

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESAL
WATER SERVICE RATES OF THE CITY OF PIKEVILLE)
MOUNTAIN WATER DISTRICT) Case No. 2019-00080
)

MOTION TO COMPEL

Mountain Water District (MWD), by counsel, submits this motion to compel responses to its discovery request of July 1, 2019. Pursuant to the Commission's order of June 10, 2019, MWD submitted data requests to Pikeville. Questions 52, 53, and 54 request information about the expenses, including the profit calculation included in Utility Management Group's (UMG) water management contract. The information requested by MWD is comparable that requested by the Commission in its Second Data Request to Pikeville, Item 24. Pikeville declined to provide the information, instead submitting a letter from UMG stating that the information is not public and will not be provided. See Pikeville Response to Items 52, 53 and 54 to MWD's First Data Request and Pikeville's Responses 24 to the Commission's Second Data Request filed on July 15, 2019. A copy of UMG's letter refusing to provide the requested information is attached as exhibit 1.

While the Commission's Rules of Procedure are generally silent upon discovery, the Kentucky Civil Rules make clear that scope of discovery is quite broad. If the requested material appears reasonably calculated to lead to discovery of admissible evidence, then the request is relevant. In the Matter of: The Application of Kentucky-American Water Company for Certificate of Public Convenience and Necessity Authorizing the Construction

of Kentucky River Station II, Associated Facilities and Transmission Main, Case No. 2007-00134, Order, 15 November 2007.

Further, the Commission has recognized the standards for discovery stated in Kentucky Civil Rule 26.02 (1).

It is well-settled that discovery rules are to be liberally construed so as to provide the parties with relevant information fundamental to proper litigation. While not binding on the Commission, nonetheless, the Commission finds persuasive Kentucky Civil Rule 26.02 (1). In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2004 to October 31 2006, Case No. 2006-00509, and In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from November 1, 2004 to October 31, 2006, Case No. 200600510, Order, 9 May 2007.

Kentucky Civil Rule 26.02 (1) states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence.

The information sought by MWD and the Commission falls within the scope of permissible inquiry consistent with the authority under Civil Rule 26.02 (1). It is the city's burden to demonstrate that the request is exempt from disclosure and to cite specific grounds in support of its contention. Where a party objects to the request, the burden is upon the objecting party to demonstrate that the request is improper. In the Matter of: The Application of Kentucky-American Water Company for a Certificate of Public Convenience

and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main, Case No. 2007-00134, Order, 15 November 2007. Pikeville has not asserted any grounds for the requests being improper.

The Commission admonished MWD about this same issue in Case No. 2014-00342, data request 18, dated February 27, 2015, page 10:

18. Refer to Mountain District's responses to Staff's Second Request, Items 22 and 23. **The burden is on Mountain District to show that UMG's contract fee is reasonable.** Provide copies of any study or analysis that Mountain District has that supports its position that the UMG contract fee is reasonable. (Emphasis added).

As in that case, the burden in this case is on Pikeville to prove the reasonableness of the contract services provided by UMG. A mere refusal by UMG to provide the information is not a valid basis for withholding the information.

A significant portion of Pikeville's expenses related to the cost of service to MWD is charges by UMG. Apparently embedded in the reimbursement by Pikeville to UMG is a profit margin. Without knowing that margin, it is impossible to determine if the individual expenses allocated to MWD are reasonable.

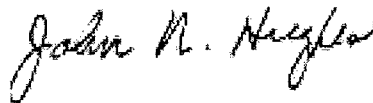
The Commission has recently recognized the need for disclosure of a utility contractor's profit. In Martin County Water District, Case No. 2018-00017, the Commission ordered Martin to solicit bids for a contract operator. Included in Martin County's RFP for potential contractors is a schedule of line item expenses, including specific lines for overhead and profit. See attached exhibit 2, lines 15 and 16. It is obvious from this expense listing that the Commission wants to know the profit earned by the contractor. There is no reason that same information is not relevant to this proceeding.

Pikeville has not asserted any objection to the requested information. It simply states that UMG does not want to disclose it. UMG is not a party to this case. It has no standing to assert any objection to the discovery request. Failing to require the disclosure would provide an opportunity for future municipal applicants to refuse to provide information that is undisputedly necessary for the determination of the reasonableness of the proposed simply because a supplier does not want to cooperate.

Pikeville has based its cost of service study on expenses owed to UMG for operation of the water distribution system. A significant portion of those expenses has been allocated to MWD. Without the requested information, MWD and the Commission itself, cannot accurately assess the accuracy, validity or reasonableness of the expenses.

For these reasons, MWD requests an order compelling Pikeville to provide responses to Items 52, 53 and 54 of its first data request.

SUBMITTED BY:



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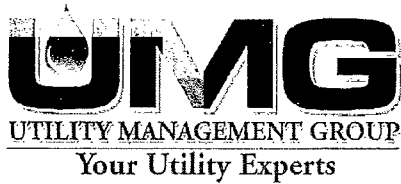
Attorneys for Mountain
Water District

Certification:

I certify that the electronic filing is a complete and accurate copy of the original documents to be filed in this matter, which will be filed within two days of this submission and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

John R. Heyle

EXHIBIT 1



July 12, 2019

Re: UMG Cost of Operations for Waterplant and Distribution

Dear Phillip Elswick

UMG will supply the City the cost that UMG incurs with the operation and maintenance of Pikeville's water treatment plant and water distribution system. It will include the cost of labor, fringe benefits, chemicals, fuel etc. It will also include the allocated cost of the overhead with company profit margin.

UMG will not supply any information concerning the company's balance sheet or cost of any other service that we supply to the city or names of employees.

We are a private company and supplying the necessary information to determine the cost of operating and maintaining the water plant and distribution system will be made available.

Sincerely,

A handwritten signature in cursive script that reads 'Greg May'.

Greg May
Chief Operating Officer

287 Island Creek Road - Pikeville, Kentucky 41501
Phone: 606-437-4754 - Fax: 606-437-5083

EXHIBIT 2

MODIFIED APPENDIX A1

WATER COST PROPOSAL WORKSHEET

(Excel Spreadsheet available in Electronic Resource Library)

ATTACHMENT A1 (revised)- MARTIN COUNTY WATER DISTRICT					
COST PROPOSAL					
Contractor:					
Date:					
Submitted By:					
Signature Line:					
Category:	Contract Year ==>	Year 1	Year 2	Year 3	Total
Annual Services					
1. Labor Costs		\$ -	\$ -	\$ -	\$ -
2. Labor Related Overhead		\$ -	\$ -	\$ -	\$ -
3. Purchased Water		\$ -	\$ -	\$ -	\$ -
4. Power (Treatment and Pumping only)		N/A	N/A	N/A	N/A
5. Chemicals (Treatment only)		\$ -	\$ -	\$ -	\$ -
6. Maintenance and Repair-		\$ -	\$ -	\$ -	\$ -
7. Equipment		\$ -	\$ -	\$ -	\$ -
8. Materials and Supplies		\$ -	\$ -	\$ -	\$ -
9. Utilities, Rental, Leases		\$ -	\$ -	\$ -	\$ -
10. Professional Contract Services		\$ -	\$ -	\$ -	\$ -
11. Miscellaneous Contract Services		\$ -	\$ -	\$ -	\$ -
12. Insurance and Bonds		\$ -	\$ -	\$ -	\$ -
13. Other (Contractor to specify)		\$ -	\$ -	\$ -	\$ -
14. Other (Contractor to specify)		\$ -	\$ -	\$ -	\$ -
15. Other (Contractor to specify)		\$ -	\$ -	\$ -	\$ -
14. Sub-Total Cost of Services		\$ -	\$ -	\$ -	\$ -
15. Overhead Percentage (insert %)	0.00%	\$ -	\$ -	\$ -	\$ -
16. Profit Percentage (insert %)	0.00%	\$ -	\$ -	\$ -	\$ -
17. Total Annual Cost of Service		\$ -	\$ -	\$ -	\$ -
Other Services:					
18. Management and Infrastructure Plan-		\$ -	N/A	N/A	\$ -
19. Capital Improvement Plan		N/A	N/A	N/A	N/A
20. Water Rate Study		N/A	N/A	N/A	N/A
21. Total Other Services Cost-		\$ -	N/A	N/A	\$ -
NOTES:					
1. Contractor should fill in each yellow cell. The green cells will automatically calculate the sum.					
2. Year 1 (FY2020) begins July 1, 2019; Year 2 (FY 2021) begins July 1, 2020; Year 3 (FY 2022) begins July 1, 2021.					
3. Year 2 (FY2021) and Year 3 (FY2022) entries must include any increase in annual costs from prior year.					
4. Other Services Cost (Items 18,19,20) are a one time total cost to provide the services requested and includes overhead, markup and profit.					
5. The Contract Year will begin on the operations start date identified in the Contract.					
6. Addendum #1 removes the cost of power for water operations from the Scope of Work. MCWD will pay the power costs directly.					
7. Addendum #1 removes the Capital Improvement Plan (line 19) and the Water Rate Study (line 20) from the scope of work.					
8. Addendum #1 notifies Contractor that Year 4 and 5 costs will be adjusted using the CPI-U for Water and Wastewater Services.					

MODIFIED APPENDIX A2
WASTEWATER COST PROPOSAL WORKSHEET
(Excel Spreadsheet available in Electronic Resource Library)

ATTACHMENT A2 (revised)- MARTIN COUNTY SANITATION DISTRICT					
COST PROPOSAL					
Contractor:					
Date:					
Submitted By:					
Signature Line:					
Category:	Contract Year ==>	Year 1	Year 2	Year 3	Total
Annual Services:					
1. Labor Costs		\$ -	\$ -	\$ -	\$ -
2. Labor Related Overhead		\$ -	\$ -	\$ -	\$ -
3. Purchased Water		\$ -	\$ -	\$ -	\$ -
4. Power (Treatment and Pumping only)		N/A	N/A	N/A	N/A
5. Chemicals (Treatment only)		\$ -	\$ -	\$ -	\$ -
6. Maintenance and Repair-		\$ -	\$ -	\$ -	\$ -
7. Equipment		\$ -	\$ -	\$ -	\$ -
8. Materials and Supplies		\$ -	\$ -	\$ -	\$ -
9. Utilities, Rental, Leases		\$ -	\$ -	\$ -	\$ -
10. Professional Contract Services		\$ -	\$ -	\$ -	\$ -
11. Miscellaneous Contract Services		\$ -	\$ -	\$ -	\$ -
12. Insurance and Bonds		\$ -	\$ -	\$ -	\$ -
13. Other (Contractor to specify)		\$ -	\$ -	\$ -	\$ -
14. Other (Contractor to specify)		\$ -	\$ -	\$ -	\$ -
15. Other (Contractor to specify)		\$ -	\$ -	\$ -	\$ -
14. Sub-Total Cost of Services		\$ -	\$ -	\$ -	\$ -
15. Overhead Percentage (insert %)	0.00%	\$ -	\$ -	\$ -	\$ -
16. Profit Percentage (insert %)	0.00%	\$ -	\$ -	\$ -	\$ -
17. Total Annual Cost of Service		\$ -	\$ -	\$ -	\$ -
Other Services:					
18. Capital Improvement Plan		N/A	N/A	N/A	N/A
19. Water Rate Study		N/A	N/A	N/A	N/A
20. Total Other Services Cost		N/A	N/A	N/A	N/A
NOTES:					
1. Contractor should fill in each yellow cell. The green cells will automatically calculate the sum.					
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