

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

**IN THE MATTER OF:**

<b>ELECTRONIC INVESTIGATION INTO</b>	)	
<b>WHOLESALE WATER RATES CHARGED BY</b>	)	
<b>THE CITY OF CARLISLE TO SHARPSBURG</b>	)	
<b>WATER DISTRICT AND NICHOLAS COUNTY</b>	)	<b>CASE NO. 2021-00382</b>
<b>WATER DISTRICT PURSUANT TO KRS 278.200,</b>	)	
<b>KRS 278.160, KRS 278.180, KRS 278.190 AND</b>	)	
<b>KAR 5:011</b>	)	

**RESPONSE OF THE CITY OF CARLISLE, KENTUCKY  
TO ALLEGATIONS IN PSC ORDER OF 20 OCT 2021**

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Come now City of Carlisle, by counsel, (City), and for its Response to the allegations contained in the PSC Order of 20 OCT 2021 states as follows:

1. What is alleged there is hereby contested in its entirety.

2. The basis of jurisdiction in this matter, both as reflected in the PSC letter to Carlisle of 16 AUG 2021, attached as Exh 1, less attachments, and its Order, is unquestionably the cited case of *Simpson County Water District v. City of Franklin, (Simpson)*, 872 S.W.2d 460 (Ky. 1994), which case is simply not on point, as follows. In *Simpson* the facts are not in dispute that the City of Franklin was abusing its monopoly on the sale of water to the water district, and unilaterally raising its rates to the out-of-city customer district, which was in no position to do anything other than pay the increased rates as KRS then pointedly defined a city utility as outside of PSC jurisdiction.

The rates and services exception effectively insures, throughout the Commonwealth, that any water district consumer/customer that has contracted **and become dependent for its supply of water from a city utility** is not subject to either excessive rates or inadequate service. *Simpson*, At 465. Emphasis added.

The City of Franklin had used its monopoly position to exact money from the District, in a manner that did not change its rates for its city and other direct customers.

The City's unilateral adoption of the two water-rate ordinances doubled the water charge and, in no uncertain terms, was an act that directly

related to rate charged by the water district. At. 464.

Neither Nicholas County Water District (NCWD) nor Sharpsburg Water District (Sharpsburg) is dependent upon Carlisle for potable water for resale to their customers, respectively. In fact and law, the buyers are in a “free market,” can chose from whom to buy water, while the seller is in a regulated economy and must sell at a rate below its cost. The “freedom” that a district enjoys under *Simpson* is from “excessive rates or inadequate service.” How can imposition of a rate less than any of the other wholesale suppliers to the water districts here be “excessive?” and how is the regulated status of Carlisle *vis-a-vis* the free market status of the districts fair and equitable to the citizens of Carlisle who find themselves subsidizing the water purchases of their neighbors?

3. Both NCWD and Sharpsburg have multiple sources of supply, and Carlisle’s proposed rate in the referenced tariff is less than that Sharpsburg pays to Bath County, \$2.02 *vice* \$3.66, and less than the NCWD pays its next cheapest supplier, Western Fleming at \$2.14, and the average of its three (3) other suppliers, \$3.12, all per thousand gallons. Please take notice of PSC filed documents by Sharpsburg and NCWD reflecting these rates.

4. The NCWD most recent tariff reflects in its Contents Para #G a “Wholesale Rate” but which is rate left out of the tariff itself. Carlisle, on information and belief, alleges that NCWD is using the lower rate charged by Carlisle to “wheel” its purchased water to its wholesale customer or customers, to wit: Harrison County Water District (HCWD), thus abusing its free market position at the expense of Carlisle. Records in the possession of the PSC which justify water rates by the regulated NCWD, Sharpsburg, and HCWD will either prove or disprove this allegation.

5. Additionally, NCWD is estopped from contesting this rate, as the Mayor of Carlisle appeared at its Board meeting of 27 JUL 2021, presented the case for a higher rate, the parties bargained, and its Board of Directors agreed to the new rate. “The Board has agreed to the requested rate increase and recognizes the need for the city to increase the rate.” See Exh 2 and Exh 3, attached hereto. As the other items in the tendered and signed by NCWD Contract were neither discussed nor agreed to by the City, it remains unexecuted by the City. Any renegotiated contract by Carlisle will contain “take or pay” provisions for its wholesale customers.

6. As to its COLA increase on an annual basis, this is pursuant to City of Carlisle Ordinance 6-2000, attached as Exhibit 4, amended Ordinance 2-2005, Exh. 5, and is applied to all of its customers, the direct customers both in and outside the city limits, and its wholesale customers NCWD and Sharpsburg. On information and belief, the PSC has allowed both of these

regulated utilities to pass this along under the purchased water adjustment procedure, notwithstanding its “reluctance” to so do regarding a COLA based on the CPI. This acquiescence and acceptance by the PSC cannot be “un-done.”

7. The PSC is asked to take judicial notice of the case of *Commonwealth vs Ann Brierly*, Nicholas Circuit Court Action 19-CR-000 in which Ms. Brierly plead guilty to embezzlement of City of Carlisle funds while she was in the position of City Clerk Treasurer, an office she held between 2012 and 2018, attached as Exh 6. During such time, Clerk Brierly repeatedly either refused or was unable to compile the City’s financial records in a manner that would have enabled an annual audit of the financial position of the City as required by Kentucky Revised Statutes, thus concealing her fraud, but also leaving the City in a position of being unable to seek a rate increase from the PSC, as a current audit is a prerequisite to starting such a case. Mayor Ronnie Clark, upon taking office in December 2019, immediately sought to remedy this failure, and audits for the missing fiscal years, 2012-2013 thru 2019-2020 have been completed, and 2020-2021 is in progress. It was during the course of these “missing” audits that the defalcation of the City Clerk, Ann Brierly, was discovered. These audits will be provided in the data dump requested by the PSC 25 OCT 2021.

8. The PSC states it must determine “the reasonableness” of the rates in the proposed tariff, based on investigation.

a. Attached hereto is Ordinance 3-1992, enacted 11 MAY 1992, in which the rates in its NCWD contract were established. Exh. 7. The Contract with the NCWD is included in PSC Order as an Exhibit, was executed over twenty-eight (28) years ago, and used the rates from Ordinance 3-1992.

b. Attached hereto is Ordinance 7-1988, enacted 7 OCT 1988, Exh. 8, which rates were used to contract with Sharpsburg on 12 NOV 1989. Exh. 9. At the request of Sharpsburg, the contract term was extended to accommodate bonded waterline extensions on 13 NOV 1989, and again on 12 APR 1995, with no concomitant change in the rates charged Sharpsburg.

c. Included with the Order is Carlisle’s current tariff, issued 21 FEB 2019, effective 1 JUL 2003, filed with the PSC 18 MAR 2019. It was provided by the Mayor at the request of the PSC as apparently no tariff was on file, coupled with the lack of a change in its wholesale rates triggered such request, but the lack of audits as shown above prevented a full-blown rate increase case from being filed. This tariff reflects nothing more than the rates in Ordinance 2-2005, Exh. 5,

with rates adjusted by the annual COLA as set out above. No later ordinance of the City was found establishing wholesale or retail water rates.

9. It is respectfully submitted that it should take little to no investigation to determine Carlisle’s wholesale water rates are inadequate to compensate the City of Carlisle, woefully out of date, and that an adjustment in its wholesale rate as set out in its proposed tariff, as supported by what is provided here, should stand.

Based on the foregoing, it is respectfully requested that the PSC Order that the Tariff filed by the City of Carlisle, which is the subject matter of this case, be filed effective on the date filed.

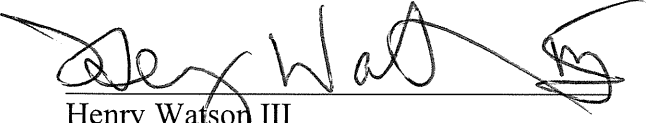
Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that the electronic filing has been transmitted to the Commission on November 9, 2021, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.



Henry Watson III  
Counsel for the City of Carlisle