



The Earlier Wording Is Held. The Later Effect Is Not.

An agreement can appear in a public record. Years later, another document can describe how that agreement changed. What connects the two?

In Martin County, Kentucky, BRII followed that question across two Public Service Commission cases. One filing held an agreement between Martin County Water District and Alliance Water Resources. A later filing described changes to compensation and term. The task looked ordinary. Find the earlier wording. Set it beside the later exhibit. BRII found the earlier wording. That was the turn. The wording answered where the agreement's language was. It could not answer whether the later description had taken effect. Treating the later description as the change itself would be a mistake.

FOUR RECORDS, AND NOT ONE CHANGE

A reader can keep four questions apart. What did the earlier agreement itself require? Where does a later page use different words? Which document claims to be the amendment? What would show that the claimed amendment became operative? In this investigation the earlier agreement holds the insurance wording, the fees by year, a term through December 31, 2024, and a requirement that a modification be a written amendment signed by both parties. A later exhibit uses a different monthly figure and a term through December 31, 2029. That exhibit, and a separate July 30, 2020 instrument about insurance, are claims of change. Section 15.1 says what an operative

modification requires. The pages read here do not establish that either later instrument took effect.

THE QUESTION THAT CHANGED THE INVESTIGATION

What evidence establishes the transition from the earlier agreement to the later claimed amendment?

A letter that sounded complete

BRII followed the December 4, 2019 filing in Case No. 2018-00017. Thirty-one pages begin with a Commission letter. The letter states that the attached executed management contract has been filed. Why this matters is the temptation in that sentence. A public letter can announce an executed contract. The announcement is not the signature of either party.

A PRINTED NAME, AND WHOSE IT IS

Beneath a handwritten mark, the letter prints Gwen R. Pinson, Executive Director. That is the Commission's letter. It is not a signature of the water district or of Alliance.

The attachment opens as a Professional Operating and Management Agreement for Water Service. The date line, as the text layer returned it, reads "201h day of November 2019." BRII preserved those characters. To correct them would have been to invent a date the page did not cleanly give.

Source: December 4, 2019 filing, Case No. 2018-00017, page 1 (Commission letter) and page 2 (date line).

An order before the letter

BRRI returned to the same case, to the order entered November 15, 2019. The order finds that the Management Contract with Alliance should be approved. It orders that the Management Contract contained in Appendix B is approved. It orders Martin District to execute that contract with Alliance in triplicate no later than November 20, 2019, with the term to begin January 1, 2020, and then to send the three originals to Alliance for signatures. Alliance, in turn, should return one executed copy to Martin District and one executed copy, under seal, to the Commission. A November 20, 2019 order adds an appendix and leaves the other provisions of the November 15 order in effect. Appendix B's cover identifies the Management Contract and states that it is confidential until the contract is executed. BRRI did not treat that confidential appendix as a public reading of the December filing.

Why this matters is the difference between an order and a signature. The Commission approved a contract and directed its execution. The December 4 letter says an executed contract has been filed. The order does not establish that the December attachment is the signed original. The letter does not become a signature of either party.

Source: November 15, 2019 order, Case No. 2018-00017, pages 34 and 37, and Appendix B cover, page 42. November 20, 2019 order.

The earlier contract, in its own words

Section 5.9 says listed expenses are excluded from Alliance's payment obligations and are the responsibility of the Utility. Item (d) reads: "Property damage, liability and directors' liability insurance." Exhibit E says each party shall maintain adequate property insurance, including extended coverage. A search of this copy's text layer did not return the words inland marine. That search does not prove an image on the page cannot contain them.

Then the money, and it does not sit in one year. Through December 31, 2019, the initial monthly base fee is \$164,445.50. For 2020, the first-year base fee is \$1,973,346.00. For 2021, the base fee is \$2,022,078.91, rendered in the same sentence as \$168,506.58 a month. So far, BRII was holding a schedule. The monthly figure belongs to calendar year 2021 in this copy. It is not a fee stated for December 18, 2019, and it is not a fee stated for 2024.

Section 9.1 runs from January 1, 2020 through December 31, 2024, subject to annual appropriation. Section 15.1 says the agreement may be modified only by a written amendment signed by both parties. At this point the earlier wording is held. The insurance exclusion. The property-insurance sentence. The fees by period. The term through 2024. The requirement of a signed written amendment. None of that says what a later exhibit did. These sentences are the original terms in the copy that was read. A later page can propose different words. It does not replace these terms until the signed written amendment Section 15.1 requires is itself established.

Source: same filing. Section 5.9(d), page 8. Section 6.1, pages 11 and 12, including Section 6.1.3 on page 12. Section 9.1, page 17. Section 15.1, page 20. Exhibit E, page 28.

Marks on a page

The text layer of the signature page did not recover personal names. BRII returned to the image. Handwriting is there. A reading of handwriting is not a certification that a named person signed, and it does not establish that a later document changed this agreement.

READ, AND NOT CERTIFIED

The handwritten entry on the Utility line appears to read James D. Kerr, with Chairman identified as the title. The name line beneath it was not read as a second name. The handwritten entry on the Alliance name line appears to read Timothy H. Geraghty, with President identified as the title. The attest lines appear to read John P. Hensley, with Clerk identified as the title, and

Mary Ann Perkins, with Secretary identified as the title. These are visual readings. They are not a certification of identity, and they do not establish legal effect.

Source: December 4, 2019 filing, signature page, page 23. The text layer of that page did not recover these names.

Another case, and a different set of words

Case No. 2020-00154 is not Case No. 2018-00017. A later motion in the 2020 case cites the earlier one. BRII refused to collapse the two numbers. The motion's narrative says the parties executed an agreement dated November 20, 2019, and that on July 25, 2023 they executed an amendment extending the term through December 31, 2029. The exhibit opens as an amendment to an agreement made December 18, 2019. Three date strings, and none of them was corrected to match another: "201h day of November 2019," "November 20, 2019," and "December 18, 2019."

The exhibit's page image shows a monthly base fee of \$168,507.00 for services from December 18, 2019, and a term from January 1, 2024 through December 31, 2029. The witness clause says the amendment was executed on July 25, 2023. A repeated block in the same file's text layer prints the fee as \$168.507.00. Both strings were left as they appeared. The exhibit prints the offices Board Chairman, District Clerk, Secretary, and President. The Secretary attest appears to read Mary Ann Perkins. The District Clerk mark was not read as a name. The chairman and president lines show marks over the printed offices. BRII did not carry the 2019 handwritten readings onto those lines by resemblance. This is the later set of words, and the document that claims to make them the agreement. A claim that an amendment was executed is not, by itself, the signed writing Section 15.1 requires a reader to find.

Source: Motion in Case No. 2020-00154, page 2 (narrative dates) and page 7 (exhibit, both fee strings, and the handwritten marks).

An earlier amendment, and not the later one

The docket of Case No. 2020-00154 also holds a July 30, 2020 filing. The filing gives notice of a first amendment to the Alliance contract. The attached instrument is a First Amendment to the Professional Operating and Management Agreement, made a blank day of July 2020. It recites an original agreement dated November 20, 2019. It would change insurance wording. Section 5.9(d) would read “Property damage and directors’ liability insurance,” and Exhibit E would change with it. The signature lines on the clean copy are unfilled. This is not the amendment in the later motion. It does not revise the fee, and it does not extend the term through December 31, 2029. Unfilled signature lines do not establish that this first amendment took effect. The later exhibit is a different situation: marks are visible on that page, and their identity and legal significance have not been established. An empty signature line and a visible but unestablished mark are not the same evidence. Neither one establishes that an amendment became operative.

Source: July 30, 2020 filing, Case No. 2020-00154, notice pages 1 and 2; clean amendment, pages 9 through 11.

THE CONCLUSION THAT OFFERED ITSELF

Forty-two cents apart. Is that the amendment?

\$168,506.58 and \$168,507.00 are not the same provision. One is the 2021 monthly rendering in the earlier copy. The other purports to revise section 6.1 from December 18, 2019. BRII compared them across those periods and refused the gap as evidence that an amendment was made. A small numerical difference cannot stand in for a signed change the pages have not established.

STILL OPEN

Which date controls, and whether the later exhibit took effect, is not established. The November 15 order directs execution of a management

contract. It does not establish the later exhibit. The July 30, 2020 first amendment is a different instrument. The letter's statement that the attachment was executed remains the letter's statement.

What finding the document did not finish

The earlier agreement could be read. The November 15, 2019 order approved a management contract and directed its execution. The July 30, 2020 filing gave notice of a different amendment, limited to insurance wording, with signature lines unfilled. The later exhibit could be read beside them. That exhibit shows marks. Those marks are not the unfilled lines of the July 2020 instrument, and their identity and legal significance have not been established. Those pages still did not show that the later amendment had taken effect. That later effect remains unresolved. The limit belongs to that later instrument. It is not a finding that the rest of the docket was left unread.

In practical terms, a reader examining another contract can ask the same three questions of the pages in hand. Which sentences are the original terms? Which later document claims to amend them? Which signed writing, if any, shows that the amendment took effect? Here the original terms are held. Two later documents claim a change. The operative effect of those claims remains unresolved.

Documentary evidence

The pages cited above were read in the copies BRII held.

December 4, 2019 filing in Kentucky Public Service Commission Case No. 2018-00017. Thirty-one pages. The Commission letter is page 1. The date line "201h day of November 2019" is page 2. Section 5.9(d) is page 8. The fee schedule is pages 11 and 12. Section 6.1.3, including \$168,506.58 for the second year of water service, is page 12. Section 9.1 is page 17. Section 15.1 is page 20. The signature page is page 23. The

names there are visual readings, not certified signatures. Exhibit E is page 28.

Docket: <https://psc.ky.gov/Case/ViewCaseFilings/2018-00017>. Public copy, matched to the file examined: https://psc.ky.gov/pscscf/2018%20cases/2018-00017/20191204_PSC%20Notice%20of%20Filing.pdf

November 15, 2019 order in the same case. The approval and the direction to execute are on pages 34 and 37. Appendix B's cover, page 42, identifies the Management Contract and states that it is confidential until executed. The contract text in that appendix was not read into this publication. Public copy: https://psc.ky.gov/pscscf/2018%20Cases/2018-00017//20191115_PSC_ORDER.pdf. The November 20, 2019 order adds Appendix C and leaves the other provisions in effect: https://psc.ky.gov/pscscf/2018%20Cases/2018-00017//20191120_PSC_ORDER.pdf

Motion in Kentucky Public Service Commission Case No. 2020-00154. Ten pages. The narrative dates are on page 2. The later amendment exhibit is page 7. On that page, the image shows a monthly base fee of \$168,507.00, and a text layer on the same line prints \$168.507.00. The handwritten marks on that page are visual readings, not certified signatures. Docket: <https://psc.ky.gov/Case/ViewCaseFilings/2020-00154>. Public copy, matched to the file examined: https://psc.ky.gov/pscecf/2020-00154/dhaley%40ksattorneys.com/12032025121811/Motion_to_Lift_PSC_Monitoring_Order.pdf

July 30, 2020 filing in the same case. Notice of a first amendment, pages 1 and 2. The clean amendment's insurance changes are on pages 9 and 10. Its signature lines, page 11, are unfilled. This instrument is not the later amendment. Public copy, matched to the file examined: https://psc.ky.gov/pscecf/2020-00154/cumbolaw%40cumbolaw.com/07302020082541/07.30.20_Filed_Amendment_to_Alliance_Contract.pdf

These copies are public-docket retrievals. A fingerprint identifies a file. It does not certify the Commission's sealed original. The handwritten readings are not certified

identities. The forty-two-cent difference is not an amendment. The November 15 order and the July 30, 2020 filing do not establish that the later exhibit took effect.

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