

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

**In The Matter Of:**

**THE APPLICATION OF THE  
MARTIN COUNTY WATER  
DISTRICT FOR ALTERNATIVE  
RATE ADJUSTMENT**

**Case No. 2018-00017**

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**MARTIN COUNTY CONCERNED CITIZENS, INC.’S CORRECTED RESPONSE  
TO MARTIN COUNTY WATER DISTRICT’S MOTIONS FOR CLARIFICATION  
AND REVISED SCHEDULE OF IMPLEMENTATION**

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The Martin County Concerned Citizens, Inc. (“MCCC”) by and through counsel hereby submits this Response to Martin County Water District’s (“MCWD” or “the district”) Motion for Clarification and Motion for Revised Schedule of Implementation submitted on December 7, 2018 in response to the Commission’s November 5, 2018 Order in this matter.

In general, MCCC believes that the Commission’s November 5 Order is fair, well-reasoned, and clear. The substantial increase in rates ordered by the Commission is a significant hardship for many in MCWD’s service area, especially those living on fixed incomes. But, the Commission is right; the system is “in crisis and on the verge of collapse.” (Nov. 5, 2018 Order, 19.) The Commission’s Order and Chairman Schmitt’s Concurrence demonstrate that the Commission considered the possibilities and chose the least bad of its options — to grant MCWD the substantial rate increase needed to ensure the continued operations of the district, but, in doing so, to require that the district be taken over by outside management. The takeover is necessary, as the Order explains, to “change the culture” of the district and to ensure that an infrastructure improvement plan is developed and implemented to reduce the district’s significant unaccounted-for water loss. As the Order notes, the district has been made aware of

the need to hire qualified management and develop and implement an infrastructure improvement plan, but consistently failed to do so. (*See* Nov. 5, 2018 Order, 10-11.)

Paragraph 4 of the November 5 Order sets forth a clear schedule for compliance with the steps necessary to obtain contract management and develop a plan for the repair, replacement, and maintenance of the water distribution system. (Nov. 5, 2018 Order, ¶4, pp. 21-22.) In particular, that paragraph sets an initial deadline of January 30, 2019 by which the district is to have issued a Request for Proposals (“RFP”), which is to include a specific solicitation of proposals from the entities listed in Appendix B of the Order; received, evaluated, and ranked RFP responses; and submitted a report to the PSC. It now appears from the district’s motion that the district will be unable to comply with that initial deadline.

Given MCWD’s failures in the past to meet Commission deadlines in this matter and in the related investigation, MCCC has been concerned that the district will be unable or unwilling to comply with the January 30<sup>th</sup> deadline and would thereby risk receivership proceedings. On November 29, 2018, MCCC sent an Open Records Request to the district asking for, *inter alia*, its communications with Greg Heitzman. (*See* Exhibit 1.) MCCC issued that request out of concern that nothing had been said about the development and issuance of an RFP in the three and one-half weeks between November 5 and November 29. MCWD responded stating, “[d]ue to the District having to work on ongoing crisis management issues, we will reply within thirty (30) days, and not later than December 28, 2018.” (*See* Exhibit 2.) MCCC determined that it would be counterproductive to appeal MCWD’s request for an extension to the Office of Attorney General. MCCC hopes that it may now learn more about the district’s work to develop and issue the RFP through the testimony of Greg Heitzman at the December 20 hearing.

The district’s ability to meet the January 30, 2019 deadline may have been somewhat

compromised by the resignation of the district's Chair of the Board of Commissioners, John Horn. On December 5, 2018, at a special meeting of the MCWD board, Jimmy Don Kerr was named acting chair of the board. MCCC has had a good working relationship with Mr. Kerr and is supportive of Mr. Kerr's role as chair. Given the significant and necessary change in leadership of the district and given the fact that it is clear that the district cannot comply with the January 30, 2019 deadline, MCCC will not oppose a one- to two-month extension of that initial deadline, so long as the district completes all tasks set forth in paragraph 4 of the November 5 Order by the new deadline.

MCCC objects to the two-step process set forth in paragraph 6 of MCWD's Motions. In particular, the addition of a separate step for accepting letters of interest and qualifications is unnecessary and adds significant time to the overall contracting process. In addition, given the district's repeated failures to meet deadlines in the past and the critical need for outside management to assume operations as soon as possible, MCCC objects to any extension of the November 5, 2019 deadline for full contracted operations to begin.

Furthermore, MCCC seeks to ensure that it has to opportunity to participate in both the selection of the contract management entity and the development of the contract with that entity. Acting Chair Jimmy Don Kerr has expressed his desire that the citizens group be included in the process. MCCC appreciates the Mr. Kerr's recognition of the need to include the citizens in the process and intends to participate. MCCC assumes that, in addition to the work that it intends to do with the district in advising the district in selecting a management company and developing a contract with that company, it will have the opportunity to provide formal comments for the Commission's consideration on both the district's report of its proposed rankings of RFP responses and its final plan "for the retention and compensation of contract management and the

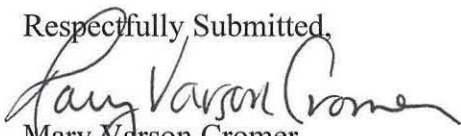
repair, replacement, and maintenance of its water distribution system.” (See Nov. 5, 2018 Order, ¶5, p. 20.)

Finally, MCCC would like to address one additional issue raised in the district’s Motions. MCWD seeks clarification of the scope of services it is to solicit in the RFP. MCCC believes that the Order is clear in requiring the district to seek full “operational management services” rather than just an outside general manager. (See Nov. 5, 2018 Order, ¶4a, p. 22.) While it may be preferable and expedient for a contract management company to retain employees of the district for its operations, those decisions must be made on a case-by-case basis to ensure that the changes implemented are sufficient to change the culture of the organization.

#### **CONCLUSION**

MCCC submits this response to MCWD’s Motions for Clarification and for a Revised Schedule of Implementation. MCCC intends to participate in the hearing that is to be held on MCWD’s Motion on December 20, 2018 at 9:00 AM.

Respectfully Submitted,



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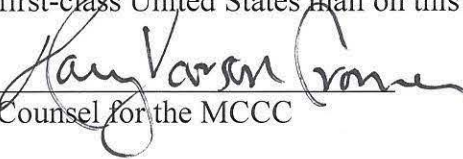
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*Counsel for MCCC*

### **CERTIFICATE OF SERVICE**

This is to certify that the foregoing copy of the Corrected Response to Motions for Clarification and Revised Schedule of Implementation in this action is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on December 13, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is sent to the Commission via first-class United States mail on this day.

  
Counsel for the MCCC

# **EXHIBIT 1**

# APPALACHIAN CITIZENS' LAW CENTER, INC.

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November 29, 2018

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Jimmy Don Kerr, Treasurer  
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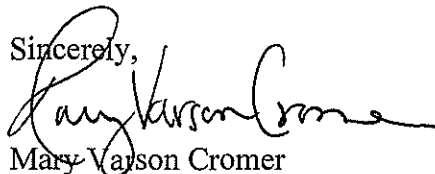
Dear Sirs,

On behalf of my client, Martin County Concerned Citizens ("MCCC"), I submit this Open Records Request pursuant to KRS 61.870, et seq. for the following:

1. All records of communication between MCWD and BlueWater Kentucky and/or Greg Heitzman from September 21, 2018 to the present; and
2. All records of communication between MCWD and the Big Sandy ADD from September 21, 2018 to the present.

Please respond in writing via electronic or US Mail within three days of receipt of this request as is required by KRS 61.880(1). If possible, please provide copies of the materials requested electronically to me at the email address above.

If any of the materials requested are non-existent, please state so affirmatively. If the board wishes to claim an exemption for any of the materials requested, please state the basis of the exemption and describe the material(s) withheld in sufficient detail such that MCCC can determine the propriety of the claimed exemption.

Sincerely,  
  
Mary Varson Cromer

## **EXHIBIT 2**





## BRIAN CUMBO

ATTORNEY AT LAW

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ADMITTED IN KY AND WV

November 29, 2018

Hon. Mary Varson Cromer  
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317 Main Street  
Whitesburg, KY 41858

*Via Email: [mary@appalachianlawcenter.org](mailto:mary@appalachianlawcenter.org)*

RE: Open Records Request dated November 29, 2018

Dear Ms. Cromer:

Please be advised that I am in receipt of your open records request dated November 29, 2018.

Due to the District having to work on the ongoing crisis management issues, we will reply within thirty (30) days, and no later than December 28, 2018.

If you have any questions or concerns, please do not hesitate to contact my office.

Very truly yours,

BRIAN CUMBO

BC/ld

cc: Martin County Water District