

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF MARTIN COUNTY ) CASE NO.  
WATER DISTRICT FOR AN ALTERNATIVE ) 2018-00017  
RATE ADJUSTMENT )

ORDER

On January 16, 2018, Martin County Water District (“Martin District”) filed an application (“Application”) with the Commission requesting to adjust its rates for water service pursuant to the alternative rate adjustment procedure for small utilities, 807 KAR 5:076. In the cover letter accompanying its Application, Martin District requested that emergency rates be permitted, pursuant to KRS 278.190(2), while the Commission completed its review of the rate application. On January 26, 2018, a public hearing was held at the Commission’s offices in Frankfort, Kentucky, for the purpose of addressing Martin District’s request for interim rate relief. Evidence was taken for the purpose of determining whether the request for interim relief met the standard set forth in KRS 278.190(2). That standard requires the Commission to make findings that Martin District’s credit or operations will be materially impaired or damaged if all or a portion of the proposed rates are not permitted to become effective during the further review of the rate application.

At the hearing, the Commission granted Martin County Concerned Citizens, Inc.’s (“MCCC”) motion to intervene, and memorialized that decision in an Order entered on February 2, 2018. Prestonsburg City’s Utilities Commission (“PCUC”) filed

its motion to intervene on February 26, 2018, and was allowed to participate in the February 28, 2018 hearing in the interest of developing the evidentiary record, pending a decision on its motion to intervene. However, PCUC's motion to intervene should be denied as moot based upon PCUC's limited connection to this matter as a creditor, and the subsequent representations to the Commission that PCUC and Martin District have reached a tentative agreement upon the proposed "Tank Lease and Water Supply Agreement" regarding the Honey Branch Storage Tank and infrastructure. As of the date of this Order, no other party has moved to intervene.

On February 28, 2018, a second hearing was held in this matter for the purpose of obtaining additional information from Martin District regarding its emergency rate request. On that same date, a public hearing was held to hear testimony and take evidence in Case No. 2016-00142.<sup>1</sup>

### DISCUSSION

At the public hearing on January 26, 2018, the Commission heard public comment from Nina McCoy, a spokesperson for MCCC, who described the then-current and critical situation of many customers being without water service for an extended period of time. Ms. McCoy described customers not being able to bathe and schools not able to operate due to the lack of water. Ms. McCoy also stated that customers are concerned about a rate increase because of a lack of trust of Martin District, and that a rate increase would have a negative impact on one of the poorest counties in Kentucky. Ms. McCoy asked for transparency and an explanation of how Martin District's funds are

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<sup>1</sup> Case No. 2016-00142, *Investigation of the Operating Capacity of Martin County Water District Pursuant to KRS 278.280* (Ky. PSC Apr. 11, 2016), was incorporated into the case record of this proceeding by Order on January 22, 2018.

utilized.<sup>2</sup> In addition to the comments by Ms. McCoy, the Commission acknowledges multiple public comments opposing a rate increase filed into the record of this proceeding.<sup>3</sup> The Commission also took administrative notice of the increased national media attention being focused on the inhumane conditions created by water outages and the substandard condition of the water service in Martin County.<sup>4</sup> Finally, due to the record developed in Case No. 2016-00142, the Commission is aware of the history of Martin District's ineffective management and financial status. To expedite the review of Martin District's request for emergency rate relief, the Commission incorporated by reference the record of Case No. 2016-00142 into the record of this proceeding.<sup>5</sup>

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<sup>2</sup> January 26, 2018 H.V.T. at 7:52.

<sup>3</sup> Public Comments: Alma Meade, 1/10/18; Paul Morrison, 1/19/18; Wayne Preece, Ernest and Luann Dials, Paul and Kimberly Evans, Jami Mollette, Ricky Endicott, Michael Maynard, Brian Preece, Zola Howell, David and Anna Wolf, 1/20/18; Cheryl Maynard, 1/21/18; Denise Endicott, Thelma Davis, Phillip Smith, Jack Harmon, Ernest Dials, Edward Gess, Charlie Speer, Clinton Raines Jr, Linda Smith, Shelby J. Adkins, Henry Jarrell, Rory Bialecki, 1/22/18; Anna Stepp, Tammy Alley, James T. Williamson, Rachel Mullins, Pamela Blevins, Danny Crum, Michael Webb, Carl and Mattie Otten, Jimmie Pack, Jennifer Vanover, Aaron Dickey, Rondena Howard, 1/23/18; Connie Adkins, Lowell Dove, Hazel Goble, Leanna Crum, Karen Whitt, Rita Stacy, Alma Meade 1/24/18; Alicia Moore, Marlene Maynard, Tonya Hensley, Malin Holbrook, Larry Maynard, Connie Maynard, Patty Webb, Barbara and Lon Pauley, Jamalyn Maynard, Martha Sweeney, Dallas Sweeney, Rita Stafford, Troy and Ursula Dingess, Rosemary Salmons, Jimmy and Delores Hall, Willa Thompson, Paul Morrison, Sharon Gartin, Joyce H. McBride, Chester Gartin, G.L. Ball, 1/25/18; Clyde Meek, Robert D. Preece, Cathy Smith, Linda Preece, Linda Smith Stayton, 1/26/18; Karen Fitzgerald, Sharlene Jude, Bessie Morrison, Jamie Marcum, Linda Cain, 1/29/18; Delcie Fitch, 1/30/18; Aurelia Howard, Edna Clile, 1/31/18; Bill Harvey, 2/1/18; Wilma Spaulding, Roy Spaulding, 2/2/18; Anonymous Public Comment, 2/12/18; Anonymous Public Comment, 2/12/18; Gary Ball, 2/20/18.

<sup>4</sup> Newspaper Articles and Letters to the Editor: Sister Wilma Spaulding, *What is the county coming to?*, The Mountain Citizen, Wednesday, January 31, 2018; Various anonymous authors, *SoundOff*, The Mountain Citizen, Wednesday, January 31, 2018; Gary Ball, *State's worst water utility*, The Mountain Citizen, Wednesday, January 31, 2018; Nina McCoy, *A victim of official abuse Martin County says 'times up'*, Lexington Herald Leader, Op-ed, Sunday, February 11, 2018; Jenny Jarvie, *The water runs milky and can feel like fire. In this impoverished county, Trump's \$1.5 trillion infrastructure plan may not help*, The L.A. Times, February 12, 2018; Will Wright, *These Kentuckians had no water for weeks. Now officials want to raise rates by half*, Lexington Herald Leader, January 25, 2018, updated January 26, 2018, [www.kentucky.com](http://www.kentucky.com).

<sup>5</sup> Case No. 2018-00017, *Application of Martin County Water District for an Alternative Rate Adjustment*, Order setting Hearing (Ky. PSC Jan. 22, 2018).

At the public hearing on January 26, 2018, Martin District called Linda Sumpter, Martin District's contract accountant, to testify as to Martin District's current financial condition.<sup>6</sup> Ms. Sumpter testified that, in general terms, the financial situation was "critical."<sup>7</sup> According to its 2016 Annual Report, filed with the Commission on August 29, 2017, Martin District experienced a net operating loss of \$873,516.<sup>8</sup> In addition, Martin District's cash balance as of December 31, 2016, was reported to be \$44,727.<sup>9</sup> Martin District introduced an Exhibit that stated the accounts payable balance to be \$808,209 as of December 31, 2017, of which \$616,882 was over 90 days past due, and that Martin District's current payables of \$104,238 exceed its operating cash balance.<sup>10</sup> Ms. Sumpter also gave testimony on the recent events regarding interrupted water service in January 2018, causing Martin District's employees to work 622 overtime hours.<sup>11</sup> Ms. Sumpter described Martin District as barely able to meet payroll and stated that its cash flow was depleted due to paying the electric bill and its power suppliers.<sup>12</sup> Ms. Sumpter gave testimony that Martin District's credit and operations will be materially impaired or damaged if the requested emergency rates are not approved.<sup>13</sup>

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<sup>6</sup> January 26, 2018 H.V.T at 18:31.

<sup>7</sup> *Id.* at 19:49.

<sup>8</sup> *Annual Report of Martin County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2016* ("2016 Annual Report") at 20.

<sup>9</sup> *Id.* at 15.

<sup>10</sup> January 26, 2018 H.V.T. at 21:20, Martin District's Exhibit 1.

<sup>11</sup> *Id.* at 26:15.

<sup>12</sup> *Id.* at 26:34.

<sup>13</sup> January 26, 2018 H.V.T at 35:03

John Glenn Horn, chairman of Martin District's Board of Commissioners, testified that he believed Martin District's financial condition was so dire that, without emergency rate relief, it was not likely it would be able to continue to operate beyond 60 to 90 days.<sup>14</sup> Additionally, Mr. Horn described the events that took place in January 2018, causing the immediate water crisis, and how Martin District's critical financial situation affected its ability to conduct repairs because Martin District was on a "cash-on-delivery" basis with the repair service that had the backup raw water intake pump.<sup>15</sup> Martin District called James Don Kerr, Martin District Board of Commissioners, and Gregory Heitzman, Blue Water Kentucky, to provide further testimony regarding Martin District's financial crisis, and in support of an interim rate increase. Both asserted that Martin District's operations will be materially impaired or damaged if the interim rates are not approved.<sup>16</sup>

Public comment and testimony was given by Nina McCoy on behalf of the MCCC, as its chairperson, at the public hearing on February 28, 2018, in Case No. 2016-00142. The Commission asked Ms. McCoy what the MCCC's position was regarding the rate increase in this matter. She explained that she represented the customers who have historically paid their bills.<sup>17</sup> Ms. McCoy stated that she would prefer to see a temporary rate increase implemented that could be closely monitored,

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<sup>14</sup> *Id.* at 1:17:22.

<sup>15</sup> *Id.* at 1:19:32.

<sup>16</sup> *Id.* at 1:49:08, Kerr testimony and at 1:55:00, Heitzman testimony.

<sup>17</sup> Case No. 2016-00142, February 28, 2018 H.V.T. at 5:15:17.

rather than a permanent base rate increase.<sup>18</sup> She testified that she wanted any money collected to be used to ensure that all customers are paying their bills.<sup>19</sup>

During the second public hearing held on February 28, 2018, for Case No. 2018-00017, Martin District called Linda Sumpter to update the Commission on Martin District's financial situation since the January 26, 2018 hearing. Ms. Sumpter testified that she believed that, despite efforts made by Martin District to rein in expenses after the appointment of the new board members in January 2018, Martin District's financial condition would only support its current level of expenses for another four months.<sup>20</sup> She also testified that the current balance in all of Martin District's unrestricted cash accounts was approximately \$75,000, which included the operational account and payroll account.<sup>21</sup>

The Commission additionally called James Don Kerr, who testified at the February 28, 2018, hearing in Case No. 2018-00017 that Martin District had contacted several banks and discussed a plan to obtain needed financing, which included establishing a relationship with the banks and providing a baseline of information so the lending institutions could assess their progress. Kerr planned to continue his discussions with various lending institutions in order to determine what would be required for Martin District to obtain financing. While he acknowledged that lending institutions declined to provide financing because of Martin District's current financial

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<sup>18</sup> February 28, 2018 H.V.T at 5:17:39.

<sup>19</sup> *Id.* at 5:18:15.

<sup>20</sup> Case No. 2018-00017, February 28, 2018 H.V.T. at 6:20.

<sup>21</sup> *Id.* at 20:40.

condition, Kerr testified that Martin District plans to put policies in place to help it establish credibility that would enable it to obtain financing in the future.<sup>22</sup>

The record shows that Martin District's current state is a result of past conduct, including bad business practices and ineffective management and leadership, that allowed the facilities required to provide adequate, efficient, and reasonable water service to ratepayers to deteriorate without proper maintenance. That past conduct has left Martin District on the brink of financial insolvency and, in its current state, unable to address even immediate routine repairs.

Such conditions certainly increase the difficulty of considering a rate increase. The Commission recognizes the fact that many citizens have been paying their water bills, only to receive water that is alleged to be substandard and service that is inadequate or, as during the most recent crisis, non-existent. The Commission sympathizes with those citizens and notes that Martin District was simultaneously allowing other customers to receive what services there were without collecting payment. The testimony in the record shows that Martin District has recognized the inadequacy of its historic practices and that the new Board of Commissioners has committed to and began to implement better business practices. To resolve the financial and operational problems facing Martin District, the commissioners will need to put forth an effort equal in commitment to that of the Martin County citizens who have worked to call attention to their need for better water service. All citizens of Martin County are affected, and all citizens deserve adequate and reasonable water service around the clock, not just during certain hours of the day. The current problems facing Martin District are significant and resolving them will take both time and a significant

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<sup>22</sup> Case No. 2018-00017, February 28, 2018 at H.V.T. at 1:01:54.

infusion of capital. Absent grant funds, Martin District, like all utilities, must rely upon the rates paid by customers to fund operations and necessary system repairs and improvements.<sup>23</sup>

The Commission receives very few requests for emergency rate relief. When such an application is filed, every detail and potential option is thoroughly reviewed before a decision is issued. The Commission fully recognizes that the majority of Martin District's ratepayers have for years been paying for water service and often not receiving the quality of service to which they are entitled. Thus, it is understandable that there is widespread opposition to any rate increase, including the emergency increase requested in this case. However, the reality of the situation is that, absent some amount of the emergency relief requested, Martin District will be unable to continue operating within 60 to 90 days, leaving every customer with no water service, forcing residential customers to abandon their homes and commercial customers, including schools, to close. While raising water rates clearly places an increased burden upon Martin District's customers, the alternative of not raising rates would create an even greater burden on not only the customers of Martin District but also the entire population of Martin County.

The Commission's decision to grant an emergency rate increase, including one rate surcharge, is made with accompanying critical attention to requiring Martin District

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<sup>23</sup> Martin District has recently been approved for three grants to address some of its infrastructure issues. The first is a \$1.2 million Appalachian Regional Commission grant from the Kentucky Department of Local Government that is designated to fund the replacement of approximately 1,000 service lines and meters. The other grants, announced in late February 2018 by the Kentucky Division of Abandoned Mine Lands, total \$3.4 million and have been preliminarily designated for the installation of a secondary water intake in the Tug Fork River, upgrades to the Crum reservoir dam, and the installation of telemetry on Martin District's water storage and delivery system. It is important to note that all of the grant funding Martin District has been awarded must be used for infrastructure improvements and that none of the grant funds can be used to pay operating expenses, aged accounts payable or other outstanding debt.

to account for every dollar collected and to take all reasonable steps to become a solvent entity that is employing good business practices. In response to public demand for full transparency, and in order to ensure strict oversight of all revenues received by Martin District, the Commission will require a detailed accounting each month, in the public record, of every dollar collected and spent by Martin District. All expenditures of the collected surcharge funds will require advance approval by Commission Order. The Commission is aware that public opinions have been expressed suggesting that receivership may be a better option than a rate increase. However, receivership will neither reduce nor eliminate Martin District's present need for an emergency rate increase to address its critical situation. Martin District, like every other regulated utility, must fund its day-to-day operations from the rates charged to its customers, and the need to fund day-to-day operations continues for a utility for as long as it is operating, even if it is in receivership. If Martin District is unable to timely and adequately address its financial and operational deficiencies, the Commission may have to re-evaluate the option of appointing a receiver.

The Commission is not simply relying on the promises of the new board to improve Martin District; rather, the Commission is requiring Martin District to operate more efficiently and effectively by exercising every administrative power available to ensure that all funds are properly spent and accounted for. Martin District is required to adhere to the Commission Orders to make certain that the ratepayers have transparency and that the Commission has the necessary oversight of Martin District's operations. The Commission will eventually, in the Final Order to this case, require Martin District to file a written plan of corrective action. If Martin District does not adhere

to the requirements in this emergency Order, the Commission will proceed with any administrative means available to it, including, but not limited to, removing the board members pursuant to KRS 74.020, seeking a court-appointed receiver pursuant to KRS 278.021, or opening an investigation into the feasibility of merger pursuant to KRS 74.361.

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that:

1. Based on the present financial condition of Martin District, as presented in its most recently filed annual report, and based on the testimony of Martin District officials and the record, an emergency exists and Martin District's credit or operations will be materially impaired unless an interim rate increase is granted prior to the final Order of the Commission in this proceeding.

2. Based on a review of Martin District's Application and its current financial condition, Martin District should be granted a portion of the requested interim rates sufficient to generate revenues of approximately \$482,071, or 26.46 percent annually. In order to provide strict oversight of the funds, the Commission has structured the interim rate increase as a combination of a base rate increase and a surcharge. Martin District's base rates will be increased evenly across the board by 17.50 percent, generating approximately \$318,884 of additional revenue.

3. In addition, a Debt Service Surcharge is to be used to help Martin District either pay its accounts payable or secure a loan to pay existing past due accounts.<sup>24</sup> The surcharge is estimated to generate approximately \$163,187 annually, an increase

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<sup>24</sup> Application, References at I. This loan amount is anticipated to be \$734,000 with a 5-year term and 4.5 percent interest rate.

of 8.96 percent above current revenue. The surcharge calculated in the Appendix to this Order is based on the current number of Martin District's customers, 3,243, as stated in Martin District's 2016 Annual Report. The amount of the surcharge is per customer, per month. Once Martin District has discharged all accounts payable existing on or before April 1, 2018, Martin District will cease collecting the surcharge.

4. The approved rates will increase a typical residential customer's<sup>25</sup> bill from \$39.90 to \$51.07, an increase of \$11.17, or 27.99 percent.

5. The interim base rate increase shall be subject to refund pending final determination of Martin District's request for permanent rate relief.

6. On the fifteenth of each month, beginning on April 15, 2018, Martin District should provide monthly updates, supported by financial records, to the Commission on Martin District's attempts to identify uncollectibles and write off accounts, and report on its ability to sell any receivables that are over 180 days past due.

7. If it has not done so already, Martin District should be required to revise its termination-of-service procedures so that they are consistent with its current tariff, relating to non-payment of bills, which states that the utility may terminate service for non-payment of charges incurred for utility services, and may terminate service only after five (5) days' written notice of termination is provided, and after twenty (20) days have elapsed since the mailing date of the original unpaid bill.

8. On the fifteenth of each month, beginning on April 15, 2018, Martin District should provide monthly revenue and expense reports to the Commission that show the

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<sup>25</sup> A typical residential customer purchases 4,000 gallons of water per month through a 5/8-inch x 3/4-inch meter.

amount of money collected in each month for its base rates and how each dollar collected is expensed.

9. Martin District should be required to deposit into a separate interest-bearing account the amounts collected from the Debt Service Surcharge, and the proceeds for such shall either be used to pay its accounts payable or to obtain financing for the purpose of doing so. Martin District shall make no disbursement from the surcharge account without first obtaining prior approval in a Commission Order.

10. Martin District should be required to prioritize the payments of its accounts payable by first paying those outstanding obligations that are most critical to Martin District's ability to continue operating and providing water service to the citizens of Martin County. Within 10 days of the entry of this Order, Martin District shall be required to file with the Commission a prioritized list of its accounts payable, listed in the order in which Martin District proposes to pay its creditors.

11. Martin District's members of the Board of Commissioners and all management employees of Martin District should be required to attend the Public Service Commission sponsored 2018 Water Training Seminar to held on April 17 and 18, 2018, in Prestonsburg, Kentucky, which this Commission purposefully scheduled to occur in eastern Kentucky in close proximity to Martin District for the benefit of Martin District's Commissioners and management (as well as other interested parties in eastern Kentucky who may wish to attend).

12. PCUC's motion to intervene shall be denied as moot.

IT IS THEREFORE ORDERED that:

1. Martin District is authorized to place into effect the interim base rate increase, subject to refund, and the surcharge set forth in the Appendix to this Order, for service rendered on and after the date of this Order.

2. Martin District shall maintain its records in such a manner as will enable it, or the Commission, or any of Martin District's customers, to determine the amounts to be refunded and to whom any refund is due in the event that a refund of any portion of the interim base rate increase is ordered by the Commission.

3. On the fifteenth of each month, beginning on April 15, 2018, Martin District shall provide monthly updates, supported by financial records, to the Commission on its attempts to identify uncollectibles and write off accounts, and report on its ability to sell any receivables that are deemed to be uncollectible by Martin District.

4. As of the date of this Order, Martin District shall immediately revise its termination-of-service procedures so they are consistent with its current tariff for non-payment of bills.

5. On the fifteenth of each month, beginning on April 15, 2018, Martin District shall provide monthly revenue and expense reports to the Commission that show the amount of revenue billed, revenue received through base rates, and how each dollar collected was expensed. Included in this monthly report shall be a status update on the restructuring of the process for approval of employee purchases from each of Martin District's vendors. Management approval shall be required for employee purchases and such purchases shall be restricted to operational needs. Itemized

receipts shall be required for approval or an explanation provided as to why an itemized receipt could not be obtained.

6. Subject to the conditions set forth in ordering paragraphs 7 through 13, Martin District is authorized to assess a monthly surcharge of \$4.19 on each customer upon the creation of an interest-bearing account with a financial institution, continuing until Martin District has discharged all accounts payable existing on or before April 1, 2018. Martin District's failure to comply with the conditions set forth in ordering paragraphs 7 through 13 shall result in termination of the surcharge.

7. Within ten days of the date of the entry of this Order, Martin District shall establish a separate, interest-bearing account in which to deposit the proceeds of the surcharge.

8. Martin District shall deposit surcharge collections in the interest-bearing account.

9. Subject to the provisions of ordering paragraph 8 through 13, Martin District, shall use the proceeds of the surcharge solely for the discharge of its accounts payable incurred prior to April 1, 2018.

10. Martin District is authorized to utilize the proceeds of the surcharge as collateral for, and payment of, a loan utilized to discharge all or a portion of Martin District's accounts payable. Such loan shall only be for the discharge of accounts payable incurred prior to April 1, 2018.

11. Martin District shall make no disbursement from the surcharge account without explicit permission granted in a Commission Order.

12. On the fifteenth day of each month beginning from the date of entry of this Order, Martin District shall file with the Commission a monthly activity report that includes all of its accounts payable. The report shall also include new accounts payable that have not been discharged within 30 days of accrual, and a copy of the most recent bank statement for the interest-bearing account established pursuant to paragraph 7.

13. Martin District shall prioritize payment of accounts payable by first paying those outstanding obligations that are most critical to the district's ability to continue operating and providing water service to the citizens of Martin County. Within ten days of the entry of this Order, Martin District shall file with the Commission a prioritized list of its accounts payable, listed in the order in which Martin District proposes to pay its creditors.

14. Martin District's members of the Board of Commissioners, and all management employees of Martin District shall attend the Public Service Commission sponsored 2018 Water Training Seminar to be held on April 17 and 18, 2018, in Prestonsburg, Kentucky.

15. Should Martin District fail to comply with the terms and conditions of this Order, any, and all amounts collected as a result of the interim base rate increase granted hereunder shall be subject to refund, and both Martin District and the Board of Commissioners shall be subject to all applicable penalties under KRS 278.990.

16. PCUC's motion to intervene is denied as moot.

By the Commission



ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2018-00017 DATED **MAR 16 2018**

The following rates and charges are prescribed on an interim basis, subject to refund, for the customers in the area served by Martin County Water District. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of the Commission prior to the effective date of this Order.

Monthly Water Rates

5/8 X 3/4-Inch Meter

First	2,000 Gallons	\$31.14	Minimum Bill
Over	2,000 Gallons	7.87	per 1,000 Gallons

1-Inch Meter

First	5,000 Gallons	\$54.76	Minimum Bill
Over	5,000 Gallons	7.87	per 1,000 Gallons

1 1/2-Inch Meter

First	10,000 Gallons	\$94.12	Minimum Bill
Over	10,000 Gallons	7.87	per 1,000 Gallons

2-Inch Meter

First	20,000 Gallons	\$172.84	Minimum Bill
Over	20,000 Gallons	7.87	per 1,000 Gallons

3-Inch Meter

First	30,000 Gallons	\$251.57	Minimum Bill
Over	30,000 Gallons	7.87	per 1,000 Gallons

4-Inch Meter

First	50,000 Gallons	\$409.02	Minimum Bill
Over	50,000 Gallons	7.87	per 1,000 Gallons

Debt Service Surcharge \$4.19/ Month

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