesale purchase of water from Todd County Water District—multiple meters will need to be set from the beginning.

First, a meter (referred to herein as a “master meter”) will need to be placed where Muhlenberg County Water District's facilities meet Todd County Water District's facilities. This master meter, contemplated by McGhee Engineering as being a 2” master meter, will be necessary to measure the amount of water Muhlenberg County Water District purchases from Todd County Water District. Second, a 5/8 x 3/4 inch meter will be set for each residential customer along the proposed 3” water line extension (including the existing house on Mr. Hill's property). These smaller meters are appropriate and necessary not only to accurately measure the amount of water consumed by each customer, but also, upon information and belief, to “step-down” a 3” distribution main to a residential service line.

Mr. Hill's proposal contemplates that the master meter will be placed at the end of Todd County Water District's existing 3” line on McPherson Road, roughly 400 feet from the beginning of Forest Hills Lane. Todd County Water District, now a party to this action, has proposed that the master meter be set on the Todd County side of the Todd County/Muhlenberg County line.⁵ Todd

⁵ See Response of Todd County Water District, p. 2 (filed herein on August 6, 2018). Presumably, this course of action would result in Muhlenberg County Water District assuming ownership and operation of all facilities on its “side” of the master meter, including the existing facilities presently owned and operated by Todd County Water District in Muhlenberg County. Thus, as a consequence of the proposed extension of its system, Muhlenberg County Water District would immediately gain at least the six (6) customers in Muhlenberg County presently served by Todd County Water District, in addition to the existing and future homes planned for Mr. Hill's property. These facts further underscore that Muhlenberg County Water District can (and therefore must) reasonably extend its system to serve Mr. Hill's planned subdivision.

County Water District's proposal, in this respect, is consistent with the way Todd County Water District and Muhlenberg County Water District handled a nearly-identical situation involving another nearby subdivision south of Lake Malone, namely Deep Water Estates.

Upon information and belief, service to the Deep Water Estates subdivision was the impetus of the wholesale water purchase agreement dated May 1, 2006 (and filed with the Commission effective July 5, 2006) between Todd County Water District and Muhlenberg County Water District (the "Deep Water Estates Agreement"). Pursuant to the Deep Water Estates Agreement, Todd County Water District agreed to construct a 4" PVC water line to the Todd County/Muhlenberg County line and there install a 3" master meter, which would be used to measure "a quantity of water not to exceed 800,000 gallons per month" sold at wholesale to Muhlenberg County Water District. Muhlenberg County Water District, in turn, constructed (or approved the construction of) distribution lines from the master meter into and throughout the proposed Deep Water Estates subdivision, ostensibly setting a 5/8 x 3/4 inch residential meter for each customer as he or she requested service along the line. Importantly, and further upon information and belief, at no point did Muhlenberg County Water District condition its extension of service to Deep Water Estates on, *e.g.*, a minimum number of customers or gallons consumed from the lines, the payment of line-specific flushing costs, or the proximity/exclusive use of public roads. To Mr. Hill's knowledge, these requirements were not and have not been imposed upon the developers of Malone Meadows or upon Mr. Rocky Cisney or upon any other customer or prospective customer in Muhlenberg County.

Ostensibly, Muhlenberg County Water District agrees that a master meter will need to be placed somewhere along McPherson Road at the point of connection between the two (2) relevant water districts to measure quantity purchased at wholesale.⁶ However, Muhlenberg County Water District also appears to believe that Mr. Hill's usage should be measured by a meter located on McPherson Road, rather than by using the 5/8 x 3/4 inch residential meter necessarily installed at his house and at each house that is constructed along the line in the future. By measuring Mr. Hill's usage using a meter on McPherson Road (approximately 1.1 miles from his actual point of usage), Muhlenberg County Water District believes it can then disclaim—at least temporarily until certain sales thresholds are met—ownership of and responsibility for the 3" water line that will run from the meter along Forest Hills Lane to Mr. Hill's proposed subdivision. This set-up, whereby Muhlenberg County Water District considers the line beyond the meter "private" until such time as it is profitable or convenient to take it over as part of its system, is plainly ridiculous. Not only does it ignore the fact that the same 3" water line is constructed (to Muhlenberg County Water District's specifications and approved by the Kentucky Division of Water, of course, so that the line can later be taken over by Muhlenberg County Water District), but it would likely require

⁶ It is worth noting that, while Mr. Hill has agreed to construct the proposed 3" line extension as his expense (subject to refunds) as set forth in applicable tariff and regulatory provisions, he challenges his responsibility to also pay for the master meter. The master meter is necessary so that Todd County Water District can sell more water at wholesale and Muhlenberg County Water District can expand its service at retail; the cost of the master meter, like those for a water processing facility or storage tank or booster pump station or similar infrastructure, are fundamental costs appropriately recovered through rates applied across the system. It is also worth noting that, under the Deep Water Estates Agreement, Todd County Water District was responsible for the cost of the master meter and there was no minimum purchase requirement. Because it is reasonably likely (and perhaps even relatively certain) that both water districts will experience increased revenue, *ad infinitum*, as a result of Mr. Hill's investment in the expansion of Muhlenberg County Water District's system, it is not unreasonable that they invest in the master meter.

Mr. Hill to become the proprietor and provider of potable water through a “private” water line until the Water District decides it should do the very job it exists to do.

Consistent with the letter and spirit of Muhlenberg County Water District’s Tariff (which contemplates system extensions to planned subdivisions and does not require anything like that which Muhlenberg County Water District has attempted to impose upon Mr. Hill), as well as the Water District’s historical practices, the proposed extension of Muhlenberg County Water District’s system, including the placement of meters, is reasonable as proposed by Mr. Hill.

William C. Hill
Case No. 2017-00316
Commission Staff's Post Conference Request for Information

5. Provide the legal argument and support or dissent for installing a 3-inch line and a meter at McPherson Road to utilize for providing water service to Mr. Hill's existing home with the intention of moving the meter closer to the subdivision as homes are built on the lots in the subdivision.
 - a. Discuss the exact location of the meter, the cost of installing and alternatives.
 - b. Discuss what factors would be used to determine when the meter would be moved and specifically, how many homes would need to be built before moving the meter.
 - c. Discuss whether Muhlenberg District or Todd District would install the meter.

Response:

Please see Mr. Hill's Response to Item 4 of this Request for Information.

Mr. Hill seeks to finance and construct an extension of Muhlenberg County Water District's system to include his planned subdivision on Forest Hills Lane. No matter where meters are placed, Mr. Hill intends to construct the same 3" line from the point of connection with Todd County Water District to and along Forest Hills Lane until it terminates at the northerly reach of his planned subdivision.

Pursuant to the Water District's Tariff, Rules and Regulations, Section U, Ownership of Mains, Services, and Appurtenances, all mains and "[a]ll service lines from the main to the meter with appurtenances are and shall remain the property of the utility, whether installed by the utility or the customer." Section U(1) & (2). Ostensibly in light of this provision, Muhlenberg County Water District desires to sell Mr. Hill water measured by a meter on McPherson Road, approximately 1.1 miles from the home that presently exists on his property, so that it need not technically extend its system to include the 3" water line constructed (to the Water District's specifications) by Mr. Hill. Muhlenberg County Water District would like to keep this arrangement in place for some amount of time, apparently until enough gallons are consumed from the 3" line to make flushing unnecessary and thus render the extension immediately profitable for the Water District. Of course, once houses are established and the Water District decides to directly provide utility service to these Muhlenberg County citizens, it can expect to earn revenue from those customers, essentially forever.

- a. Mr. Hill anticipates that, following the extension of the Water District's system to include his planned subdivision, the water usage of the home on his property will be measured by a 5/8 x 3/4 inch residential meter placed between the 3" water line extension near the home and the smaller residential line serving the home. Mr. Hill expects to pay a tap-on/connection charge and pay the rates as outlined for such a meter in Muhlenberg County Water District's tariff.

The only other apparent alternative for placement of the meter measuring Mr. Hill's usage is at the intersection of McPherson Road and Forest Hills Lane. Essentially, this

arrangement entirely ignores that a subdivision is planned; it attempts to treat the 1.2 mile 3" line as "private" and thus would not be an extension of the Water District's system to include Mr. Hill's planned subdivision, but rather an extension of the Water District's system some 400 feet along McPherson Road to Forest Hills Lane (assuming the master meter is placed where Todd County Water District's existing 3" line terminates, and not at the Todd/Muhlenberg County line as proposed by Todd County Water District). It is unclear to Mr. Hill what the size, type, or cost of a meter placed on McPherson Road would be; however, it would almost certainly be temporary, as it will not be used or useful once Muhlenberg County Water District decides the line is profitable, takes over the line, and utilizes for measurement the already-installed 5/8 x 3/4 inch residential meters at each customer premises in the subdivision (including Mr. Hill's existing house).

- b. For the reasons discussed herein, initially measuring Mr. Hill's usage from a meter on McPherson Road, only to abandon that meter and assume responsibility for the 3" line extension when sufficient customers are added to eliminate whatever flushing the line may require, is inconsistent with the Water District's tariff, contrary to the Water District's past practices, and fundamentally unreasonable.

If for some reason the meter measuring Mr. Hill's usage is placed initially at McPherson Road, it should not be used once a second customer connects to the 3" line in Mr. Hill's planned subdivision. Each home will undoubtedly have a 5/8 x 3/4 inch residential meter in place to permit and measure its individual consumption, and it is

unreasonable to require Mr. Hill to become a private provider of potable water to even one (1) home, especially when Muhlenberg County Water District forced no such requirements on other customers or developers. Again, however, considering the 3” line “private” (and thus Mr. Hill’s responsibility) until a second customer is added (at which point it becomes part of Muhlenberg County Water District’s system) makes little sense.

- c. The 3” line extension proposed by Mr. Hill is to be owned and operated by Muhlenberg County Water District as part of its system, and thus that Water District would install and own the individual meters used to measure retail usage off its system. With respect to the master meter that measures Todd County Water District’s wholesale sales to Muhlenberg County Water District, it is unclear which utility should agree to install the master meter. As aforementioned, under the Deep Water Estates Agreement, Todd County Water District apparently paid for and installed the master meter as seller; however, in its Response filed herein on August 6, 2018, Todd County Water District stated that the master meter (estimated to cost between \$8,000 and \$10,000) should be paid for by Muhlenberg County Water District or Mr. Hill. Presumably, the master meter will be owned and maintained by Todd County Water District as seller.

