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FEB 22 2018

PUBLIC SERVICE
COMMISSION



BRIAN CUMBO

ATTORNEY AT LAW

86 W. Main St., Suite 100
P.O. Box 1844
Inez, KY 41224
(606) 298-0428
FAX: (606) 298-0316
cumbolaw@cumbolaw.com

ADMITTED IN KY AND WV

February 15, 2018

Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: Martin County Water District
PSC Case No. 2018-00017
Application for Rate Adjustment

To Whom It May Concern:

Enclosed please find original and six (6) copies of Martin County Water District's Response to Post Hearing Request for Information regarding the above matter.

Thank you for your attention to this matter.

Very truly yours,

BRIAN CUMBO

BC/ld
Enclosure

FEB 22 2018

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**MARTIN COUNTY WATER DISTRICT’S RESPONSE
TO POST HEARING REQUEST FOR INFORMATION**

Comes the Martin County Water District, by counsel, and for their Response to the Commission Staff’s Post Hearing Request for Information dated January 31, 2018, states as follows:

- 1. Provide a copy of the most recent version of the proposed “Tank Lease and Water Supply Agreement” regarding the “Honey Branch Storage Tank” between Martin District and Prestonsburg City’s Utilities Commission or the city of Prestonsburg.

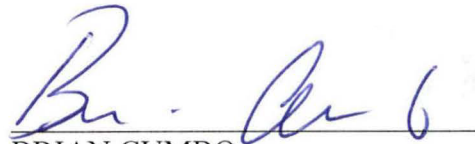
RESPONSE: See attached Lease.

- 2. Provide a copy of any offers to buy the “Honey Branch Storage Tank,” and responses thereto from Martin District.

RESPONSE: Attached.

- 3. Provide a copy of any offers to sell water to Martin District from Prestonsburg City’s Utilities Commission or the city of Prestonsburg; Mountain Water District; Kermit; or other neighboring water utilities during the last three months.

RESPONSE: There is no writing of which we are aware. See attached invoices.



BRIAN CUMBO
COUNSEL FOR MARTIN COUNTY
WATER DISTRICT
P.O. BOX 1844
INEZ, KY 41224
TELEPHONE: (606) 298-0428
TELECOPIER: (606) 298-0316
EMAIL: cumbolaw@cumbolaw.com

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing was emailed on this the 15 day of February, 2018, to the following:

Public Service Commission
ATTN: Brittany Koenig
P.O. Box 615
Frankfort, KY 40602
brittany.koenig@ky.gov

Hon. Mary Varson Cromer
Appalachian Citizens' Law Center, Inc.
317 Main Street
Whitesburg, KY 41858
mary@appalachianlawcenter.org

M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Ste. 1400
Lexington, KY 40507
tosterloh@sturgillturner.com



BRIAN CUMBO

VERIFICATION

I, Joe Hammond, of the Martin County Water District, hereby verify that the responses and exhibits attached hereto are true and correct to the best of my knowledge.



JOE HAMMOND

STATE OF KENTUCKY)

COUNTY OF MARTIN)

SUBSCRIBED, SWORN and ACKNOWLEDGED before me by Joe Hammond this
15th day of February, 2018.

My Commission Expires: 9-18-18.



NOTARY PUBLIC, STATE AT LARGE

LEASE

TANK LEASE AND WATER SUPPLY AGREEMENT

THIS TANK LEASE AND WATER SUPPLY AGREEMENT (hereinafter "Agreement") is made and entered into the 1st day of January, 2018, by and between the MARTIN COUNTY WATER DISTRICT (hereinafter referred to as "District"), of 387 Main Street, Suite 140, Inez, Martin County, Kentucky 41224, and PRESTONSBURG CITY'S UTILITIES COMMISSION (hereinafter referred to as "PCUC"), of 2560 South Lake Drive, Prestonsburg, Floyd County, Kentucky 41653.

RECITALS

WHEREAS, the Parties have entered into that certain Interlocal Cooperation Agreement for the Development of Utility Infrastructure dated the 15th day of January, 1998, recorded in Misc. Book 6, Page 12, in the office of the Floyd County Clerk, Floyd County, Kentucky (hereinafter the "Interlocal Agreement");

WHEREAS, the Parties, pursuant to and consistent with the Interlocal Agreement, entered into the Joint Operation Agreement dated July 3, 2000 (hereinafter the "Joint Operation Agreement") to develop the necessary water transmission lines, pumping station, tanks, and related appurtenances to jointly provide water services to the Big Sandy Federal Prison ("Federal Prison") constructed by the Federal Bureau of Prisons ("Bureau") at the Honey Branch Industrial Park ("Industrial Park") in Martin County, Kentucky;

WHEREAS, pursuant to Section 3 of the Joint Operation Agreement, the District constructed and owns a water storage tank of approximately 1,040,000 gallons capacity including related appurtenances (hereinafter the "Honey Branch Storage Tank");

WHEREAS, the parties hereto entered into that certain Tank Maintenance Agreement dated the 1st day of March, 2010;

WHEREAS, the parties hereto entered into the First Amendment to the Joint Operation Agreement on the 1st day of January, 2017, to adjust the respective water rates charged by each party.

SECTION ONE DESCRIPTION OF PREMISES

District leases to PCUC, and PCUC hires from District, for any and all lawful purposes, that water storage tank, appurtenances, and equipment associated therewith ("Demised Premises"), owned by District, and situated at the Industrial Park.

SECTION TWO RENT

PCUC agrees to pay, without demand, to District, as rent for the Demised Premises, \$15,000.00 per month, on the fifteenth (15th) of every month, which sum shall be paid to District by placing in the United States mail, payment to the District, at the address designated by District as 387 Main Street, Suite 140, Inez, Kentucky 41224. Said payments are past due if not received by the 20th, and PCUC shall pay a late fee equal to five percent (5%) of the rent due.

SECTION THREE WATER SERVICE

As additional consideration, PCUC will provide, at no cost to District, up to 625,000 gallons per month of treated water, at such existing, or newly installed master meters in such locations as determined by mutual agreement between the parties with said meters to be AWWA compliant at all time. The locations bound by this Agreement

shall include the Industrial Park, and the main pump station operated by PCUC on Airport Road. It is clearly understood that all customers situated now, or in the future, at the Industrial Park, are District's customers, other than the Federal Prison and all responsibility for serving the District's customers shall remain the sole obligation of the District. The District shall be responsible for reading the meters of its customers, billing and collection, and shall receive all revenue therefrom.

In the event the District requires a supplemental treated water supply over and above the 625,000 gallons provided to the District by PCUC at no cost, PCUC will sell to the District and the District shall purchase, treated water at the rate of \$4.00 per thousand gallons. Payment for the supplemental water purchased from PCUC by the District shall be paid to PCUC by the fifteen (15th) of the month immediately following said sale of supplemental water. Payment shall be paid to PCUC by the District placing said payment in the United States mail to the address designated by PCUC as 2560 South Lake Drive, Prestonsburg, Floyd County, Kentucky 41653. Said payment shall be deemed past due if not received by the fifteenth (15th) of the next successive month, and PCUC shall add a late fee equal to five percent (5%) of the payment due. Further, if payment by the District is not made by the thirtieth (30th) of that month an additional five percent (5%) late fee will be added. Upon being sixty (60) days past due the late fee interest will increase an additional five percent (5%) on the first (1st) of every month thereafter until the payment is made in full.

The parties agree that, at any time hereafter, should PCUC be successful at renegotiating the rate charged to the Big Sandy Federal Prison, currently \$7.95 per

thousand, then the District shall also receive an increase in rent equal to the percentage increase paid to PCUC by the Federal Prison, and any successive increases.

SECTION FOUR TERM

This Lease shall be for a period of ten (10) years from the date of this Agreement, and may be extended by mutual agreement for three additional five (5) year periods. The monthly rental fee and water rates for each additional five (5) year period will be established in writing prior to the date of extension. Any notice of termination must be provided in writing at least ninety (90) days in advance of the termination date.

SECTION FIVE ALTERATIONS & IMPROVEMENTS

PCUC shall not be permitted to make alterations to the structures or equipment on the Demised Premises or construct any building or make other improvements on the Demised Premises, without prior written consent. All alterations, changes, and improvements built, constructed or placed on the premises by PCUC with the exception of fixtures removable without damage to the premises and moveable personal property, shall, unless otherwise provided by written agreement between District and PCUC, be the property of District and remain on the Demised Premises at the expiration or sooner termination of this Lease. However, the District expressly consents to the installation of master meters to meter water delivered to the District's distribution system and customers. Further, PCUC shall be responsible for all maintenance, repairs and upkeep relative to the storage tank, appurtenances and associated equipment, in accordance with all Kentucky drinking water regulations.

The District shall be responsible for all repairs and upkeep to its distribution system at Industrial Park, and from its distribution point in the existing main pump station located on Airport Road just off Ky. Route 3.

SECTION SIX RIGHT OF INSPECTION

District and its' agents shall have the right to make inspection of the Demised Premises and the improvements thereon, as reasonably necessary. The District shall have the unimpeded right to access, and read, the meters installed by PCUC identified in Sections Three. Provided, however, such right of inspection shall not any way interfere or impede the maintenance or operation of the Demised Premises, and the District shall provide reasonable notice of at least twenty-four (24) hours prior to making an inspection.

SECTION EIGHT SUBLETTING

PCUC may not sublet the premises or equipment, in whole or in part, without District's written consent.

SECTION NINE SURRENDER OF PREMISES

At the expiration of the Lease term or renewal term, PCUC shall quit and surrender the premises and equipment hereby demised in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear thereof and damages is excepted.

SECTION TEN EARLY TERMINATION

This Agreement shall terminate immediately if at any time for any reason the Federal Prison is no longer a customer of PCUC.

**SECTION ELEVEN
DEFAULTS**

Should any party to this Lease be in default, the other shall notify said party by certified mail of such default at the address recited herein. If said default is capable of cure, it shall be done within ten (10) days after such notice has been provided.

Nothing herein, however, shall preclude the parties claims for damages, should any default occur.

**SECTION TWELVE
BINDING EFFECT**

The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this Lease.

**SECTION THIRTEEN
KENTUCKY LAW**

That Kentucky law governs any dispute, and venue shall exclusively lie in Martin County, Kentucky.

**SECTION FOURTEEN
TERMINATION OF RELATED AGREEMENTS**

This Agreement, as amendment of the Joint Operation Agreement, is entered into pursuant to Section 25(b) of the Joint Operation Agreement, and shall supersede said Joint Operation Agreement, which shall be hereinafter null and void, except for payments due for water delivered by the respective parties hereto prior to the execution of this Agreement. In addition, the First Amendment to the Joint Operation Agreement and the

Tank Maintenance Agreement be null and void at the same time as the Joint Operation Agreement.

**SECTION FIFTEEN
PSC JURISDICTION**

This Agreement shall be filed by PCUC with the Kentucky Public Service Commission ("Commission"), and shall be subject to the Commission's jurisdiction.

**SECTION SIXTEEN
DAMAGE TO OR DESTRUCTION OF LEASED PREMISES**

A. If during the term of this Lease the Demised Premises are totally destroyed by any cause, the PCUC may, at its option, terminate this Lease by giving the District written notice thereof within thirty (30) days after such destruction.

B. In case the Demised Premises without the fault of PCUC, is damaged to the extent that it is unusable and if such damage is not repairable within sixty (60) days from the date of the damage, PCUC may, at its option, terminate this Lease by giving the District written notice thereof within thirty (30) days after such damage.

C. In case the Demised Premises, without the fault of PCUC, shall be destroyed or damaged, prepaid rent shall be refunded or credited in whole or in part, and future rent shall abate in whole or in part, as may be equitable under all the circumstances.

**SECTION SEVENTEEN
HOLDOVER**

If, at the expiration or termination of this Lease, PCUC shall hold over for any reason, the tenancy of PCUC thereafter shall be on a month-to-month basis only and shall be subject to all other terms and conditions of this Lease, in the absence of a written agreement to the contrary.

**SECTION EIGHTEEN
WARRANTIES OF DISTRICT; ENCUMBRANCES**

District covenants and warrants that it is lawfully seized in fee of the Demised Premises; that District has full right to lease the same as aforesaid; that so long as PCUC complies with the covenants and conditions herein contained, it shall have the quiet and peaceable possession and enjoyment thereof; that there are no zoning restrictions, easements, restrictive covenants, adverse possessions, or tenancies which will prevent the use of the Demised Premises for distribution of potable water and that said Demised Premises are free and clear of all liens and encumbrances, except for liens held by Kentucky Infrastructure Authority or by Rural Development, if any.

**SECTION NINETEEN
INSURANCE**

A. Fire and Extended Coverage. The District shall carry casualty insurance relating to the water storage tank and related facilities constructed upon the Leased Premises for the full cost of replacement thereof. In the event of damage or destruction of the water tank portion of the Leased Premises, this Lease shall terminate and thereafter be of no force and effect.

B. Public Liability Coverage. PCUC shall continually during the Term, carry public liability insurance with respect to the Premises. Such insurance policy shall have a combined single limit of liability of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person and for damage to property. A copy of the policy or a certificate of insurance shall be delivered to the District. The District, its successors and assigns, shall be named a coinsured thereon, and the policy shall contain a clause that the

insurer will not cancel or change the insurance without giving the District thirty (30) days prior written notice. The insurance shall be in an insurance company having a rating of "A" or better in Best's Insurance Reports.

C. Indemnification of the District. PCUC will indemnify the District, its heirs and assigns, and hold them harmless from and against any and all claims, actions, damages liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon, or at the Leased Premises, or the occupancy or use by PCUC of the Leased Premises or any part thereof, or occasioned, in whole or in part, by any act or omission of PCUC, its agent, contractors, employees, servants, lessees or concessionaires, including, but not limited to, environmental contamination, unless the aforesaid injuries or damages are attributable to acts of the District or that of its servants, agents, licensees, invitees or contractees, for which the District is legally responsible, or to the acts of any third parties not under the control of PCUC.

D. Indemnification of PCUC. The District will indemnify PCUC, its successors and assigns, and hold them harmless from and against any and all claims, actions, damages liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of the District's failure to perform the District's obligations under the terms and conditions of this Lease or occasioned, in whole or in part, by any act or omission of the District, its agents, contractors, employees, servants, lessees or concessionaires, including, but not limited to, environmental contamination, unless the aforesaid injuries or damages are attributable to acts of PCUC

or that of its servants, agents, licenses, invitees or contractees, for which PCUC is legally responsible, or to the acts of any third parties not under the control of the District.

**SECTION TWENTY
EFFECTIVE DATE**

This Agreement shall become effective thirty (30) days after the date this Agreement is filed with the Commission, unless the Commission opens an investigation into the transaction contemplated by this Agreement.

This Agreement is entered into and made as of the day and year first above written, but shall be effective in accordance with the preceding Section without regard to the fact that execution hereof by the Parties shall have been effected at the same time or at other times.

ATTEST:

John P. Hensley
SECRETARY

MARTIN COUNTY WATER DISTRICT

BY: Joe Harwood
ITS: Business Manager

PRESTONSBURG CITY'S UTILITIES
COMMISSION

BY: _____
TURNER E. CAMPBELL,

SUPERINTENDENT

ATTEST:

JIM CALHOUN, CHAIRMAN
OF THE PRESTONSBURG
CITY'S UTILITIES COMMISSION

HONEY BRANCH STORAGE TANK

Cumbo Law

From: jhammond58 [REDACTED]
Sent: Thursday, February 15, 2018 8:44 AM
To: Cumbo Law
Subject: Fw: Request for Info

On Thursday, February 15, 2018 6:49 AM, Eddie Campbell [REDACTED] wrote:

Good Morning Joe,

Here is what you asked me for yesterday:

Gallons provided to Martin County Water for November	790,000
Gallons provided to Martin County Water for December	1,764,000
Gallons provided to Martin County Water for January	5,782,000

I hope this helps Joe.

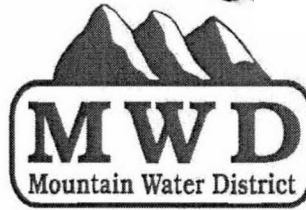
By the way, I have been out in meetings a lot this week and have not had an opportunity to view the video of the Martin County Water board meeting held earlier this week. In all honesty, that is something I wouldn't normally do anyway. However, a couple of my managers were able to see it. I am having a little difficulty with what I am told were some board member statements to the effect that Prestonsburg was attempting to take advantage of the District while they are down. If this is what was portrayed by the board it is quite disturbing to say the least. Over just the past three months alone we have provided the gallons of water illustrated above to the District without restrictions or without hesitation. These three months alone represent over \$63,000 of water that, given the District's current financial woes, we have little or no hope of collecting (not counting the nearly \$18,000 in water provided during the current billing period). Not one time have we complained to the press or to any other person, we simply provided the water. In addition, we have offered more than once to buy the Honey Branch Tank and infrastructure, offering to invest in those assets at least \$1,000,000 or more and to sell Martin County Water potable water at a rate that would be an embarrassment to turn down. This would be, without one doubt the quickest path for Martin County Water to have a fighting chance at successfully starting anew, providing the District not only enough cash to bring their vendor payables balance back to square one but potentially allow for some immediate operating cash. I keep hearing that the District "cannot" sell the tank and infrastructure due to covenants/restrictions in the funding sources utilized to those assets. Of the more than \$2.5M spent to construct the Honey Branch Tank and infrastructure in 2000 only \$600,000 of that total was loan funds (RD) with the remaining funding being grant funds. Even if USDA/RD could have restricted the sale, they are no longer a factor since the District paid off that loan and three other RD ones in early 2015 with a large loan from Kentucky Rural Water Finance Corporation. Therefore, I am having some problem understanding why certain folks are saying that the District cannot take advantage of Prestonsburg's offer. I am really puzzled by that.

Give me a shout if you need anything further Joe.

Have a good morning,

INVOICES

ACCOUNT NUMBER	[REDACTED]
CUSTOMER NAME	Martin Co Water #2
SERVICE DATES	1/3/2018 to 2/1/2018
DUE DATE	02/24/2018



P. O. BOX 3157
 PIKEVILLE, KY 41502-3157
 PHONE: (606) 631-9162
 AFTER HOURS: (606) 754-4218
 FAX (606) 631-3087
 PHONE PAY: 1 (855) 984-1204
 www.mountainwaterdistrictky.com

Hours: 8:00 a.m. - 4:30 p.m.
 Monday - Friday

SERVICE ADDRESS: Before Nolan Bridge

SERVICE	PRESENT READING	PREVIOUS READING	USAGE	AMOUNT	WE WILL BE CLOSED ON: FEBRUARY 19, 2018 PLEASE SECURE METER LIDS TO PREVENT WATER FREEZING.
WT WATER	34472200	34330900	141300	395.64	
ST Local Tax				11.87	
TOTAL AMOUNT DUE				407.51	

TO AVOID PENALTIES, PAYMENT MUST BE RECEIVED IN OUR OFFICE BY 4:30 P.M. ON THE DUE DATE.

ANY BALANCE FORWARD SUBJECTS THE ACCOUNT TO DISCONNECTION UNTIL PAID IN FULL.

LOCAL PHONE NUMBERS FOR THE BELFRY AND PHELPS AREAS:

BELFRY: (606) 353-8190
 PHELPS: (606) 456-8170

PAYMENT OPTIONS:

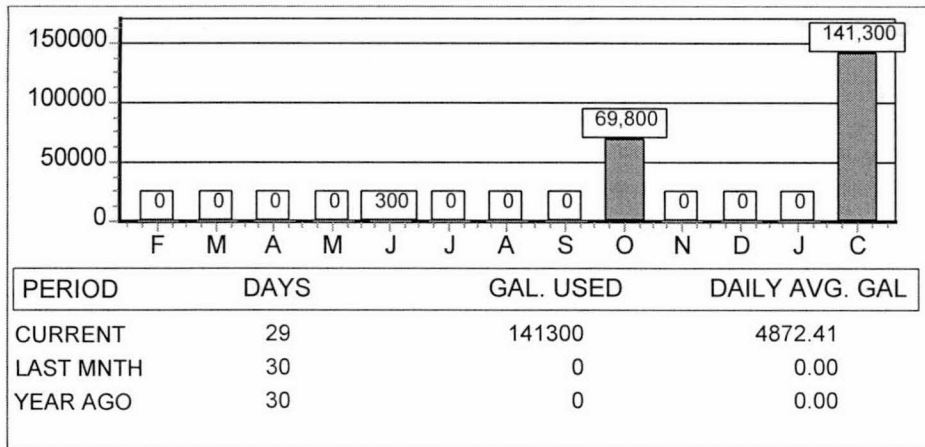
ONLINE - PAY BY CREDIT/DEBIT CARD OR E-CHECK AT:
 www.mountainwaterdistrictky.com

PHONE - PAY BY CREDIT/DEBIT CARD OR E-CHECK AT
 1 (855) 984-1204

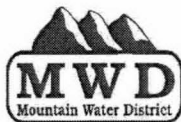
OFFICE - PAY IN PERSON OR USE OUR PAYMENT DROP
 BOX LOCATED AT 6332 ZEBULON HWY.

THE DISTRICT'S TARIFFS AND RATES ARE AVAILABLE AT
 OUR OFFICE OR ON OUR WEBSITE.

THE DISTRICT IS NOT RESPONSIBLE FOR UNDELIVERED
 MAIL OR FAILURE OF THIRD PARTY PAYMENT PROVIDERS.



Please Detach And Return Bottom Portion With Payment



P. O. BOX 3157
 PIKEVILLE, KY 41502-3157
 PHONE: (606) 631-9162
 FAX (606) 631-3087
 PHONE PAY: 1 (855) 984-1204
 Return Service Requested

ACCOUNT NUMBER	[REDACTED]
AMOUNT DUE	407.51
DUE DATE	2/24/2018
AMOUNT AFTER DUE DATE	447.07

Make checks payable to:
 MOUNTAIN WATER DISTRICT
 P. O. BOX 3157
 PIKEVILLE, KY 41502-3157

Seq. 64

Martin Co Water #2
 Hc 69 Box 875
 Inez, KY 41224

Cumbo Law

From: jhammond58 [REDACTED]
Sent: Thursday, February 15, 2018 8:44 AM
To: Cumbo Law
Subject: Fw: Request for Info

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Give me a shout if you need anything further Joe.

Have a good morning,

Cumbo Law

From: jhammond58 [REDACTED]
Sent: Thursday, February 15, 2018 8:49 AM
To: Cumbo Law
Subject: Kermit water Supply

Supplied MCWD = 141,301 gallons of water
@ \$2.80 per thousand gallons

Thanks

Joe