

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO	)	
TRANSFER OF OWNERSHIP TO	)	
PRESTONSBURG CITY UTILITIES	)	
COMMISSION OF THE WASTEWATER	)	CASE NO.
SYSTEM AND CERTAIN PORTIONS OF THE	)	2020-00228
WATER SYSTEM OF SOUTHERN WATER	)	
AND SEWER DISTRICT PURSUANT TO KRS	)	
278.250 AND KRS 278.390	)	

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on September 1, 2020 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on September 1, 2020 in this proceeding;
- A written log listing, inter alia, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on September 1, 2020.

A copy of this Notice, the certification of the digital video record, and hearing log have been served upon all persons listed at the end of this Notice. Parties desiring to view the digital video recording of the hearing may do so at <https://youtu.be/Y7QkKeElxK4>.

Parties wishing an annotated digital video recording may submit a written request by electronic mail to [pscfilings@ky.gov](mailto:pscfilings@ky.gov). A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 14<sup>th</sup> day of September 2020.



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Kent A. Chandler  
Acting Executive Director  
Public Service Commission of Kentucky

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO )  
TRANSFER OF OWNERSHIP TO )  
PRESTONSBURG CITY UTILITIES )  
COMMISSION OF THE WASTEWATER SYSTEM )  
AND CERTAIN PORTIONS OF THE WATER )  
SYSTEM OF SOUTHERN WATER AND SEWER )  
DISTRICT PURSUANT TO KRS 278.250 AND )  
KRS 278.390 )

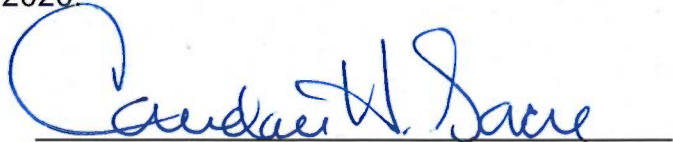
CASE NO.  
2020-00228

CERTIFICATION

I, Candace H. Sacre, hereby certify that:

1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on September 1, 2020. The Formal Hearing Log, Exhibits, and Exhibit List are included with the recording on September 1, 2020;
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of September 1, 2020; and
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of September 1, 2020, and the time at which each occurred.

Signed this 8<sup>th</sup> day of September, 2020.



Candace H. Sacre  
Administrative Specialist III



Stephanie Schweighardt  
Notary Public State at Large ID#: 614400  
Commission Expires: January 14, 2023



Southern Water and Sewer District (Southern District) and Prestonsburg City Utilities Commission (PCUC)

Date:	Type:	Location:	Department:
9/1/2020	Public Hearing\Public Comments	Hearing Room 1	Hearing Room 1 (HR 1)

Witness: Brian Music; Grondall Potter; Jeff Prater  
 Judge: Kent Chandler; Talina Mathews; Michael Schmitt  
 Clerk: Candace Sacre

Event Time	Log Event	
9:03:20 AM	Session Started	
9:03:24 AM	Chairman Schmitt Note: Sacre, Candace	We're now on the record. This is the Kentucky Public Service Commission. My name is Michael Schmitt. I'm Chairman of the Commission. Also present today by video is Vice Chairman Kent Chandler and Dr. Talina Mathews.
9:03:43 AM	Chairman Schmitt Note: Sacre, Candace	The purpose of our hearing today is to consider Case No. 2020-00228, investigation into the transfer of ownership by Southern Water and Sewer District to Prestonsburg City Utilities Commission of the wastewater system and portions of its water distribution system pursuant to KRS 278.250 and KRS 278.390.
9:04:15 AM	Chairman Schmitt Note: Sacre, Candace	This proceeding is being reported by Ms. Candace Sacre, and transcripts will be available to anyone who wants one. The video will be the official record. This case is being streamed live over the internet.
9:04:34 AM	Chairman Schmitt Note: Sacre, Candace	So, in order to make some sense of the proceeding for anyone who might be watching this proceeding and not have any history of it, I have tried to write out in longhand a brief history of why we're here today and what we're doing. I've done it in longhand, and my penmanship is not the best, so bear with me as I try to get through this, and, if I am in substantial error, when I finish, you will have an opportunity to correct me.
9:05:04 AM	Chairman Schmitt Note: Sacre, Candace	In Case No. 2017-00044, the Public Service Commission entered an Order approving the transfer of certain wastewater and water system assets from Southern to Prestonsburg City Utilities Commission. KRS 278.390 provides that the Commission's Orders are in effect until, among other things, they are revoked or modified. In that previous case, the parties did not obtain an appraisal of the assets to be transferred but mutually agreed on a market value, saying that there had been extensive negotiations and that the parties were knowledgeable as to value and that the value assigned in that other proceeding represented the actual fair market value of the assets to be transferred.

9:06:04 AM	Chairman Schmitt Note: Sacre, Candace	Later, in Case No. 2018-00230, the Commission learned that the transaction had not been closed and that asset ownership had not been closed because the U.S. Department of Agriculture Rural Development Agency, which had a lien on the water distribution assets, had not approved the transfer, and Rural Development withheld approval, in part, because there had not been an appraisal. Rural Development required an appraisal to be conducted and accepted before it would agree to release its lien on the water assets which were the subject of the transfer agreement.
9:06:54 AM	Chairman Schmitt Note: Sacre, Candace	The parties later obtained an appraisal which valued the transaction at \$4.1 million, but Rural Development determined that the appraisal, which was to value both the water and wastewater assets, covered only the water systems, and there was a question as to whether the valuation was unduly excessive. The Rural Development loan and lien did not cover or encumber the wastewater assets, and those assets were transferred pursuant to the Asset Purchase Agreement between the parties as approved by the Public Service Commission, I think, in July of 2018 or sometimes perhaps in 2018. The operation of the water distribution assets, however, were assumed by Prestonsburg in perhaps late 2016, early 2017 but have yet to be transferred or operational control returned to Southern. A second appraisal was performed, and an appraisal report dated June 15th, 2020, was produced and filed in the record, and it valued the water distribution assets at \$1,510,960.
9:07:45 AM	Video Conference Deactivated	
9:07:48 AM	Video Conference Activated	
9:08:17 AM	Chairman Schmitt Note: Sacre, Candace	There are two Water District distribution systems or assets which were involved in this proceeding, the transfer of both of which was previously approved by the Commission, and those assets were the Stanville/Betsy Layne System along U.S. Highway 23 in Floyd County, Kentucky, and the Pyramid System, which I think is along Kentucky Route 850. Southern and Prestonsburg have, subject to Public Service Commission approval and with the approval of Rural Development which has already agreed, to amend the original Asset Purchase Agreement to provide for the transfer of the Stanville/Betsy Layne System and for Southern to retain ownership of the Pyramid System. Rural Development has agreed to the Amended Asset Purchase Agreement and to release its lien upon the Stanville/Betsy Layne System upon payment to it by Prestonsburg City Utilities Commission of \$1.6 million.
9:09:25 AM	Chairman Schmitt Note: Sacre, Candace	Although the wastewater assets have been transferred by Southern to Prestonsburg, Southern has been collecting the fees charged by Prestonsburg but has not remitted those fees to Prestonsburg but has retained them. The apparent debt that Southern now owes Prestonsburg City Utilities Commission as a result of that is \$275,000. The parties have agreed that Prestonsburg will forgive and waive payment of \$137,500, or approximately one-half of the amount owed to it by Southern, and Southern will pay the balance owed in installments of \$2,500 per month. Southern will continue to collect Prestonsburg fees for wastewater service, I am thinking only two, Wayland and Eastern wastewater systems, and remit the amounts owed to Prestonsburg for a management fee pursuant to a separate agreement between the parties.

9:10:33 AM	Chairman Schmitt Note: Sacre, Candace	The purpose of the hearing today is to receive evidence on the proposed Amended Asset Purchase Agreement and whether the Public Service Commission should approve it.
9:10:43 AM	Chairman Schmitt Note: Sacre, Candace	Is that substantially correct for the parties?
9:10:47 AM	Atty McNally PCUC Note: Sacre, Candace	No objection, Your Honor.
9:10:55 AM	Chairman Schmitt Note: Sacre, Candace	Okay, thank you, all right. At this time, the parties to this proceeding are Southern Water and Sewer District and Prestonsburg City Utilities Commission. Would counsel for Southern Water and Sewer District please stand, identify himself, the client he represents, and any witnesses he has with him today?
9:11:09 AM	Atty Bailey Southern Water Note: Sacre, Candace	Thank you. I'm Steven Bailey. I represent Southern Water, and, today, we have two witnesses, Jeff Prater, which is the chairman of Southern Water's board, and Grondall Potter, who is with UMG we contract to manage Southern Water.
9:11:26 AM	Chairman Schmitt Note: Sacre, Candace	Thank you, Mr. Bailey, and on behalf of Prestonsburg City Utilities Commission?
9:11:31 AM	Atty McNally PCUC Note: Sacre, Candace	Good morning, Chairman. I'm Kip McNally, counsel for Prestonsburg City Utilities. We have one witness here today. That's Brian Music. He's superintendent of the Utilities Commission.
9:11:43 AM	Chairman Schmitt Note: Sacre, Candace	Thank you, and on behalf of Public Service Commission Staff?
9:11:47 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Nancy Vinsel from PSC Legal.
9:11:49 AM	Chairman Schmitt Note: Sacre, Candace	Okay, thank you. Now, as I understand it from the record, to the extent possible, notice has been given to the public, Mr. Bailey, that this proceeding is being held this morning, is that correct?
9:12:03 AM	Atty Bailey Southern District Note: Sacre, Candace	Yes, Your Honor, we made a post on our Facebook page.
9:12:06 AM	Chairman Schmitt Note: Sacre, Candace	Thank you. Now, at this time, the proceeding will be open for comment by the public, and, since there's no one in the hearing room and because of the requirements imposed upon everybody by the COVID-19 virus, we'll have four or five minutes available by telephone for anyone who might want to call in and express an opinion or a comment about this proceeding. Is that correct, Ms. Vinsel?
9:12:37 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	That's correct.
9:12:38 AM	Chairman Schmitt Note: Sacre, Candace	And is the telephone number on our website, or is there some other way or means for people who might be watching this proceeding who might want to call in?
9:12:48 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	The phone number is on our website, and because I have to dial a conference bridge, I will go ahead and read it out.
9:12:56 AM	Chairman Schmitt Note: Sacre, Candace	Please, thank you.

9:12:59 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Any person interested in making a comment can dial 502-782-2663 and, when prompted to enter a conference passcode, would enter 43941 followed by the pound sign, and I've got the line open now. I can unmute it.
9:13:24 AM	Chairman Schmitt Note: Sacre, Candace	Okay, thank you.
9:13:28 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Good morning, this is Nancy Vinsel with the Public Service Commission. Is there anyone on the line?
9:13:37 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	No one's on the line right now.
9:13:41 AM	Chairman Schmitt Note: Sacre, Candace	So, apparently, there's no interest from anyone in commenting upon this proceeding, so we will now move to a presentation of evidence, It is our thought, I guess, that since the Public Service Commission initiated this proceeding as a result of a phone call that Mr. Music, on behalf of Prestonsburg City Utilities Commission, made to me advising that the parties had agreed, based upon the appraisal, to alter the transaction and that Rural Development approval while, at that time, had not been obtained, it was expected that it would be based upon conversations with a representative of Rural Development.
9:14:28 AM	Chairman Schmitt Note: Sacre, Candace	After that, we initiated this case in an attempt to basically get everything resolved and put to bed once and for all. After that, I think I maybe had a conversation with Mr. Prater about the same thing. In fact, I called him to make sure that my conversation with Mr. Music was known, and I told him what Mr. Music had related to me, and he agreed that that was correct.
9:15:01 AM	Chairman Schmitt Note: Sacre, Candace	So here we are today for the purpose of trying to finalize this asset transfer, and so it's our thinking that since we initiated a proceeding that Ms. Vinsel will call witnesses, after which counsel will have an opportunity to ask any follow-up questions that might be necessary, and I don't have any idea who Ms. Vinsel will call first or on whose behalf they will testify, but, for instance, if Mr. Prater were called, I would expect that Mr. McNally would then ask questions, and, Mr. Bailey, you would have the next or last shot at it.
9:15:44 AM	Chairman Schmitt Note: Sacre, Candace	We have two commissioners on the line. I do not know if either of them will ask questions, but both will have the opportunity to do so after counsel has completed, after all counsel have completed, the question.
9:16:00 AM	Chairman Schmitt Note: Sacre, Candace	All right, Ms. Vinsel, you may proceed.
9:16:02 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Yes, and, to let everyone know, the order of witnesses I propose are Chairman Prater, Mr. Potter, and then Mr. Music.
9:16:10 AM	Chairman Schmitt Note: Sacre, Candace	Okay, thank you.
9:16:12 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	So we call, Staff calls, Chairman Prater.
9:16:25 AM	Chairman Schmitt Note: Sacre, Candace	Witness is sworn.

9:16:35 AM Chairman Schmitt  
Note: Sacre, Candace I would like to say before we start that out of an abundance of caution, between witnesses, our custodian will come in and spray the glass, so that may take an extra minute or two, but so you'll understand that that apparently is the proceeding.

9:16:54 AM Chairman Schmitt  
Note: Sacre, Candace All right, Ms. Vinsel, you may proceed.

9:16:56 AM Asst Gen Counsel Vinsel PSC  
Note: Sacre, Candace Thank you, Chairman.

9:16:59 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace Cross Examination. Good morning, Chairman Prater. For the record, can you tell us your name and your position with Southern Water District?

9:17:12 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And you've been chairman of the board since February of this year?

9:17:24 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace I apologize. I realized it was 2019, and I've just gotten confused with the year. Do you have with you the Staff exhibits that were distributed at the start of the year?

9:17:41 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace For the record, I'd like to say that PSC Exhibit 1 is a copy of a map of the Southern Water System Assets that were approved to be transferred to Prestonsburg City Utilities Commission in the previous proceeding, and Staff Exhibit 2 is a copy of the original Asset Purchase Agreement that was also filed in the previous case approving the asset transfer.

9:18:14 AM Chairman Schmitt  
Note: Sacre, Candace These have already been filed in the evidence in this and other proceedings, but, for purposes of this proceeding, let these be marked as Exhibit 1, the map, and Exhibit 2, the original Asset Purchase Agreement, Ms. Sacre. Thank you.

9:18:17 AM PSC STAFF EXHIBITS 1 AND 2  
Note: Sacre, Candace  
Note: Sacre, Candace ASST GEN COUNSEL VINSEL PSC - WITNESS PRATER  
SOUTHERN WATER SYSTEM ASSETS TO BE TRANSFERRED and  
ASSET PURCHASE AGREEMENT BETWEEN SOUTHERN WATER AND  
SEWER DISTRICT AND CITY OF PRESTONSBURG FOR THE USE  
AND BENEFIT OF PRESTONSBURG CITY'S UTILITY COMMISSION  
JANUARY 1, 2017

9:18:34 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace This map is in color, and, just to clarify, can I ask you, in the green section of the map, there's a indication of Hippo Hill Tank?

9:18:48 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And is this Pyramid System?

9:19:02 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And who is serving the Pyramid area right now?

9:19:19 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace Approximately how many customers are there on the Pyramid portion of the system?

9:19:42 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And, moving on on the map to the area marked in red, is this the Stanville/Betsy Lane/Harold portion of the system?

9:20:09 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And, the Stanville area, who is operating that portion of the system now?



9:20:25 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And the Stanville portion has approximately? Is it around a thousand customers?

9:20:40 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And, within the Amended Asset Purchase Agreement, is it correct that the Pyramid, the portion of the system that is known as Pyramid, will remain with Southern?

9:21:20 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace So the legal ownership would be returned or would remain, if you will, with Southern?

9:21:42 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And, to clarify, when I say legal ownership, as I understand is part of the operating agreement between Southern and Prestonsburg City Utilities Commission, there was a transfer of beneficial ownership but not legal ownership of the assets?

9:22:03 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And also, not to beat a dead horse, but with the Amended Asset Purchase Agreement, the Stanville portion of the system will remain with - may I call it PCUC just to cut the time - will remain with PCUC and PCUC will now acquire the legal ownership?

9:22:32 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace Chairman Prater, Southern filed a spreadsheet of revenue and expenses. Do you have a copy of that spreadsheet?

9:23:18 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace I see your counsel has a copy.

9:23:19 AM Atty Bailey Southern District  
Note: Sacre, Candace May I approach?

9:23:20 AM Chairman Schmitt  
Note: Sacre, Candace You may approach.

9:23:26 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And are you familiar with this document?

9:23:36 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And for what purpose was it produced?

9:24:46 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And, subject to check, would you agree that, with Southern serving the Pyramid customers gain, that there is approximately a net operating income gain of \$58,000?

9:26:08 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace Thank you. Will the Pyramid customers be charged Southern's current rate once Southern takes over the system?

9:26:54 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace And I do plan to follow up with Mr. Potter in regard to the system at Pyramid.

9:27:33 AM Asst Gen Counsel Vinsel PSC - witness Prater  
Note: Sacre, Candace I have just a few more questions for you, Mr. Prater. I noticed on the Amended Asset Purchase Agreement, which has been executed between Southern and PCUC, there's also a line for Rural Development to sign. I also noticed you've got before you Exhibit No. 2, which is the original Asset Purchase Agreement, and I noticed that the signatories to this agreement were the then chairman of Southern Water, the chairman of PCUC, and the then-mayor and may still be mayor of Prestonsburg, but Rural Development did not sign the original Asset Purchase Agreement to the best of your knowledge?

9:28:24 AM	Asst Gen Counsel Vinsel PSC - witness Prater Note: Sacre, Candace	Will Rural Development also sign the Amended Asset Purchase Agreement?
9:29:15 AM	Asst Gen Counsel Vinsel PSC - witness Prater Note: Sacre, Candace	Yes, thank you, and I can confirm that that is in the record, a copy of that. In terms of the repayment of the sewer fees, the past sewer fees that were collected, can you give me a status of the repayment?
9:30:30 AM	Asst Gen Counsel Vinsel PSC - witness Prater Note: Sacre, Candace	Do you have an expected date by which you would like to see a Commissioner order?
9:31:08 AM	Asst Gen Counsel Vinsel PSC - witness Prater Note: Sacre, Candace	I have just one last question for you. In the financial management agreement, Southern will receive an administrative fee. It's a three percent fee?
9:31:22 AM	Asst Gen Counsel Vinsel PSC - witness Prater Note: Sacre, Candace	Can you tell me what the inputs were for that three percent, how it -
9:32:15 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Thank you. Staff has no further questions.
9:32:21 AM	Chairman Schmitt Note: Sacre, Candace	Mr. McNally, questions?
9:32:22 AM	Atty McNally PCUC Note: Sacre, Candace	Yes, I have one question.
9:32:25 AM	Atty McNally PCUC - witness Prater Note: Sacre, Candace	Cross Examination. Just for clarification, Mr. Prater, has Southern begun paying the current sewer fees that have been collected under the financial management agreement that were anticipated under that agreement?
9:32:56 AM	Atty McNally PCUC - witness Prater Note: Sacre, Candace	Another way of - so another question is so that the financial management services agreement then is effectively being implemented as of the 1st of August, I guess?
9:33:25 AM	Atty McNally PCUC Note: Sacre, Candace	Thank you, Mr. Prater. That's all I have, Chairman.
9:33:28 AM	Chairman Schmitt Note: Sacre, Candace	Thank you. Mr. Bailey, any questions?
9:33:31 AM	Atty Bailey Southern District Note: Sacre, Candace	Just one, Your Honor.
9:33:33 AM	Atty Bailey Southern District - witness Prater Note: Sacre, Candace	Direct Examination. Were you involved in the initial asset purchase when this asset purchase came about?
9:33:52 AM	Atty Bailey Southern District Note: Sacre, Candace	That's all I have.
9:33:52 AM	Camera Lock Applicant Activated	
9:33:54 AM	Chairman Schmitt Note: Sacre, Candace	Vice Chairman Chandler, do you have any questions?
9:33:56 AM	Camera Lock Deactivated	
9:34:00 AM	Vice Chairman Chandler Note: Sacre, Candace	I do, Chairman. Can you hear me okay?
9:34:03 AM	Chairman Schmitt Note: Sacre, Candace	Yes.

9:34:05 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater Examination. Good morning, Mr. Prater. The first question I have is, at least looking at the 2017 Asset Purchase Agreement, the City of Prestonsburg, itself, was a party to that agreement. Would you agree?
9:34:23 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater And so, the first amendment that's been filed in this record, it appears that Southern and Prestonsburg are parties but the City is not. Do you see that?
9:34:51 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater Right, and so I guess I'd ask, since the City is a party to the agreement and this is an amendment to the agreement, do you know if the City has signed off on the agreement?
9:35:35 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater And then do you have a copy of the amendment in front of you?
9:35:42 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater Do you mind to go to the third page of that amendment?
9:35:57 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater And, on the third page of the amendment, on the fifth line, there's a recital, "Whereas, Southern District and PCUC have been unable to consummate the transfer of the Designated Water Assets. . ." Do you see that?
9:36:12 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater So, in that Agreement, and I can't find it in this amendment or in the Asset Purchase Agreement, I can't find that Designated Water Assets is a defined term even though it's capitalized, so, for the record, at least from your perspective, can you tell me what you believe to be the Designated Water Assets that that text refers to?
9:37:12 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater Okay, so, as far as the amendment goes, when it references the Designated Water Assets, it's, in your opinion, the red former Sandy Valley Water Distribution System in PSC Staff Exhibit No. 1?
9:37:46 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater So the green and the red?
9:38:08 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater Thank you, and then, last question, as far as you understand it, at least, as proposed, you will be operating - again, explain the green. You will be operating and billing that, or that would just go back to you all?
9:39:25 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater Well, let me ask it this way, Mr. Prater, will those customers be served pursuant to Southern's tariff on file with the Commission?
9:39:50 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater So, in all regards, those will be Southern's customers?
9:39:55 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater Now, how about the red?
9:40:13 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater And so, pursuant to the financial agreement - I want to get it right - the financial management services contract, what area of the system does that apply to?
9:41:11 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater So they'll be your all's water customers but Prestonsburg's sewer customers?
9:41:39 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Prater Okay, so but you will bill them for the sewer service?

9:41:47 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace Okay, and so I just want to make clear that, in terms of level of service, rates charged, and everything like that on the water side, it will be fully compliant with the statutes and regulations on the water side, correct?

9:42:06 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace And then, on the sewer side, you all will be billing, but you won't have a service obligation and you won't have tariffs necessarily for those customers; they'll be served pursuant to PCUC rates?

9:42:23 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace Okay, and your ability to disconnect those customers is limited to the terms of this agreement?

9:42:44 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace Yeah, your ability, Southern's ability, to disconnect or terminate customers is only laid out in this agreement, correct?

9:43:13 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace On the bottom of page 2 of the financial - do you have the financial management services contract in front of you?

9:43:39 AM Atty Bailey Southern District  
Note: Sacre, Candace If I may approach again, Your Honor.

9:43:41 AM Chairman Schmitt  
Note: Sacre, Candace You may.

9:43:47 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace All right, so page 2 of that agreement, paragraph 6 says, "The District shall charge each residential customer in accordance with the tariff schedules established by the agency as amended from time to time," so that's what we were talking about earlier. The actual tariffs that you will be billing for aren't your tariffs on file with the Public Service Commission; they're PCUC's tariffs, right?

9:44:17 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace Right, right, we're just talking about wastewater here. "The agency shall give the District notice of its initial or amended tariff sheet at least 30 days prior to the date of the District's billing date. The initial tariff sheet is attached hereto as Exhibit A and is hereby incorporated by reference as if fully set forth herein." Then, "The District," that's you all, right?

9:44:40 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace "The District shall perform the financial services in accordance with the District's established billing and collection procedures," and it basically is the otherwise referred to here is "the residential retail billing procedures as may be amended from time to time. The District will only terminate a customer's water service for nonpayment in accordance with its residential retail billing procedure." Is the residential retail billing procedure a document that's been filed into this record?

9:45:44 AM Vice Chairman Chandler - witness Prater  
Note: Sacre, Candace I would like to agree, but I don't know that I necessarily glean that from the agreement, and I guess what I would ask is, it says "The District will only terminate a customer's water service for nonpayment in accordance with its residential retail billing procedure," so does this say that the agreement - that you all can or can't disconnect somebody's water service for nonpayment of sewer service?

9:47:59 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	So this has come up on occasion, you can imagine, over the years, for folks who provide water service for areas they don't necessarily provide the sewer service, so we can talk through it for a second. The answer you just gave was effectively that Southern will be able to disconnect customers for not paying a rate that is not in Southern's tariff?
9:49:29 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	Well, Mr. Prater, the next paragraph though speaks exactly to that, that "Any partial payments received from a customer shall be first applied to any amount due the District for utility services rendered, and the remaining portion of the payment, if any, shall be applied to amounts charged by the agency."
9:50:00 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	And so, I'll just say, the way I read the final sentence about termination is that you can only - the District will only terminate a customer's water service for nonpayment in accordance with its residential retail billing procedure which, as you stated, is laid out in your all's tariffs as it relates solely to water, so, just speaking for myself, I would have read that final sentence as saying that you can only disconnect water if they don't pay their water bill, and then the next sentence says that, if for partial payments, they'll be applied initially to the water bill. I just want to make sure I get your understanding of what you believe, from Southern's perspective, of what this agreement says on its front so that we can know how to adjudicate it.
9:51:33 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	Okay, and then, the last question I have, Mr. Prater, is just, have you all looked into the cost of obtaining the insurance and the bond coverage in paragraph 8 of that agreement?
9:52:08 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	And the only reason I ask is because the agreement, if it's approved by the Commission, the language there is "shall," right? And so, insofar as it's prohibitively expensive or whatever it costs, if it starts costing more than the three percent that you're getting for that, then that would be something we'd like to know before we consider the actual agreement.
9:53:09 AM	Vice Chairman Chandler Note: Sacre, Candace	Okay, all right, I appreciate it, Mr. Prater. That's all the questions I have, Chairman.
9:53:13 AM	Chairman Schmitt Note: Sacre, Candace	Commissioner Mathews, do you have any questions?
9:53:16 AM	Commissioner Mathews Note: Sacre, Candace	I don't have any. Thank you.
9:53:18 AM	Chairman Schmitt Note: Sacre, Candace	I have a few.
9:53:23 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	Examination. I know that you weren't on the commission of Southern Water and Sewer District at the time the original Asset Purchase Agreement was executed, but you, at all times, have been a customer, is that correct, Mr. Prater?
9:53:49 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	As I understand it, and, perhaps, Mr. Music may be better able to answer this question or confirm what I'm going to say, Southern Water and Sewer District had three wastewater treatment systems, one in Harold, one at Eastern, and one at Wayland, is that correct?

9:54:13 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	And Southern had been unable, for some period of time, to hire and maintain qualified operators at one or more of those systems, is that correct?
9:54:28 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	And Southern basically was facing enforcement of perhaps severe civil penalties from the Energy and Environment Cabinet as a result of its failure to comply with state and federal laws and regulations pertaining to wastewater treatment systems, is that correct?
9:54:52 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	So Prestonsburg, apparently for some time prior to the time the Asset Purchase Agreement was executed originally, had basically taken over operational control of those systems. I think that's correct. Isn't that right? And Prestonsburg agreed to basically come in and provider operators and was running the system on Southern's behalf, correct?
9:55:35 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	And the wastewater treatment plant, especially, I think I remember, at Wayland was in need of some serious rehabilitation or upgrades, is that - do you know?
9:55:49 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	Okay, now, at Harold, the Harold wastewater treatment plant, the water that furnishes that plant and furnishes its customers would be supplied or is being supplied by a portion of the system known as the US 23 or the Stanville/Betsy Lane Water System, is that correct?
9:56:47 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	So, assuming someone attached to or connected to the Harold Wastewater System didn't pay the bill, that would be the - Southern wouldn't be involved at all in that? That would be -
9:56:59 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	- Prestonsburg because Prestonsburg provides the water as well, correct?
9:57:28 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	But the reality is that the City of Prestonsburg has taken over control of these wastewater treatment plants at Eastern and Wayland and initially assumed control or operational management control on behalf of Southern at Southern's request, is that correct?
9:57:48 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	And, yet, if Southern can't cut off the water in order to enforce Prestonsburg's right to payment for use of the sewer, then Prestonsburg basically has an asset that costs it a lot of money but is of absolutely no benefit to it. Is that fair to say?

9:58:32 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	The reason that I'll probably ask Mr. Music, and he may or may not know, but, as I understand it, when the federal prison was built at the old Pelter Mining Complex in Martin County, what they now call the - some kind of industrial park, the City of Prestonsburg ran the water, and, in a spirit of regionalization that was somebody's brain child, Prestonsburg provided water, and they allowed Martin County to provide part of the water, and the City of Paintsville was to provide sewer, and what happened was is that, once the sewer system left the Johnson County line, nobody would pay the sewer bill, and certain district courts in one county or another refused to enforce payment of the bill until the City of Prestonsburg agreed to basically terminate water service to those customers so that Paintsville could basically get paid for the sewer services. But it is, obviously, one way or the other, if this transfer is approved, if it's going to get my vote, Prestonsburg has to be able to request and Southern has to agree to cut off the water service to people who don't pay their sewer bill
10:00:11 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	Now, originally, the original agreement was that Prestonsburg was to get the three wastewater treatment plants which have never been transferred to it, but it was also to get, for the price of \$2,140,000, the Stanville/Betsy Layne System and the Pyramid System, but under the amended agreement, the Pyramid System will be retained by Southern. Can you tell us why Southern is retaining that? Is that something that Rural Development required that Prestonsburg no longer wanted, or what was the reason why Pyramid is remaining with Southern?
10:03:06 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	Now, as I understand it, under the terms of the original Asset Purchase Agreement as approved by the Public Service Commission, Southern was to receive, in cash and kind payment, loan payments, \$2,140,000, and that amount was, in fact, paid by the City of Prestonsburg to Southern, correct?
10:03:33 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	And, under the revised agreement, Southern not only gets to keep the Pyramid customers, right -
10:03:42 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	- but it gets the benefit of another \$1,600,000 that Prestonsburg is going to pay on the Rural Development loan, right?
10:03:54 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	Plus, \$137,000 in debt relief for the sewage collection fees that Southern owes to Prestonsburg, is that correct?
10:04:10 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	So is this a good deal for Southern and Southern's customers?
10:05:38 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	Well, I maybe - it does, and it doesn't. What are the ramifications to Southern Water and Sewer District if the Public Service Commission refused to basically approve this amended agreement and just required the parties to unwind everything they had done? My understanding is, at that point in time, Southern would owe Prestonsburg the amount that it's been paid so far of \$2,140,000, and there's more than that, plus the fact that Prestonsburg has replaced all the meters, haven't they -
10:06:34 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	- for Stanville/Betsy Lane and made other upgrades?

10:06:38 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace And, if that were the case, could Southern possibly come up with that kind of money to basically reimburse Prestonsburg for the amount of money it's spent to upgrade Southern's system?

10:07:55 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace It's basically making the best of what, through nobody's fault that's here, in this room, the best of a bad situation, correct?

10:08:07 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace Now, a couple of other things. One, I think, well, I know that under the original agreement, there was a freeze on rates -

10:08:23 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace - so that, for three years after closing, Prestonsburg, for instance, agreed not to raise the rates, the water rates, of the Stanville/Betsy Layne System. Is that still part of this agreement, or, once this - assuming this agreement as amended is now approved, will Prestonsburg still be bound to maintain the same rates that it now has or had from 2016 or '17 on for another three years?

10:09:37 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace The reason why say that, and we we may have to, when we consider this, do some amending of some of this language, I'm sure that RD won't care as long as it gets its \$1,600,000, but it says at page 15, numerical paragraphs 11, 15, and 16, "The schedule of Southern District's current rates for monthly water service is attached as Exhibit 2. The City and PCUC agree that, following the closing, PCUC shall charge these rates to persons in the Pyramid and Stanville/Betsy Layne/Harold areas for water service and shall not increase these rates for at least three years following the date of closing," but there never was a closing on the water assets, correct?

10:10:30 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace Well, as far as you're concerned, I know you haven't considered it or your commissioners haven't considered it, but would you be willing to consider basically altering that sentence to basically permit Prestonsburg to charge those customers the rates that it charges other people in the City? Now, I don't even know what those are. They may be more. They may be less. But is there any particular reason at this time to have that clause in the contract when Prestonsburg has already kept those rates at the same rate despite substantial investments in that part of the system for three years that would now extend it for at least six years, isn't that correct?

10:11:56 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace Well, we may have to - you may have to do a little massaging of that language. Anyway, that's up to you all, I guess. The first appraisal that was done that basically raised the temperature of the Public Service Commission was apparently where the City of Prestonsburg or the Prestonsburg City Utilities Commission hired, found, designated, and agreed to pay the appraiser but the ostensible customer of that appraiser was Southern, but, based upon the general manager's testimony at the time, he never even talked to the appraiser.

10:12:48 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace Now, what I want to ask you is, in this case, Dean Dorton, or what I always thought was Dean Dorton Ford, from Lexington, Kentucky, was the company that performed the appraisal at \$1,510,000 or something, \$1,510,960, correct?

10:13:11 AM Chairman Schmitt - witness Prater  
Note: Sacre, Candace Now, who paid for that appraisal?



10:13:24 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	Let me ask. Let me clear it up. I think I can. Who - they paid for the appraisal. What influence, if any, did you or did Southern Water District have in picking the person who did the appraisal? Did you have any influence in it at all?
10:15:10 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	So are you satisfied that the appraisal is fair, reasonable, and accurate?
10:15:25 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	One last question. No lawyer can ask just one last question, but the - Southern needed new water meters because, as I remember, 700 to 750 water meters in its system were basically not functioning. Is that substantially correct?
10:15:58 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	And then Southern was advised that it was the recipient or would be the recipient of, like, \$1,400,000 or a million six hundred thousand, something, from Abandoned Mine Lands money in order - and it could use it, was supposed to use that money to replace the meters, correct?
10:16:24 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	All right, now, because something had to be done immediately, the Public Service Commission granted a surcharge to Southern of five dollars and something a month on all of its customers in order to basically try to get enough money so that Southern could get a loan and replace the meters, and the surcharge money would assist in repaying the loan, correct?
10:17:08 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	All right, and that was our intent when we did it, but we also knew that the AML money had been designated for meters, and we were told that nothing in writing - that that AML money would ultimately still come to Southern, and Southern would be able to use it for infrastructure replacement and improvements. What I want to ask you is, has Southern gotten any of the AML money to date?
10:18:41 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	Now, what is the status of your meter replacements?
10:20:13 AM	Chairman Schmitt - witness Prater Note: Sacre, Candace	If you retain and then assume operational control of the 110 or -15 customers at the Pyramid System, does Southern have sufficient money to replace those meters with the radio-read meters?
10:21:14 AM	Chairman Schmitt Note: Sacre, Candace	Thank you. I have no further questions. Ms. Vinsel, anything further?
10:21:18 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	I just have a few things further.
10:21:21 AM	Asst Gen Counsel Vinsel PSC - witness Prater Note: Sacre, Candace	Recross Examination. I apologize. I'm going to do something I don't like to do. I'm going to read the law. Given the nature of our discussion about the ability to disconnect sewer service, excuse me, it should be for nonpayment of the sewer bill, let me refer you, just in general for your information as you all are pondering this, first, to KRS 74.407, Subpart (4), which reads, "If a water district that provides sewer services is not. . ." I'm sorry. I've read this one wrong. Let me have you just go and look at that particular section. It also refers you to KRS 96.930 to 96.943.

10:22:54 AM	Asst Gen Counsel Vinsel PSC - witness Prater Note: Sacre, Candace	Yes, and, actually, I'm going to say, I was incorrect about Subpart 4, but the statutes address this very issue about where a water district is collecting fees for sewer services provided by a different entity, and there are also Commission decisions on it. I think from the, particularly, the Vice Chairman's questionings, the question about the disconnection for service needs to be clarified further.
10:23:31 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	And Staff has no further.
10:23:32 AM	Chairman Schmitt Note: Sacre, Candace	Okay. Mr. McNally, any questions?
10:23:35 AM	Atty McNally PCUC Note: Sacre, Candace	No.
10:23:36 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Bailey?
10:23:37 AM	Atty Bailey Southern District Note: Sacre, Candace	No, Your Honor.
10:23:38 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Chandler?
10:23:41 AM	Vice Chairman Chandler Note: Sacre, Candace	Yeah, thank you, Chairman, just a follow-up on what Ms. Vinsel was discussing there.
10:23:45 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	Examination. So, Mr. Prater, we were talking about the agreement that says that the partial payments from a customer, this is in regards to the area that the tariffs of Prestonsburg will be applied to the sewer customers, but the water customers will be Southern's, the financial agreement says that "Any partial payments received from a customer shall be first applied to any amount due to the District for utility services, and the remaining portion of the payment, if any, shall be applied to the amounts charged by the agency." First, I'll just ask, do you know what the intent was with that provision?
10:24:46 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	Let me ask this, Mr. Prater, if there's a concern that, let's just say, hypothetically, there's a concern that legally Southern would not be able to disconnect due to somebody not paying Prestonsburg's bill, right, or the sewer portion of the bill, if, for instance, the partial payments went to the agency, which would be the sewer portion of the bill first, then any nonpayment would necessarily apply to the Water District's service, right?
10:25:40 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	And there's no - as you understand it, you just get to follow your tariff as it relates to delinquency and disconnections due to nonpayment for water service pursuant to your all's tariffs, right?
10:25:53 AM	Vice Chairman Chandler - witness Prater Note: Sacre, Candace	Okay, and so, to me, this seems beneficial to the District insofar as the District gets the money first, but, based on the conversation and the questions today, can you speak on behalf of the District as to whether or not you all would have a concern if the agency's monies were applied first in the event there were partial payments?
10:26:53 AM	Vice Chairman Chandler Note: Sacre, Candace	That's all I have, Chairman. Thank you.
10:26:55 AM	Chairman Schmitt Note: Sacre, Candace	Commissioner Mathews?

10:26:57 AM	Commissioner Mathews Note: Sacre, Candace	I don't have anything.
10:26:59 AM	Chairman Schmitt Note: Sacre, Candace	I have nothing further. May this witness be excused?
10:27:02 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Yes, he may.
10:27:03 AM	Chairman Schmitt Note: Sacre, Candace	You may step down then, Mr. Prater.
10:27:06 AM	Chairman Schmitt Note: Sacre, Candace	Why don't we take basically a seven- or eight minute break until 25 till 11 and allow our custodian to come in and basically sanitize the witness booth? We'll be in recess until 25 minutes until 11.
10:27:31 AM	Session Paused	
10:38:52 AM	Session Resumed	
10:38:56 AM	Chairman Schmitt Note: Sacre, Candace	We're now back on the record. Mr. McNally, as attorney for Prestonsburg City Utilities Commission, I understood at break that you wanted to enlighten the Commission and for the record the status of the Prestonsburg City Utilities Commission as it pertains to the City of Prestonsburg. Is that correct?
10:39:16 AM	Atty McNally PCUC Note: Sacre, Candace	That would be fine.
10:39:18 AM	Chairman Schmitt Note: Sacre, Candace	All right, please go ahead and do so.
10:39:19 AM	Atty McNally PCUC Note: Sacre, Candace	Vice Chairman Chandler, most city utilities are an agency of the city and organized under Chapter 96 of the Kentucky Revised Statutes. Prestonsburg is probably one or two city utilities that are organized differently. They're organized under Chapter 58 of the Kentucky statutes as a public project, so, as a consequence, it's independent of the City. The City's only control is through two things. (Click on link for further comments.)
10:40:48 AM	Vice Chairman Chandler Note: Sacre, Candace	Well, and that, I don't necessarily disagree or have a position on it, but would you all concede that they are a party to the initial agreement?
10:40:57 AM	Atty McNally PCUC Note: Sacre, Candace	Yes.
10:40:59 AM	Vice Chairman Chandler Note: Sacre, Candace	Okay.
10:41:00 AM	Atty McNally PCUC Note: Sacre, Candace	That could possibly have been. I wasn't involved then, but possibly it was because there was a revenue bond issued approximately that time by Rural Development, so there may have been - that may have been the reason for the City's signing off on the agreement. That's the way, when they're doing a project with a bond ordinance, they're going to be issuing a new bond, the City does get involved in those agreements and signs off on them, so that's possibly why that's why they were there. I don't know.
10:41:30 AM	Vice Chairman Chandler Note: Sacre, Candace	And, with that being the case and this being an amendment to that specific agreement, do you have an objection to getting their acquiescence in writing?

10:41:41 AM	Atty McNally PCUC Note: Sacre, Candace	I don't think it would be a problem. The City probably would be cooperativet, but I don't represent the City. That's another issue. The City has separate counsel. I just only represent the Utilities Commission.
10:41:53 AM	Vice Chairman Chandler Note: Sacre, Candace	No, I don't - I understand that. I just want to make sure that if we're going to approve an amendment to an agreement, that all the parties to that initial agreement are at least aware.
10:42:05 AM	Atty McNally PCUC Note: Sacre, Candace	The mayor's been involved. He's knowledgeable of it, but we can approach the mayor and ask if the City would sign off on it. We could have maybe some kind of signature page or some kind of agreement to ratify and confirm it.
10:42:20 AM	Vice Chairman Chandler Note: Sacre, Candace	All right, thank you.
10:42:21 AM	Chairman Schmitt Note: Sacre, Candace	Thank you, Mr. McNally.
10:42:23 AM	Chairman Schmitt Note: Sacre, Candace	Are you ready to call your next witness, Ms. Vinsel?
10:42:27 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Yes, I am, Chairman. Staff calls Mr. Potter.
10:42:36 AM	Chairman Schmitt Note: Sacre, Candace	Witness is sworn.
10:42:44 AM	Chairman Schmitt Note: Sacre, Candace	Please be seated.
10:42:45 AM	Chairman Schmitt Note: Sacre, Candace	You may ask.
10:42:47 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Thank you.
10:42:49 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Cross Examination. Good morning, Mr. Potter. I think there's a lot of follow-up questions. I'm going to start with some more general ones, and I'm going to ask you to fill in the gaps as you can.
10:43:03 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Let me start with - I'm sorry. Let me start back. Can you on the record say what your position is in terms of Southern Water District?
10:43:43 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Thank you. Can you give a general assessment in regard to the Amended Asset Transfer and what impact it will have on Southern's operations?
10:45:29 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Can you expand on that? Why you think it's a win-win?
10:46:12 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Thank you. Do you know very much about the Pyramid System? Like, what its status is of the infrastructure, the meters?
10:46:50 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Do you know what the water loss rate is for that?
10:47:35 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Fair enough, fair enough. Oh, I should have been clear. I was speaking about water loss for the Pyramid System. I can ask Mr. Music.
10:47:52 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	And your statements about the water loss on the Southern System, it's understood and fair statement.

10:48:08 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Okay. Do you know what kind of meters are installed on the Pyramid System?
10:48:19 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Neptune?
10:48:21 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	And they're radio-read meters?
10:48:29 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	And I should probably ask Mr. Music how old they are, would you suggest, or do you know?
10:48:55 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Given that these are newer but they're radio-read as opposed to the AMI, what would Southern's plan be for meter -
10:49:49 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	So, if this is approved, then Southern would switch out these?
10:49:57 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Okay. Would you have any plan for selling the -
10:50:20 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	That was going to be one of my next questions.
10:50:43 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	You've spoken about the status of the AMI meters and that the residential is done. How far along is the installation on the commercial customers?
10:51:51 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Understood, and I apologize for looking down. I'm trying to write the time so I can - I want you to know I am listening very carefully. I'm making notes. In terms of those laptops, do you have a sense when they might be delivered?
10:52:26 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	Okay, going back to the time line for a Commission decision, you know, with what Chairman Prater said, that it would really be a good situation if the Commission order could be out so that this could be in effect October 1st. It sounds like that lines up somewhat with the installation of the commercial meter so that the crew could then move over to Pyramid. Is that correct?
10:53:13 AM	Asst Gen Counsel Vinsel PSC - witness Potter Note: Sacre, Candace	And the Chairman may want to explore a little bit more about the question about some of the grants that have come in, like the AML, but let me follow up on a couple of items that Chairman Prater referenced, so can you tell me the status of the AML funds that will be going to Wayland/Lackey line replacement?
10:57:33 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Staff has no further questions.
10:57:35 AM	Chairman Schmitt Note: Sacre, Candace	Mr. McNally?
10:57:36 AM	Atty McNally PCUC Note: Sacre, Candace	I have no questions.
10:57:37 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Bailey?
10:57:38 AM	Atty Bailey Southern District Note: Sacre, Candace	None, Your Honor.
10:57:39 AM	Chairman Schmitt Note: Sacre, Candace	Vice Chairman Chandler?

10:57:44 AM	Vice Chairman Chandler Note: Sacre, Candace	Just one, and, again, you shouldn't trust me, Chairman, if I didn't say just one.
10:57:53 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Potter Examination. I just want to understand now that you've had a significant amount of experience there. What percent of Southern's customers are commercial customers?
10:58:30 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Potter And, historically, have they been served by larger meter sizes?
10:58:45 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Potter And, so once the meters are installed, you anticipate that there's going to be some sort of proposal from Southern to charge them different rates than the rest of the customer base?
10:59:23 AM	Vice Chairman Chandler Note: Sacre, Candace	All right, thanks.
10:59:30 AM	Chairman Schmitt Note: Sacre, Candace	Anything further, Mr. Chandler?
10:59:39 AM	Chairman Schmitt Note: Sacre, Candace	Dr. Mathews, any questions?
10:59:41 AM	Commissioner Mathews Note: Sacre, Candace	I just have a question about those commercial customers.
10:59:47 AM	Commissioner Mathews - witness Note: Sacre, Candace	Potter Examination. How many of those are in the area that was given to Prestonsburg?
11:00:07 AM	Commissioner Mathews - witness Note: Sacre, Candace	Potter Yeah, but there are some commercial customers on that corridor, correct?
11:00:19 AM	Commissioner Mathews - witness Note: Sacre, Candace	Potter Okay, so Southern lost some higher volume customers with that deal?
11:00:30 AM	Commissioner Mathews Note: Sacre, Candace	Okay. That's all I have.
11:00:35 AM	Chairman Schmitt - witness Note: Sacre, Candace	Potter Examination. Just a couple, Mr. Potter. If the Commission refused to approve this amended agreement, the terms of the amended agreement, and the transaction had to be completely unwound with the parties basically insofar as the water distribution systems are concerned, could Southern afford to repay Prestonsburg the \$2,140,000 that had previously been paid on its behalf and pay for the meters and the other upgrades that were made at Pyramid and the Stanville/Betsy Layne section?
11:01:37 AM	Chairman Schmitt - witness Note: Sacre, Candace	Potter Oh, I understand, yeah. I understand.
11:01:44 AM	Chairman Schmitt - witness Note: Sacre, Candace	Potter You take the position that Prestonsburg did that just out of the goodness of its heart. It thought it was getting the system, isn't that correct, and that would be a benefit if Southern got it back with a million dollars' worth of improvements made to it, don't you think that, equitably, that Southern would be required or should be required to reimburse Prestonsburg on some basis?
11:02:23 AM	Chairman Schmitt - witness Note: Sacre, Candace	Potter Let me ask you this. When it became apparent that Southern needed basically to replace all of its meters which were old and apparently were basically running slow or weren't running/metering at all, is that correct -

11:02:42 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	- and, as a result of that, basically the surcharge of \$5-plus was put into effect in order to be able to do that, correct?
11:02:54 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	And because who knew when the AML money would ever get there and isn't there even today, correct?
11:03:02 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	And there's some question about whether now whether they would have permitted the money to be spent on meters in the first place, correct?
11:03:10 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	In order to basically fund the new meters that were required, Southern had to borrow money, correct?
11:03:21 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	And, even with the surcharge of \$5.60 or whatever per meter, did Southern have trouble borrowing money?
11:03:45 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	I mean, the whole purpose of the surcharge was to basically provide a method of payment, but, even at that, there was little, if any, interest in anybody loaning Southern any money, isn't that true?
11:04:01 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	Which would, I guess, lend support to my statement that, if this transfer isn't somehow approved, Southern basically takes it on the chin?
11:04:15 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	Essentially, they will go under?
11:04:17 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	Isn't that essentially true?
11:04:24 AM	Chairman Schmitt - witness Potter Note: Sacre, Candace	You can't unwind it at this point, so it's a question of just making the best of what turned out to be a bad situation maybe for everybody, correct?
11:04:34 AM	Chairman Schmitt Note: Sacre, Candace	No further questions.
11:04:35 AM	Chairman Schmitt Note: Sacre, Candace	Ms. Vinsel?
11:04:36 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	I have nothing further.
11:04:37 AM	Chairman Schmitt Note: Sacre, Candace	Mr. McNally?
11:04:38 AM	Atty McNally PCUC Note: Sacre, Candace	None.
11:04:40 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Bailey?
11:04:41 AM	Atty Bailey Southern District Note: Sacre, Candace	None.
11:04:42 AM	Chairman Schmitt Note: Sacre, Candace	Vice Chairman Chandler?
11:04:45 AM	Vice Chairman Chandler Note: Sacre, Candace	Nothing, Chairman.
11:04:46 AM	Chairman Schmitt Note: Sacre, Candace	All right. Dr. Mathews?
11:04:49 AM	Commissioner Mathews Note: Sacre, Candace	No, sir.

11:04:50 AM	Chairman Schmitt Note: Sacre, Candace	May this witness be excused?
11:04:52 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Yes, he may.
11:04:53 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Potter, thank you. You may step down.
11:04:55 AM	Chairman Schmitt Note: Sacre, Candace	I guess we need to take another, like, five, ten minutes. Let's come back at 11:15 and finish up with Mr. Music. We'll be in recess while we sanitize the witness box.
11:05:10 AM	Session Paused	
11:11:37 AM	Session Resumed	
11:11:38 AM	Chairman Schmitt Note: Sacre, Candace	Okay. We're now back on the record. Ms. Vinsel, do you have another witness to call?
11:11:42 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Yes, sir, Brian Music.
11:11:52 AM	Chairman Schmitt Note: Sacre, Candace	Witness is sworn.
11:12:03 AM	Chairman Schmitt Note: Sacre, Candace	Ms. Vinsel, you may ask.
11:12:05 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Thank you.
11:12:06 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	Cross Examination. Good morning, Mr. Music. Could you tell me about your position with Prestonsburg City Utilities Commission?
11:12:15 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	And how long have you been superintendent?
11:12:32 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	Can you tell me about the improvements that, I'm going to call it, PCUC made to the system, the Pyramid portion of the system?
11:12:51 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	Do you have an estimate of how much - what the cost was that you expended on those upgrades?
11:13:15 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	And do you know what the water loss rate is just in that portion of the system?
11:13:44 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	And what role does that situation play in the reason why Prestonsburg City Utilities Commission is agreeing for Southern to regain ownership?
11:14:27 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	And, the improvements to the, I'm just going to all it, the Stanville area, do you have an approximate cost of what improvements - the improvements were that were made to that area?
11:15:17 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	And that was, like, maybe two or three of those that were replaced?
11:15:25 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	And, the thousand meters, they were also similar to what was changed out in Pyramid, so they were about \$200 each?
11:15:34 AM	Asst Gen Counsel Vinsel PSC - witness Music Note: Sacre, Candace	The Neptune radio-read meters?



11:15:46 AM Asst Gen Counsel Vinsel PSC - witness Music  
Note: Sacre, Candace We've talked today here about the provision in the original Asset Purchase Agreement that - and, before I say that, as background, let me reiterate that Turner Campbell was superintendent at that time that the original agreement entered into, is that correct?

11:16:06 AM Asst Gen Counsel Vinsel PSC - witness Music  
Note: Sacre, Candace So you were not part of those negotiations or discussion?

11:16:16 AM Asst Gen Counsel Vinsel PSC - witness Music  
Note: Sacre, Candace So, as we've discussed, in paragraph 11 of the original agreement, there is a provision that the City of Prestonsburg and Prestonsburg City Utilities Commission entered into to keep the rates in the Pyramid and Stanville section the same for three years after closing. Has PCUC evaluated that particular contract provision and made a determination what it will do with that provision?

11:17:03 AM Asst Gen Counsel Vinsel PSC - witness Music  
Note: Sacre, Candace And would you agree that probably is one of the terms that would be looked at -

11:17:08 AM Asst Gen Counsel Vinsel PSC - witness Music  
Note: Sacre, Candace - as part of any clarification for the amended agreement?

11:17:27 AM Asst Gen Counsel Vinsel PSC  
Note: Sacre, Candace Staff has no further questions at this time.

11:17:31 AM Atty Bailey Southern District  
Note: Sacre, Candace No questions.

11:17:31 AM Chairman Schmitt  
Note: Sacre, Candace Mr. Bailey, questions?

11:17:32 AM Chairman Schmitt  
Note: Sacre, Candace Mr. McNally?

11:17:35 AM Atty McNally PCUC  
Note: Sacre, Candace Let me look at my notes. I have one, Your Honor.

11:17:51 AM Atty McNally PCUC - witness Music  
Note: Sacre, Candace Direct Examination. Mr. Music, is it your expectation that Southern Water would disconnect their water customer if that water customer doesn't pay the sewer bill in the Eastern/Wayland areas?

11:18:27 AM Atty McNally PCUC  
Note: Sacre, Candace Chairman, that's all the questions I have at this time.

11:18:30 AM Chairman Schmitt  
Note: Sacre, Candace Vice Chairman Chandler, questions?

11:18:33 AM Vice Chairman Chandler  
Note: Sacre, Candace All right, thanks, Chairman.

11:18:35 AM Vice Chairman Chandler - witness Music  
Note: Sacre, Candace Examination. Mr. Music, so, to that last question, Mr. Music, would you agree that the agreements are not particularly clear on that point?

11:18:44 AM Vice Chairman Chandler - witness Music  
Note: Sacre, Candace So, to the questions I had for Mr. Prater earlier, would you have any problem with the Commission either prorating partial payments or, other than the three percent fee, placing the partial payment on to the sewer service first for those co-served customers?

11:19:11 AM	Vice Chairman Chandler - witness Note: Sacre, Candace	Music And the question I was asking Mr. Prater earlier about the capitalized term "Designated Water Assets" in the amendment, you have the same understanding as Mr. Prater as to what those assets are referring to in that they are describing the Pyramid System that's colored in green and PSC Staff Exhibit No. 1 and the former Sandy Valley Water Distribution System that's colored red in PSC Staff Exhibit 1?
11:19:50 AM	Vice Chairman Chandler Note: Sacre, Candace	Okay, that's all I have, Chairman. Thank you.
11:19:54 AM	Chairman Schmitt Note: Sacre, Candace	Dr. Mathews, questions?
11:19:57 AM	Commissioner Mathews Note: Sacre, Candace	I don't have any.
11:20:01 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music Examination. Mr. Music, does the City of Prestonsburg charge customers outside of its city limits a higher rate than the customers inside the city limits?
11:20:21 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music And what is the difference? On a typical residential customer, what is the difference?
11:20:32 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music Now, after Prestonsburg acquired operational control of the Stanville/Betsy Layne System, did it maintain or has it maintained the rates that were in effect at the time it took control?
11:20:52 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music And how do those rates compare to the present rates that other Floyd County, non-Prestonsburg customers pay for water?
11:21:34 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music So that, basically, if the provision of the contract allowed you to change rates rather than wait another three years after closing, assuming Commission approval, I suspect that's what Prestonsburg City Utilities Commission would like the option of doing, is that correct?
11:21:56 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music Now, about how much - what's your guesstimate or best estimate of how much money Prestonsburg has invested in the Stanville/Betsy Layne System since it acquired operational control in 2017?
11:22:23 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music In the beginning, I guess, the original agreement, Prestonsburg was to acquire the three wastewater systems, Harold, Wayland, and Eastern, plus the two water distribution systems, Stanville/Betsy Layne and Pyramid for \$2,140,000, is that correct?
11:22:54 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music Now, under the proposed new agreement, Prestonsburg, which has already acquired the three wastewater systems, will acquire Stanville/Betsy Layne Water Distribution System, but Southern will keep the Pyramid System, correct?
11:23:15 AM	Chairman Schmitt - witness Note: Sacre, Candace	Music So, for fewer assets, Prestonsburg is paying more substantially more money, is that correct?

11:23:26 AM	Chairman Schmitt - witness Music Note: Sacre, Candace	Has Prestonsburg or did Prestonsburg already pay in cash or cash and kind, equipment and whatever, to Southern before it was learned that Rural Development would not approve the transaction, had Prestonsburg already paid \$2,140,000 to or on behalf of Southern?
11:23:56 AM	Chairman Schmitt - witness Music Note: Sacre, Candace	Now, in addition to that \$2,140,000, Prestonsburg now is required to pay Rural Development an additional \$1,600,000, is that correct?
11:24:11 AM	Chairman Schmitt - witness Music Note: Sacre, Candace	And that's applicable only to this water asset of - water assets that compromise Stanville/Betsy Layne so that they'll release their lien, is that correct?
11:24:25 AM	Chairman Schmitt - witness Music Note: Sacre, Candace	And, in addition, Prestonsburg is paying or forgiving \$137,500 in Southern's debt to Prestonsburg, correct?
11:24:36 AM	Chairman Schmitt - witness Music Note: Sacre, Candace	Now, at some point, and correct me if I'm wrong, did Prestonsburg actually pay the Floyd Fiscal Court a hundred thousand dollars?
11:24:48 AM	Chairman Schmitt - witness Music Note: Sacre, Candace	A hundred and fifty-eight thousand dollars, so whatever this deal cost Southern, Prestonsburg took a real hosing, didn't it?
11:24:57 AM	Chairman Schmitt Note: Sacre, Candace	I have no further questions. Anything, Ms. Vinsel?
11:25:01 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Nothing further.
11:25:02 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Bailey?
11:25:03 AM	Atty Bailey Southern District Note: Sacre, Candace	No, nothing.
11:25:06 AM	Chairman Schmitt Note: Sacre, Candace	Mr. McNally?
11:25:07 AM	Atty McNally PCUC Note: Sacre, Candace	One clarification question.
11:25:11 AM	Atty McNally PCUC - witness Music Note: Sacre, Candace	Direct Examination. I think I would, previously, just mention that the Stanville area was a newer part of the system. Could you maybe comment about the age of the water distribution system going back when it was in ancient history?
11:25:39 AM	Atty McNally PCUC - witness Music Note: Sacre, Candace	And do you know what type of water lines were laid in that area?
11:25:50 AM	Atty McNally PCUC - witness Music Note: Sacre, Candace	What is the expected life expectancy of those cement-asbestos water lines?
11:26:06 AM	Atty McNally PCUC - witness Music Note: Sacre, Candace	So are you anticipating that you're going to have to do some rehabilitation work in that area in the future?
11:26:22 AM	Atty McNally PCUC - witness Music Note: Sacre, Candace	Could that possibly include replacement of most of the surface lines in that area, the entire water distribution system?
11:26:44 AM	Atty McNally PCUC Note: Sacre, Candace	That's all the questions I have. Thank you.
11:26:47 AM	Chairman Schmitt Note: Sacre, Candace	Vice Chairman Chandler, questions?

11:27:00 AM	Vice Chairman Chandler Note: Sacre, Candace	No questions.
11:27:04 AM	Chairman Schmitt Note: Sacre, Candace	Dr. Mathews, questions?
11:27:08 AM	Comissioner Mathews Note: Sacre, Candace	No questions.
11:27:10 AM	Chairman Schmitt Note: Sacre, Candace	Is there anything else, Ms. Vinsel?
11:27:13 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Nothing else.
11:27:14 AM	Chairman Schmitt Note: Sacre, Candace	May this witness be excused?
11:27:15 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	Yes, he may.
11:27:17 AM	Chairman Schmitt Note: Sacre, Candace	Thank you, Mr. Music. You may step down, and you're excused.
11:27:20 AM	Chairman Schmitt Note: Sacre, Candace	Is there another witness, Ms. Vinsel, or does this conclude the evidence?
11:27:26 AM	Asst Gen Counsel Vinsel PSC Note: Sacre, Candace	This concludes the evidence.
11:27:28 AM	Chairman Schmitt Note: Sacre, Candace	I want to give, I guess, the parties through their counsel an opportunity if they want to say anything at this point about the transaction, or I'm assuming that both sides are for - that all parties are in favor of closing it on some basis.
11:27:43 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Bailey, do you have anything additional to say?
11:27:45 AM	Atty Bailey Southern District Note: Sacre, Candace	Your Honor, nothing additional. I just think this is the only way out for both parties.
11:27:52 AM	Chairman Schmitt Note: Sacre, Candace	Okay. Mr. McNally?
11:27:54 AM	Atty McNally PCUC Note: Sacre, Candace	One comment. I do think we need to amend the financial service agreement for the collection of the sewer fees. I think we need some clarification there, and, as to the term of the Designated Water Assets, that was picked up from one of the documents that was done. I don't remember. I've looked in the asset first agreement. I'm not sure if it's there or one of those two - there's actually two operating agreements, that they were done, and it was, I think, maybe a term used in one of those operating agreements. It was a "whereas" clause. It was just explanatory, was the intent, so - and then the one other comment about - I was wanting to be sure that RD approved the transaction before any money was paid, and I was hoping they would agree to sign off on - that's why their signatgure line's in the agreement, but they said they would have to refer to Legal and that would be a delay for that, so they said if we just do it the way we've done it, where they sign the application and the letter, the approval would be much quicker, and so we acquiesced to that process.
11:29:09 AM	Chairman Schmitt Note: Sacre, Candace	Well, and I think it's obvious they have approved. They've given the letter. They agreed to basically eliminate their lien on those assets, so, you know, I think they'd be held to that, especially in an election year, don't you?

11:29:24 AM	Atty McNally PCUC Note: Sacre, Candace	I was comfortable with their paperwork they provided, but, considering the history of this case and they initially refused to consent when everybody thought they would, I wanted to - I wanted it in writing somewhere somehow.
11:29:40 AM	Chairman Schmitt Note: Sacre, Candace	All right, I guess the issue is - I think there are probably three or four small, I don't know if they're small, but areas that the Commission will probably want to see cleaned up or changed, the minor details, and perhaps we can get something out through Staff Counsel on that and see or work out some way in order to be able to take care of those and see if you all can comply.
11:30:09 AM	Asst General Counsel Vinsel PSC Note: Sacre, Candace	Yes, I wanted to make sure that we were all on the same page in agreement of what those issues were. Clarifying the question of termination for nonpayment of sewer fees. The question about the rates in the Stanville/Betsy Layne/Harold area from the original agreement. The question of Prestonsburg's ratification. And I think we probably don't need to address the question of Rural Development's signature line on the agreement, or do you think -
11:30:46 AM	Chairman Schmitt Note: Sacre, Candace	No, I don't think we do, myself.
11:30:49 AM	Asst General Counsel Vinsel PSC Note: Sacre, Candace	I wanted to make sure about that, so those are really the three issues that I see, and I know that the parties have said that they will look at this. We can get a request for information to clarify that and have the parties refile the documents, but I think, if we do the request for information, that will get it on the record and a response, and I can get that out by tomorrow.
11:31:15 AM	Chairman Schmitt Note: Sacre, Candace	Okay, thank you.
11:31:16 AM	Vice Chairman Chandler Note: Sacre, Candace	Ms. Vinsel, if there is an agreement that defines Designated Water Assets, that the (inaudible) do, if they could file them in the record, that would be very helpful.
11:31:34 AM	Asst General Counsel Vinsel PSC Note: Sacre, Candace	Thank you, Vice Chair.
11:31:41 AM	Chairman Schmitt Note: Sacre, Candace	Is there anything further?
11:31:44 AM	Chairman Schmitt Note: Sacre, Candace	If not, then this hearing is hereby adjourned. Thank you all very much.
11:31:53 AM	Session Ended	



## Exhibit List Report

2020-00228 01Sept2020

**Southern Water and Sewer District  
(Southern District) and  
Prestonsburg City Utilities  
Commission (PCUC)**

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<b>Name:</b>	<b>Description:</b>
PSC Staff Exhibit 1	Southern Water Asset Map
PSC Staff Exhibit 2	Asset Purchase Agreement between Southern Water and Sewer District and City of Prestonsburg for the use and benefit of Prestonburg City's Utility Commission January 1, 2017



PRESTONSBURG CITY'S UTILITIES COMMISSION  
 2560 SOUTH LAKE DRIVE  
 PRESTONSBURG, KY 41653  
 PHONE (606) 886 - 6871

COMMISSION  
 CHAIRMAN JIM CALHOUN  
 COMMISSIONER EDDY CLARK JR. DMD  
 COMMISSIONER GLEN D. MAY

SUPERINTENDENT - CEO  
 TURNER E. CAMPBELL

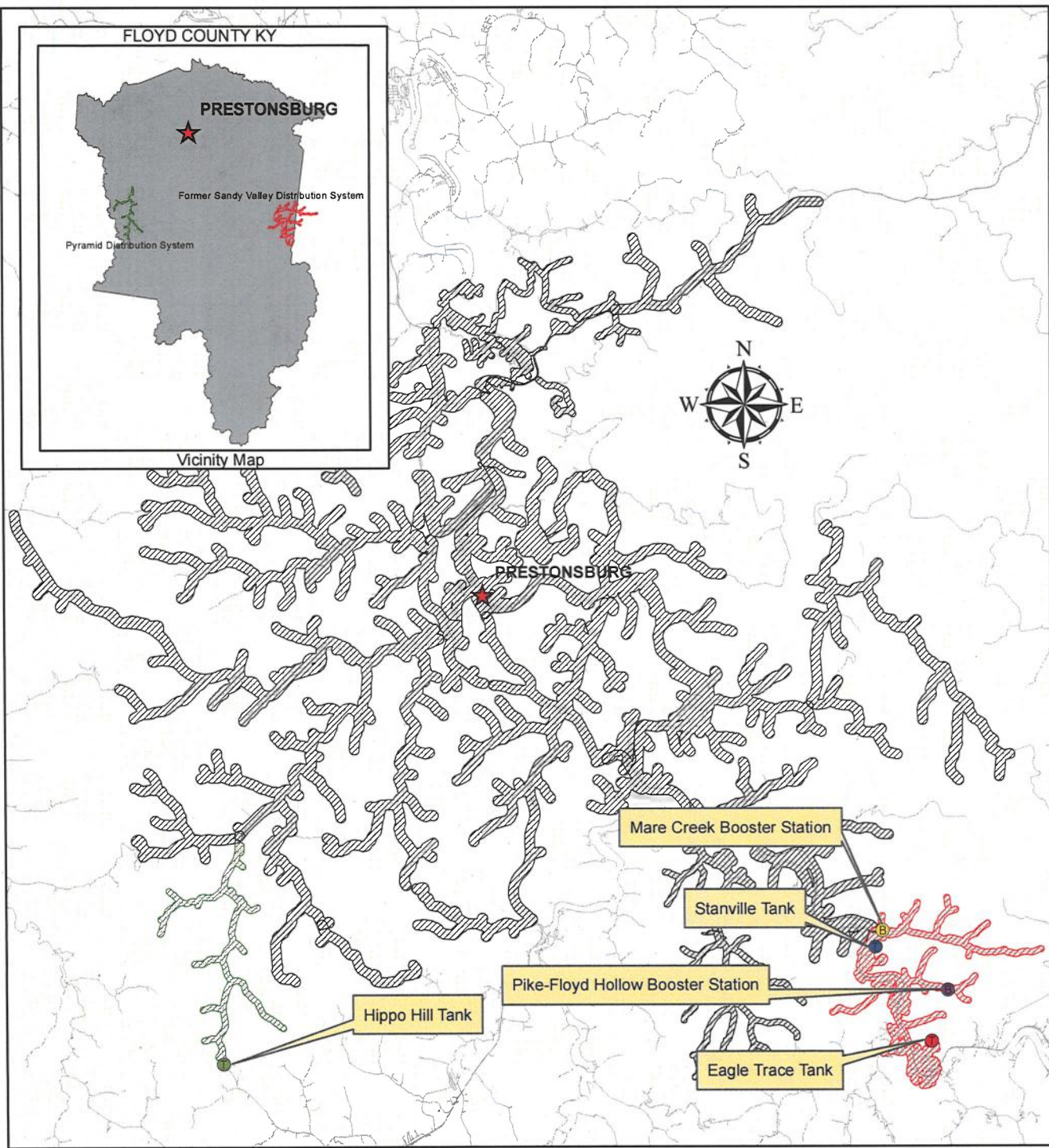
### SOUTHERN WATER SYSTEM ASSETS TO BE TRANSFERRED

**Legend**

- ★ PRESTONSBURG
- ▨ PCUC Distribution System
- Asset Purchase**
- Name**
- ▨ Former Sandy Valley Water Distribution System
- ▨ Pyramid Distribution System
- PotableStorage**
- WT\_ID**
- Eagle Trace Tank
- Stanville Tank
- Hippo Hill Tank
- Potable Booster Pumps**
- Pike-Floyd Hollow Road Booster Station
- Mare Creek Road Booster Station

Name: Southern Water Asset Map  
 Drawn by: BM  
 Checked by: TEC  
 Date: 1-5-2017

**WATER  
 ASSET  
 MAP**





**ASSET PURCHASE AGREEMENT**

Between

**SOUTHERN WATER  
AND SEWER DISTRICT**

And

**CITY OF PRESTONSBURG**

For the Use and Benefit of

**PRESTONSBURG CITY'S  
UTILITY COMMISSION**

**January 1, 2017**



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## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (the "Agreement"), effective January 1, 2017, made and entered between **SOUTHERN WATER AND SEWER DISTRICT** (the "Southern District"), P.O. Box 610, McDowell, Kentucky 41647; **PRESTONSBURG CITY'S UTILITY COMMISSION** (the "PCUC"), 2560 South Lake Drive, Prestonsburg, Kentucky 41653; and the **CITY OF PRESTONSBURG** (the "City"), 200 North Lake Drive, Prestonsburg, Kentucky 41653, (collectively, the "Parties").

### **WITNESSETH:**

**WHEREAS**, Southern District is a water district organized under the provisions of KRS Chapter 74;

**WHEREAS**, Southern District currently owns and operates water supply, treatment, and distribution facilities (the "Southern Water System") and wastewater collection and treatment facilities (the "Southern Wastewater System");

**WHEREAS**, PCUC is a duly organized and existing independent, component unit and agency of the City;

**WHEREAS**, the City currently owns, and PCUC manages and operates, water supply, treatment, and distribution facilities (the "PCUC Water System") and wastewater collection and treatment facilities (the "PCUC Wastewater System");

**WHEREAS**, the City has the sole authority to issue or assume debt on behalf of PCUC and its operations;

**WHEREAS**, certain PCUC Water System facilities are adjacent to Southern Water System facilities and certain PCUC Wastewater System facilities are adjacent to certain Southern Wastewater System facilities;

**WHEREAS**, Southern District is subject to administrative actions by the Division of Enforcement of the Kentucky Energy and Environment Cabinet (the "DOE") for alleged violations of Kentucky water quality laws;

**WHEREAS**, the actions necessary to bring Southern Wastewater System's facilities into compliance with Kentucky water quality laws are expected to cost hundreds of thousands of dollars;

**WHEREAS**, Southern District is facing substantial civil penalties for its alleged violations of Kentucky water quality laws;

**WHEREAS**, PCUC has a larger and more experienced workforce devoted to its wastewater operations than Southern District has for its wastewater operations;

**WHEREAS**, PCUC has a greater number of Wastewater Treatment Plant Certified Operators than Southern District;

**WHEREAS**, PCUC has greater financial resources than Southern District;

**WHEREAS**, since July 1, 2016, PCUC has been managing, operating, repairing, and maintaining the Southern Wastewater System pursuant to an Operating Agreement executed by PCUC and Southern District;

**WHEREAS**, since assuming responsibility for the management, operation, repair, and maintenance of the Southern Wastewater System, and in anticipation of administrative orders from DOE to remedy deficiencies in the Southern Wastewater System, PCUC has commenced, at its own expense, the rehabilitation of the Wayland Wastewater Treatment Plant and lift stations, and has made repairs to the Harold Wastewater Treatment Plant and the Eastern Wastewater Treatment Plant;

**WHEREAS**, the combination and consolidation of the Southern Wastewater System and the PCUC Wastewater System will result in greater economies of scale, enhance the reliability and quality of wastewater service presently provided to the customers of the Southern Wastewater System, substantially reduce the likelihood of the DOE's assessment of civil penalties against the Southern Wastewater System, and allow the combined wastewater systems to be managed, operated, and maintained in a more cost effective manner;

**WHEREAS**, that portion of the Southern Water System located along Kentucky Route 850 from the point where Southern currently interconnects with



PCUC near Kentucky Route 404 to the summit of the hill on Kentucky Route 850 (the "Pyramid Area") is a remote portion of the Southern Water System;

**WHEREAS**, that portion of Southern Water Distribution System located along U.S. Highway 23 from Mare Creek at Stanville south to the Pike County line, including the areas east of U.S. Highway 23 and the areas west of U.S. Highway 23 known as Justell and Harold Bottom, is also a remote portion of the Southern Water System;

**WHEREAS**, PCUC can more easily provide adequate and reliable water service to the Pyramid Area and the Stanville/Betsy Layne/Harold Area than can be provided by Southern;

**WHEREAS**, the transfer of those portions of the Southern Water System that serve the Pyramid Area and the Stanville/Betsy Layne/Harold Area from Southern District to the City, for the use and benefit of PCUC, will result in greater economies of scale, enhance the reliability and quality of water service to the customers served by those facilities, and allow the combined systems to be managed, operated, and maintained in a more cost effective manner;

**WHEREAS**, the City and PCUC have the financial, technical, and managerial abilities to provide adequate and reliable water and wastewater service to Southern District's existing customers that will be transferred to PCUC without

adversely affecting the quality of service presently afforded PCUC's existing customers;

**WHEREAS**, the City has the authority, pursuant to KRS Chapters 82, 96, and 106 and other applicable laws, to acquire, for the use and benefit of PCUC, the Southern Wastewater System and portions of the Southern Water System; and

**WHEREAS**, the transfer of the Southern Wastewater System and portions of the Southern Water System to the City, for the use and benefit of PCUC, will improve Southern District's financial position and will enable Southern District to focus its efforts on maintaining and improving the quality and reliability of service to the remaining portion of the Southern Water System.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions contained herein, the Parties agree as follows:

1. **TRANSFER OF CERTAIN ASSETS.** Subject to the terms and conditions of this Agreement, Southern District hereby agrees to transfer and convey to the City, for the use and benefit of PCUC, and the City and PCUC hereby agree to acquire from Southern District, those assets described in Paragraphs 2, 3, and 9 of this Agreement (the "Assets") for the consideration set forth in Paragraph 4 of this Agreement.

2. **WASTEWATER SYSTEM ASSETS BEING TRANSFERRED.**  
At the Closing, Southern District shall transfer to the City, for the use and benefit

of PCUC, the Southern Wastewater System in its entirety. The wastewater assets being transferred to PCUC include, but are not limited to, the following:

A. **Harold Wastewater Treatment Plant.** The in-ground, concrete basin, extended air wastewater treatment facility with a rated daily treatment capacity of 100,000 gallons and designated as the Harold Wastewater Treatment Plant (the "Harold WWTP"), the tract of real property upon which the facility is situated, and all improvements to the facility and the property on which it is situated;

B. **Harold/Betsy Layne Wastewater Collection System.** The wastewater collection system designated as the Harold/Betsy Layne Wastewater Collection System, including, but not limited to, all sewer gravity lines, all sewer force mains, all manholes, all lateral lines, all grinder pumps, all other pumps and controls, valve vaults, valves, and any and all other facilities and appurtenances used in the operation of the Harold/Betsy Layne Wastewater Collection System;

C. **Eastern Wastewater Treatment System.** The in-ground, concrete basin, extended air wastewater treatment facility with a rated daily treatment capacity of 25,000 gallons and designated as the Eastern Wastewater Treatment Plant (the "Eastern WWTP"),



the tract of real property upon which the facility is situated, and all improvements to the facility and the property on which it is situated;

**D. Eastern Wastewater Collection System.** The wastewater collection system designated as the Eastern Wastewater Collection System, including, but not limited to, all sewer gravity lines, all sewer force mains, all manholes, all lateral lines, all grinder pumps, all other pumps and controls, valve vaults, valves, and any and all other facilities and appurtenances used in the operation of the Eastern Wastewater Collection System;

**E. Wayland Wastewater Treatment Plant.** The above ground, steel basin, extended air wastewater treatment facility with a rated daily treatment capacity of 100,000 gallons and designated as the Wayland Wastewater Treatment Plant (the "Wayland WWTP"), the tract of real property upon which the facility is situated, and all improvements to the facility and the property on which it is situated;

**F. Wayland Wastewater Collection System.** The wastewater collection system designated as the Wayland Wastewater Collection System, including, but not limited to, all sewer gravity lines, all sewer force mains, all manholes, all lateral lines, all grinder pumps, all other pumps and controls, valve vaults, valves, and any and

all other facilities and appurtenances used in the operation of the Wayland Wastewater Collection System;

G. **Sewer Lift Stations.** All sewer lift stations, including the pumps and related appurtenances, used in the operation of the Harold/Betsy Layne Wastewater Collection System and Wayland Wastewater Collection System. **Exhibit 1** to this Agreement lists and describes each of these sewer lift stations and identifies its location;

H. **Real Property.** All of Southern District's rights and interests in the parcels or tracts of real property on which the wastewater system assets described above are located;

I. All other real estate easements and the improvements thereon, licenses, encroachment permits, rights-of-way, or other interests in real estate owned by Southern District and used in the operation of the Southern Wastewater System;

J. All maps, drawings, operating manuals, engineering reports, and "As Built" plans pertaining to the Southern Wastewater System;

K. All business records pertaining to the Southern Wastewater System, including, but not limited to, all customer records and agreements; and

L. Any and all other tangible and intangible rights, permits, licenses, or authorizations owned by Southern District and used in the operation of the Southern Wastewater System.

3. **WATER SYSTEM ASSETS BEING TRANSFERRED.** At the Closing, Southern District shall transfer to PCUC those portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas. The water system assets being transferred to PCUC include, but are not limited to, the following:

A. **Sandy Valley Water District Distribution System.** The entire water distribution system formerly known as the Floyd County portion of the Sandy Valley Water District, including, but not limited to, approximately 4.5 miles of 12-inch asbestos concrete water transmission main, approximately 5.8 miles of 3-inch to 8-inch water distribution lines of various composition (asbestos concrete, polyvinylchloride, or polyethylene), system valves, meter vaults, meters, fire hydrants, flush hydrants, and tap installations;

B. **Stanville Tank.** The 150,000 gallon water storage tank designated as the Stanville Tank, which is located at the junction of U.S. Highway 23 South and Mare Creek Road at Stanville, all of Southern District's rights and interests in the real property upon which the tank is

situated, valve vault, altitude valve, and all appurtenances associated therewith;

C. **Eagle Trace Tank.** The 150,000 gallon water storage tank designated as the Eagle Trace Tank, which is located at the head of the Right Fork of Penhook Branch in Harold just off U.S. Highway 23 South, all of Southern District's rights and interests in the property upon which the tank is situated, valve vault, altitude valve, and all appurtenances associated therewith;

D. **Mare Creek Road Booster Station.** The water booster station located on Mare Creek Road in Stanville, including the pump and all other appurtenances associated therewith;

E. **Pike-Floyd Hollow Road Booster Station.** The water booster station located on Pike-Floyd Hollow Road in Betsy Layne, including the pump and all other appurtenances associated therewith;

F. **Pyramid Distribution System.** The water distribution system serving the area in Floyd County that is known as Pyramid, and that is more specifically defined as the service area from the junction of Kentucky Routes 404 and 850 south along Kentucky Route 850 to the top of Hippo Hill, including, but not limited to, approximately 4.6 miles of 6-inch polyvinylchloride water transmission main, approximately 4.1 miles of 2-



inch to 6-inch polyvinylchloride or polyethylene water distribution lines, system valves, meter vaults, meters, fire hydrants, flush hydrants, and tap installations;

G. **Hippo Hill Tank.** The 125,000 gallon storage tank designated as the Hippo Hill Tank, which is located on Kentucky Route 850, all of Southern District's rights and interests in the property upon which the tank is situated, valve vault, altitude valve, and all appurtenances associated therewith;

H. **Real Property.** All of Southern District's rights and interests in the parcels or tracts of real property on which the water system assets described above are located;

I. All real estate easements and the improvements thereon, licenses, encroachment permits, rights-of-way or other interests in real estate owned by Southern District and used in the operation of the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas;

J. All maps, drawings, operating manuals, engineering reports, and "As Built" plans pertaining to the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas;

K. All business records pertaining to the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas, including, but not limited to, all customer records and agreements; and

L. Any and all other tangible and intangible rights, permits, licenses, or authorizations owned by Southern District and used in the operation of the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas.

4. **CONSIDERATION.** As consideration for the transfer of the Assets, the City and PCUC shall pay to Southern District **\$2,140,000.00** (the "Purchase Price"). The City and PCUC shall pay the consideration by a combination of cash payments to Southern District, the assumption or payment of certain debt obligations owed by Southern District, and expenditures incurred for the rehabilitation of the Wayland WWTP and sewer lift stations, Harold WWTP, and Eastern WWTP. PCUC has already made a series of payments totaling **\$149,260.00** to Southern District as a down payment on the purchase price. City and PCUC shall either assume or pay in full at the Closing, the following debt obligations of Southern District: (a) KIA Loan No. A04-06 in the approximate principal amount of \$34,019, which was incurred for the Wayland WWTP; (b) KIA Loan No. A11-16 in the approximate principal amount of \$696,000, which

was incurred for the Harold WWTP; and (c) USDA-RD Loan No. 91-05 in the approximate principal amount of \$512,990, which was originally incurred by the Sandy Valley Water District and later assumed by Southern District.

5. **CUSTOMER DEPOSITS.** Southern District represents that it is holding customer deposits for its customers who receive water or sewer service through the Assets listed in Paragraphs 2 and 3 of this Agreement. Prior to Closing, Southern District shall furnish PCUC a current list that shows the name, address, account number, and amount still on deposit for each of these customers. Southern District shall be responsible for paying, or crediting the customer's accounts, all accrued interest on the customer deposits through the date of Closing. After the Closing, PCUC shall be responsible for the refund of these deposits in accordance with PCUC's rules and regulations.

6. **LIABILITIES EXCLUDED.** PCUC is not assuming any Southern District liabilities or debts except for the loans described in Paragraph 4 and the customer deposits described in Paragraph 5 of this Agreement.

7. **CONSTRUCTION WORK IN PROGRESS.** Southern District is currently constructing sewer facilities in southern Floyd County along the U.S. Highway 23 Corridor to extend pressure sewer service to the areas of Lower Hollow, Store Hollow, and portions of Betsy Layne Bottom. This construction, which is known as Harold Sewer Project Phase 3 (the "Harold Phase 3 Project" or

the "Project"), consists of the installation of: approximately 136 Simplex E-1 Grinder Pump Stations; approximately 16,492 feet of 1.25-inch High Density Polyethylene (the "HDPE") main; approximately 3,220 feet of 2-inch HDPE main; approximately 5,162 feet of 3-inch HDPE main; approximately 3,442 feet of 4-inch HDPE main; approximately 3,442 feet of 6-inch HDPE main; and approximately 199 feet of 10-inch HDPE Force Main. It is anticipated that the construction contract will be substantially completed and the wastewater collection lines will be placed into service prior to the Closing. Upon completion of the Project or the Closing, whichever occurs later, Southern District shall assign the contractor's warranty to PCUC. In addition, Southern District shall require the contractor to provide the usual and customary Certificate of Payment certifying that the contractor has been paid in full and that all subcontractors and material providers have been paid in full. Southern District shall be responsible for making any and all remaining payments owed to the contractor and to Summit Engineering.

8. **GRANT COMPLIANCE.** Southern District is the recipient of the following grants in the following amounts: Community Development Block Grant (\$750,000); Appalachian Regional Commission (\$390,000); and Kentucky General Assembly (HB 265) Grant (\$273,000) (the "Grants"). The proceeds of the Grants shall be used to pay the costs of constructing the Project. To facilitate final



closeout of the Grants, Southern District shall be responsible for maintaining all files, books, and records regarding the Grants and the use of Grant proceeds and PCUC shall be responsible for ongoing compliance.

9. **HAROLD PHASE 3 IMPROVEMENTS.** Upon completion of the Harold Phase 3 Project or the Closing, whichever occurs later, Southern District shall transfer all the wastewater improvements installed as part of the Harold Phase 3 Project to the City for the use and benefit of PCUC.

10. **REGULATORY AGENCY APPROVALS.** PCUC shall be responsible for the following: (a) obtaining all necessary approvals from regulatory agencies, including the Kentucky Public Service Commission (the "PSC") and the Kentucky Division of Water; (b) obtaining the transfer of Kentucky Pollutant Discharge Elimination System Permits; (c) obtaining the transfer of all other necessary permits and licenses from Southern District to PCUC; and (d) taking other necessary actions to facilitate the transfer of the Southern Wastewater System and designated portions of the Southern Water System to the City for the use and benefit of PCUC. PCUC shall initiate all proceedings to obtain these necessary approvals and transfers. Southern District pledges its full cooperation and assistance to expedite these matters and ensure a smooth transition.

11. **WATER RATES.** The schedule of Southern District's current rates for monthly water service is attached as **Exhibit 2**. The City and PCUC agree that

following the Closing, PCUC shall charge these rates to persons in the Pyramid and Stanville/Betsy Layne/Harold Areas for water service and shall **not** increase these rates for at least three (3) years following the date of the Closing.

12. **WASTEWATER RATES.** The schedule of Southern District's current rates for monthly wastewater service is attached as **Exhibit 3**. The City and PCUC agree that following the Closing, PCUC shall charge these rates to persons in the areas currently served by the Southern Wastewater System and shall **not** increase these wastewater rates for at least three (3) years following the date of the Closing.

13. **DOE ADMINISTRATIVE ACTIONS.** Southern District is facing administrative actions by DOE for alleged violations of Kentucky water quality laws. To mitigate or eliminate any civil penalties that might be imposed by DOE, PCUC has been managing, operating, repairing, and maintaining the Southern Wastewater System since July 1, 2016. Southern District and PCUC believe the rehabilitation of the Wayland WWTP and other actions taken by PCUC have been viewed very favorably by DOE. PCUC pledges to continue working closely with Southern District and DOE to persuade DOE to resolve this matter without taking any more enforcement actions or seeking any civil penalties. Nevertheless, should DOE impose or assess any civil penalties for alleged violations that occurred prior

to July 1, 2016, Southern District shall be solely responsible for the payment of those penalties.

14. **CONTINUED OPERATION OF WATER SYSTEM.** Until the time of the Closing, Southern District shall continue to operate and maintain the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas in substantially the same manner as it has previously been operated and maintained. Immediately following the Closing, PCUC shall commence operating and maintaining the Water and Wastewater Systems.

15. **REPRESENTATIONS AND WARRANTIES OF SOUTHERN DISTRICT.** Southern District represents and warrants to PCUC as follows:

- A. That it is a duly organized and existing water district.
- B. That the execution and delivery of this Agreement and the consummation of the transactions herein contemplated have been duly authorized by its Board of Commissioners.
- C. That its current rates for water service are set forth in **Exhibit 2.**
- D. That its current rates for wastewater service are set forth in **Exhibit 3.**
- E. The execution, delivery, performance, and the consummation of the transactions contemplated in this Agreement do

not and will not: (1) conflict with or result in a violation or breach of any of the terms, conditions, or provisions of or constitute a default of any instrument, agreement, mortgage, judgment, order, writ, award, decree, or other restriction to which either Southern District is a Party, or to which any of Southern District's Assets are subject, or by which Southern District is bound or any statute or regulatory provision affecting Southern District; (2) require the approval, consent, or authorization of any federal, state, or local court, governmental authority, or regulatory body or of any creditor of Southern District or of any other person or entity, except for Rural Development, the Kentucky Infrastructure Authority, the PSC, and the Kentucky Division of Water; nor (3) give any Party with rights under any instrument, agreement, mortgage, judgment, order, writ, award, decree or other restriction the right to terminate, modify, or otherwise change Southern District's rights or obligations thereunder.

F. Southern District has complied with all existing laws, rules, regulations, ordinances, orders, judgments, and decrees now or hereafter applicable to Southern District's Assets. Southern District is not aware of any proposed laws, rules, regulations, ordinances, orders, judgments, decrees, governmental takings, condemnations, or other



proceedings which would be applicable to Southern District's Assets or which might adversely affect Southern District's Assets either before or after the date of this Agreement.

G. Except as noted in Paragraph 13 of this Agreement, Southern District has not received any notice or notification from any court or governmental agency, authority, or body that it is in violation of, or not in compliance with, any federal, state, or local law, statute, ordinance, rule, regulation, decree, order, or permit relating to its utility business or that upon the passage of time it will be in violation of any of the foregoing. Southern District's operation of its utility business complies in all respects with all governmental requirements relating to the collection, treatment and disposal of wastewater.

H. Southern District is the true and lawful owner of the Assets and has good, marketable, and insurable title to all of the Assets. None of the Assets will, after Closing, be subject to any mortgage, pledge, lien, charge, security interest, encumbrance, restriction, lease, license, easement, liability or adverse claim of any nature whatsoever, direct or indirect, whether accrued, absolute, contingent or otherwise, except for certain property interests (the "Property Interests") acquired by Floyd County, Floyd County Fiscal

Court, and the Floyd County, Kentucky Public Properties Corporation (the "Floyd County") as a result of past financing arrangements between Floyd County and Southern District. The City and PCUC are aware of these Property Interests. Southern District acknowledges that the City and PCUC are engaged in discussions with Floyd County officials to acquire these Property Interests. All of the Assets are in operating condition and are suitable for the purposes used.

I. Upon execution and delivery of the necessary deeds, bills of sale, easements, assignments, and other instruments of transfer by Southern District pursuant to this Agreement, PCUC shall acquire good and valid title to the Assets, free and clear of all claims, liens, security interests, agreements, restrictions, charges and encumbrances of any nature whatsoever.

J. No other person or entity, except for PCUC, now has, nor at any time prior to the Closing will have, the right to purchase, own, use, or sell any of the Assets.

K. Southern District is not insolvent as of the date of this Agreement. Southern District is able to meet all business obligations as they become due and will not be insolvent or unable to meet its

business obligations as a result of completing the transactions described herein.

L. Except as noted in this Agreement, there is no claim, legal action, suit, arbitration, governmental investigation, or other legal or administrative proceeding, nor any order, decree or judgment in progress, pending or in effect, or threatened, against or relating to the Southern District, its officers, commissioners, employees or utility business, the Assets, or the transactions contemplated by this Agreement, and Southern District neither knows nor has reason to be aware of any basis for the same.

M. Between the date of this Agreement and the Closing, Southern District shall operate its Water System diligently and substantially in the same manner as heretofore conducted prior to the date of this Agreement. Prior to the Closing, the Southern District shall not, without PCUC's prior written approval, change its rates or charges, institute any new methods of accounting or operation, or engage in any transaction or activity, enter into any agreement, or make any commitment, except in the ordinary course of business and consistent with past practice.

N. Prior to the Closing, the Southern District shall not permit any of the Assets to be subjected to a mortgage, pledge, lien or encumbrance, without notice to, and approval of, PCUC, and further shall not dispose of any of the Assets.

O. Southern District shall maintain until the Closing the insurance policies presently in effect on the Assets.

P. Southern District shall not perform any act or omit to perform any act or perform any act or omission that will cause a breach or default in this Agreement.

Q. No representation or warranty by Southern District in this Agreement, nor any statement or certificate furnished or to be furnished by it to PCUC or its representatives in connection herewith or pursuant hereto, contains or will contain any untrue statement of material fact or will omit a statement of any material fact required to make the statements herein or therein contained not misleading. Southern District has disclosed to PCUC in writing all material adverse facts known to it relating to the Southern District, its utility business, or the Assets. Southern District is not aware of any circumstances or facts which could be detrimental to its utility business other than those disclosed to PCUC in writing.



R. All minute books, books and records, and other documents maintained by Southern District with respect to the Assets are true, complete, and accurate.

S. All representations and warranties of Southern District contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall be true as of the Closing as well as of the date of this Agreement.

**16. PCUC'S REPRESENTATIONS AND WARRANTIES.** PCUC represents and warrants to Southern District as follows:

A. PCUC is a duly organized and validly existing independent component unit and agency of the City. It has the requisite right, power, and authority: (1) to carry on its utility business as it is now being conducted; and (2) to manage and operate the facilities which it currently manages and operates.

B. PCUC has full capacity, right, power, and authority to enter into, deliver, and perform this Agreement. This Agreement has been approved by its Board of Commissioners and the Prestonsburg City Council. All other consents, approvals, authorizations, or other requirements prescribed by law, rule, or regulation which must be obtained or satisfied by PCUC and which are necessary in order for it

to enter into and perform this Agreement have been satisfied. This Agreement has been duly executed and delivered by PCUC and constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms.

C. It has the financial, technical, and managerial abilities to provide reasonable water service and wastewater collection and treatment services to the customers of the Southern Wastewater System and the designated portions of the Southern Water System to be transferred to PCUC.

17. **CITY'S REPRESENTATIONS AND WARRANTIES.** The City represents to Southern District:

A. The City is a duly organized and validly existing municipal corporation and city of the home rule class of the Commonwealth of Kentucky.

B. This Agreement has been approved by its City Council. All other consents, approvals, authorizations, or other requirements prescribed by law, rule, or regulation which must be obtained or satisfied by the City or PCUC and which are necessary in order for it to enter into and perform this Agreement have been satisfied. This Agreement has been duly executed and delivered by the City and

constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms.

C. It has the financial, technical, and managerial abilities to provide reasonable water service and wastewater collection and treatment services to the customers of the Southern Wastewater System and the designated portions of the Southern Water System to be transferred to the City for the use and benefit of PCUC.

18. **CLOSING.** The closing of this transaction (the "Closing") shall take place at a mutually convenient date, time, and place.

19. **ACCESS TO BOOKS.** Between the date of this Agreement and the Closing, PCUC and the City and their authorized representatives shall have the right to examine and to obtain copies of any and all pertinent books, plats, maps, plans, and records of Southern District upon reasonable notice and mutually convenient times.

20. **FINAL BILLING.** No later than two (2) weeks prior to the Closing, Southern District shall provide PCUC with a current list of all names, addresses, meter identification numbers, and account numbers of Southern District's water and wastewater customers that are being transferred to PCUC. At Closing, Southern District shall also provide PCUC with the last meter reading for each customer. Southern District shall bill all its customers for water and wastewater

services rendered prior to the Closing. Southern District shall be entitled to all revenue derived from the final bill it sends its customers. PCUC shall be entitled to all revenue derived from water and wastewater services rendered on and after the date of the Closing.

21. **CLOSING REQUIREMENTS.** The obligations of the Parties are expressly conditioned on the following, each of which is a condition precedent to the validity and enforcement of this Agreement:

A. The representations and warranties of each of the Parties shall be true and correct as of the Closing, as though such representations and warranties were made at, and as of the Closing;

B. Each of the Parties shall have performed and complied in all material respects with all of its obligations under this Agreement that are due to be performed or complied with by such Party prior to or at the Closing;

C. At and as of the Closing, no litigation, proceedings, investigations, or inquiries shall be pending or threatened by any person, firm, corporation, government agency, or governmental official to enjoin or prevent the consummation of this transaction;

D. The PSC shall have entered an order in which it approves the transfer of the Wastewater Assets and Water Assets from Southern



District to the City, for the use and benefit of PCUC, without the addition of any requirement or condition which the City or PCUC deems objectionable;

E. USDA-Rural Development shall have either issued a Letter of Conditions to the City authorizing USDA-RD Loan No. 91-05, which is owed by Southern District, to be assumed by the City or granted written approval for Southern District to convey the Assets to the City upon payment in full of Loan No. 91-05; and

F. Kentucky Infrastructure Authority shall have given written approval for KIA Loan No. A04-06 and KIA Loan No. A11-16, which are owed by Southern District, to be assumed by the City.

22. **CONVEYANCE AND TRANSFERS.** Southern District shall not convey, lease, or in any other way dispose of the Wastewater Assets or the Water Assets until the Closing. At the Closing, Southern District shall execute and deliver to PCUC and the City such leases, deeds, assignments, bills of sale, and other instruments of transfer as are necessary or requested by PCUC and the City to vest PCUC and the City with good and marketable, unencumbered title to the Wastewater Assets and the Water Assets, without the need for further approval or consent by any other person or entity.

23. **DUE AT CLOSING.**

A. **DUE FROM SOUTHERN DISTRICT TO PCUC.**

Unless PCUC provides a written waiver of any item listed herein, Southern District shall deliver to PCUC at Closing the following:

- (1) General warranty deeds and an Assignment of Easements conveying Southern District's ownership interests in the real property described in Paragraphs 2 and 3 of this Agreement;
- (2) Such bills of sale, assignments and other instruments of transfer, all dated the Closing Date, as shall be necessary or requested by PCUC to vest PCUC with good and marketable, unencumbered title to the Assets;
- (3) A schedule which contains a current listing of the name, address, account number, meter identification number, meter reading, and amount still on deposit for each customer;
- (4) Duly certified copy of the resolution of the Board of Commissioners authorizing the execution, delivery and performance of this Agreement by Southern District, which ordinance shall be in full force and effect at, and as of, the Closing;
- (5) An opinion from Southern District's counsel, dated the Closing Date and in a form satisfactory to PCUC and the City, as to the representations, warranties, and other matters set forth in Paragraph 15 of this Agreement;
- (6) A certificate, signed by Southern District's Chairperson and dated as of the Closing Date, representing and warranting to the PCUC (i) that the representations, warranties and other matters set forth in Paragraph 15 of this Agreement are true and correct as of the Closing, as though such representations and warranties were made at, and as of, the Closing, and (ii) that the Closing

Requirements set forth in Paragraph 21 of this Agreement have been fully satisfied;

- (7) All records for the utility customers;
- (8) Possession of the Assets;
- (9) A list of any Pre-paid Connection Fees and a certified or cashier's check for the amount of any Pre-paid Connection Fees held by the Southern District;
- (10) An assignment of the contractor's warranty on the construction contract referred to in Paragraph 7 of this Agreement; and
- (11) Such other documents as may be necessary to effectuate the transactions contemplated by this Agreement.

**B. DUE FROM PCUC TO SOUTHERN DISTRICT.**

Unless Southern District provides a written waiver of any item listed herein, PCUC shall deliver to Southern District at Closing the following:

- (1) A certified or cashier's check for the balance of the Purchase Price;
- (2) A certified copy of the PCUC's resolution approving this Agreement, authorizing the Chairman to execute and deliver this Agreement, and further authorizing the appropriate officials to take all actions necessary to consummate the transactions contemplated by this Agreement;
- (3) An opinion from Stoll Keenon Ogden PLLC, special counsel to PCUC, dated the Closing Date and in a form satisfactory to Southern District, as to the representations, warranties, and other matters set forth in Paragraph 16 of this Agreement; and

- (4) Such receipts as may be reasonably requested by Southern District and such other documents as may be necessary to effectuate the transactions contemplated by this Agreement.

**C. DUE FROM CITY TO SOUTHERN DISTRICT.**

Unless Southern District provides a written waiver of any item listed herein, PCUC shall deliver to Southern District at Closing the following:

- (1) A certified copy of the City's resolution approving this Agreement, authorizing the Mayor to execute and deliver this Agreement, and further authorizing the appropriate officials to take all actions necessary to consummate the transactions contemplated by this Agreement; and
- (2) An opinion from the City Attorney, dated the Closing Date and in a form satisfactory to Southern District, as to the representations, warranties, and other matters set forth in Paragraph 17 of this Agreement.

**24. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.**

The representations, warranties, and agreements of the Parties contained in this Agreement, or in any certificate or other writing delivered pursuant hereto, shall survive the making of this Agreement and the Closing.

**25. RESPONSIBLE PARTIES.**

**A. SOUTHERN DISTRICT.** Southern District shall be solely responsible for any loss, claim, action, suit, proceeding deficiency, or expense, including reasonable attorneys' fees, relating to or arising from or in connection with (a) any misrepresentation,



breach of representation, warranty or obligation, covenant or agreement, or default by Southern District under this Agreement, including the exhibits, or any documents delivered to PCUC in connection with this Agreement; (b) claims of negligence or strict liability arising from operation of the transferred Wastewater Assets prior to July 1, 2016, and the transferred Water Assets prior to the Closing; and (c) all contingent liabilities relating to Southern District or the Water and Wastewater Assets with respect to any state of facts or occurrences existing at or prior to the Closing.

**B. PCUC AND THE CITY.** PCUC and the City shall be solely responsible for any loss, claim, action, suit, proceeding deficiency, or expense, including reasonable attorneys' fees, relating to or arising from or in connection with (a) any misrepresentation, breach of representation, warranty or obligation, covenant or agreement, or default by PCUC or the City under this Agreement, including the exhibits, or any documents delivered to Southern District in connection with this Agreement; (b) claims of negligence or strict liability arising from operation of the transferred Wastewater Assets after July 1, 2016, and the transferred Water Assets after the Closing; and (c) all contingent liabilities relating to Southern District

or the Water and Wastewater Assets with respect to any state of facts or occurrences existing at or prior to the Closing.

26. **ENTIRE AGREEMENT.** This Agreement, including all of its exhibits hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and may not be modified or amended or terminated except by written agreement specifically referring to this Agreement, and signed by all of the Parties.

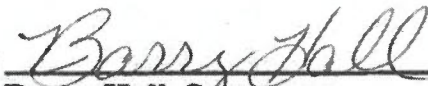
**[Remainder of page intentionally left blank.]**

IN TESTIMONY WHEREOF, this Agreement has been executed in multiple counterparts, each of which is deemed to be an original, by the duly authorized officers of the Parties, as of the effective date of this Agreement.

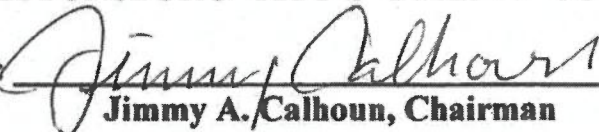
**SOUTHERN WATER AND SEWER DISTRICT**

BY:   
Paula Johnson, Chairperson

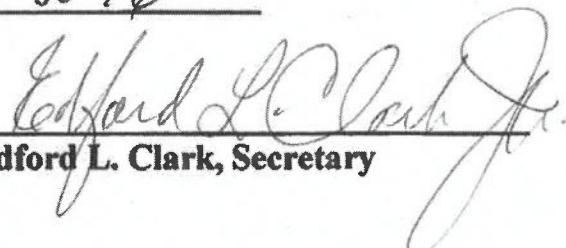
DATE: 12-19-16

ATTEST:   
Barry Hall, Secretary


**PRESTONSBURG CITY'S UTILITY COMMISSION**

BY:   
Jimmy A. Calhoun, Chairman

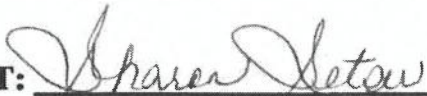
DATE: 12-20-16

ATTEST:   
Edford L. Clark, Secretary

**CITY OF PRESTONSBURG, KENTUCKY**

BY:   
Les Stapleton, Mayor

DATE: 12/20/16

ATTEST:   
Sharon Setser, City Clerk

**EXHIBIT 1**  
**SEWER LIFT STATIONS TO BE TRANSFERRED**

<b>ID Number</b>	<b>Wastewater Collection System</b>	<b>Name</b>	<b>Type and HP</b>	<b>Location</b>
SLS 1	Harold/Betsy Layne	Stanville	Myers 10HP	Bobcat Boulevard
SLS 2	Wayland	Wayland	Myers 20HP	Wayland City Park
SLS 3	Wayland	Estill Hill	Myers 15HP	Clearwater Road
SLS 4	Wayland	Estill Bottom	Myers 15HP	Estill Bottom Road
SLS 5	Wayland	Pumpkin Center	Myers 20HP	Pumpkin Center Road

**EXHIBIT 2**

**SOUTHERN WATER AND SEWER DISTRICT'S RATES  
FOR WATER SERVICE AS OF JANUARY 1, 2017**

All Meters:

First 2,000 Gallons  
Over 2,000 Gallons

\$24.60 Minimum Bill  
8.40 Per 1,000 Gallons

**EXHIBIT 3**

**SOUTHERN WATER AND SEWER DISTRICT'S RATES  
FOR SEWER SERVICE AS OF JANUARY 1, 2017**

All Meters:

First 2,000 Gallons  
Over 2,000 Gallons

\$28.38 Minimum Bill  
9.52 Per 1,000 Gallons

\*Brian Music  
Superintendent  
Prestonsburg City Utilities Commission  
2560 South Lake Drive  
Prestonsburg, KY 41653

\*Randy Conley  
UMG Project Manager  
Southern Water & Sewer District  
245 Kentucky Route 680  
P. O. Box 610  
McDowell, KY 41647

\*Prestonsburg City Utilities Commission  
Prestonsburg City Utilities Commission  
2560 South Lake Drive  
Prestonsburg, KY 41653

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Prestonsburg, KY 41653

\*Jeff Prater  
Chairman  
Southern Water & Sewer District  
245 Kentucky Route 680  
P. O. Box 610  
McDowell, KY 41647

\*Honorable Kipley J McNally  
Attorney at Law  
2527 Nelson Miller Parkway  
Suite 104  
Louisville, KENTUCKY 40223

\*Southern Water & Sewer District  
245 Kentucky Route 680  
P. O. Box 610  
McDowell, KY 41647

\*Southern Water & Sewer District  
Southern Water & Sewer District  
245 Kentucky Route 680  
P. O. Box 610  
McDowell, KY 41647