



Ernie Fletcher
Governor

LaJuana S. Wilcher, Secretary
Environmental and Public
Protection Cabinet

Christopher L. Lilly
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Mark David Goss
Chairman

Teresa J. Hill
Vice Chairman

Gregory Coker
Commissioner

June 2, 2006

Ms. Beth O'Donnell
Executive Director
Public Service Commission
Post Office Box 615
Frankfort, KY 40602

Re: City of North Middletown
Case No. 2006-00072

Dear Ms. O'Donnell:

Enclosed for filing is a Stipulation between Commission Staff and the City of North Middletown. Please bring this document to the Commission's attention for its review and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Gerald E. Wuetcher".

Gerald E. Wuetcher
Deputy General Counsel

GEW/v
Enclosure

cc: Mr. Henry Watson III
525 High Street, Suite 328
Paris, KY 40361

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALLEGED FAILURE OF THE CITY OF NORTH)	
MIDDLETOWN TO COMPLY WITH KRS 278.160)	
AND 278.180 AND THE COMMISSION'S ORDER)	CASE NO. 2006-00072
OF AUGUST 10, 1994 IN ADMINISTRATIVE)	
CASE NO. 351)	

STIPULATION

The City of North Middletown ("North Middletown") and Commission Staff stipulate:

1. North Middletown is a city of the fifth class and is located in Bourbon County, Kentucky.
2. Judy Water Association is a non-profit corporation organized under the provisions of KRS Chapter 273 that owns and operates facilities that are used in the distribution of water to the public for compensation to approximately 1,671 customers in Bath, Bourbon, Clark, Montgomery, and Nicholas counties, Kentucky.
3. Judy Water Association is a utility as defined by KRS 278.010(3)(d).
4. North Middletown owns and operates a distribution system that provides water service to residents of North Middletown and wholesale water service to Judy Water Association.
5. North Middletown purchases its total water requirements from Kentucky-American Water Company.
6. In 1998 representatives of Judy Water Association approached North Middletown about the wholesale purchase of water to supply certain areas of Bourbon County, Kentucky.

7. In October 1999, after negotiations between North Middletown and Judy Water Association, the parties executed a water purchase contract. A copy of this contract is attached as Exhibit 1. Under the terms of this contract, North Middletown would sell Judy Water Association water a maximum of 2,100,000 gallons of water per month at a rate of \$1.95. The contract further provided that North Middletown would be permitted to pass through all increases in price from its supplier, Kentucky-American Water Company, to Judy Water Association according to the methodology set forth in Administrative Regulation 807 KAR 5:068.

8. In December 2001 North Middletown began providing water service to Judy Water Association on at a rate of \$2.14 per 1,000 gallons. This rate reflected an increase in the cost of water that North Middletown purchased from Kentucky-American Water Company.

9. In January 2005 North Middletown increased its rate to Judy Water Association to reflect an increase from its wholesale supplier, Kentucky-American Water Company. North Middletown currently provides water service to Judy Water Association at a monthly rate of \$2.33 per 1,000 gallons for the first 2,000,000 and \$2.65 per 1,000 gallons for all purchases in excess of 2,000,000 gallons.

10. Prior to March 30, 2006, North Middletown had not filed a copy of this contract with the Public Service Commission or filed any rate schedule with the Commission that reflected the rates established in the contract.

11. In its Annual Reports for the years 2001 through 2004, Judy Water Association advised the Commission that it was purchasing water from North Middletown.

12. In Case No. 2000-161,¹ Judy Water Association obtained a certificate of public convenience and necessity to construct approximately 58 miles of new water mains and other distribution facilities. In its application, Judy Water Association expressly advised the Commission that it “has a preliminary agreement to purchase its total potable water supply from the City of North Middletown to serve this project at an estimated water price of \$1.90 to \$2.00 per 1000.”²

13. In Case No. 2003-00249,³ Judy Water Association applied to the Commission for a rate adjustment based upon its operations for the calendar year ending December 31, 2002. Commission Staff assisted in the preparation of this application and conducted a limited review of Judy Water Association’s financial records. A review of these financial records should have indicated that Judy Water Association was purchasing a portion of its water requirements from North Middletown. The Commission accepted Commission Staff’s findings and recommendations without any comment on Judy Water Association’s water purchase contract with North Middletown.

¹ Case No. 2000-161, The Application of Judy Water Association of Montgomery County, Kentucky, for Order Approving Construction, Financing, and Certificate of Public Convenience and Necessity and Water rates for Federally Funded Construction Projects (Ky.PSC June 30, 2003).

² Meridian Engineers and Land Surveyors, Inc., Preliminary Engineering Report for Rural Water Extensions into Bourbon County, Kentucky – Judy Water Association, Inc. (Aug. 1997) at 6.

³ Case No. 2003-00249, Application for an Adjustment of Rates of Judy Water Association, Inc. (Sept. 9, 2003).

14. In Case No. 2004-00039,⁴ Judy Water Association obtained a certificate of public convenience and necessity to construct approximately 398 miles of new water mains and other distribution facilities. In its application, Judy Water Association expressly advised the Commission that “Judy Water Association purchases water from Mount Sterling Water System and North Middletown Water System [sic].”⁵

15. Judy Water Association has not questioned the reasonableness of the rates that North Middletown has assessed nor has it objected to any pass through of any increases in the cost of water that North Middletown purchases from Kentucky-American Water Company.

16. Pursuant to Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994), the Commission in Administrative Case No. 351 directed that all municipal utilities that provide wholesale utility service to a public utility “file with the Commission a copy of their contracts with the public utility and a schedule of their rates for wholesale service.”⁶ It further directed that “[a]ny municipal utility wishing to change or revise a contract or rate for wholesale utility service to a public utility shall, no later than 30 days prior to the effective date of the revision, file with the Commission the revised contract and rate schedule.”⁷

⁴ Case No. 2004-00039, The Application of Judy Water Association, Inc. for a Certificate of Public Convenience and Necessity to Construct and Finance Pursuant to the Provisions of KRS 278.023 (Ky.PSC Mar. 24, 2004).

⁵ Strand Associates, Inc., Judy Water Association, Kentucky – FinWater System Improvements for Bourbon, Clark and Montgomery Counties, Kentucky (December 2003) at 2-1.

⁶ Administrative Case No. 351, Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Service to Public Utilities (Ky. PSC Aug. 10, 1994) at 1 – 2.

⁷ Id. at 2.

17. At the time of entry of the Commission's Order in Administrative Case No. 351, North Middletown was not providing wholesale water service to any public water utility. The Commission did not serve North Middletown with a copy of its Order.

18. If a hearing were held in this matter, Ms. Betsy Frazier would testify on behalf of North Middletown and would adopt and affirm the contents of her affidavit of March 29, 2006 as her testimony.

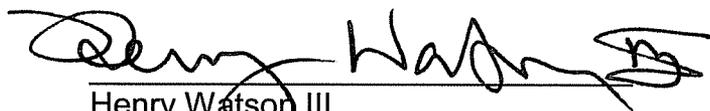
19. If a hearing were held in this matter, officials of North Middletown would testify that:

a. They were unaware of any requirement that the water purchase contact must be filed with the Commission;

b. Prior Commission approval of any subsequent revision to the contract rate was required; and,

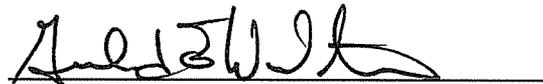
c. Any violation of KRS 278.160 or Commission order was inadvertent, unintentional and unknowing.

Respectfully submitted,



Henry Watson III
525 High Street, Suite 328
Paris, Kentucky 40361

COUNSEL FOR NORTH MIDDLETOWN



Gerald E. Wuetcher
P.O. Box 615
Frankfort, Kentucky 40602-0615

COUNSEL FOR COMMISSION STAFF