

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALTERNATIVE RATE FILING OF)
HILLRIDGE FACILITIES, INC.) CASE NO. 2010-00426

**HILLRIDGE FACILITIES, INC'S MOTION FOR RECONSIDER OF DENIAL OF ITS
PETITION FOR CONFIDENTIAL TREATMENT**

Comes Hillridge Facilities, Inc. ("Hillridge"), by counsel, and for its Motion for Reconsideration of the Commission's Denial of its Petition for Confidential Treatment of the List of Invoices and the Invoices Attached to its Answers Commission Staff's First Information Requests, states as follows:

1. The February 14, 2011 letter issued by Jeff Derouen, the Executive Director of the Public Service Commission denying Hillridge's Petition for Confidential Treatment of certain records stated:

[T]hat Hillridge has failed to demonstrate that the information requested to be made confidential meets the exemptions to the Open Records Act as no competition exists, and the materials involve normal operations and cannot be considered trade secrets, and therefore fails to meet the criteria for confidential protection.

(See February 14, 2011 letter at pg. 1).

2. The February 14, 2011 ruling of the Commission failed to take into consideration the fact that the Louisville and Jefferson County Metropolitan District ("MSD") is a competitor of Hillridge and that it is seeking to take over Hillridge's collection system and customers. The fact MSD is a competitor of Hillridge is borne out by its counsel's statement during the February 8, 2011 Informal Conference held in this case that:

DOW has the authority to order MSD to connect Hillridge's facilities to its facilities and MSD is prepared to make the connection. He also stated that the connection, which would require approximately 150 feet of 8-inch main, is likley to occur before

April 28, 2011.

See draft of the Intra-Agency Memorandum issued to Case File No. 2010-00426 on February 14, 2011.

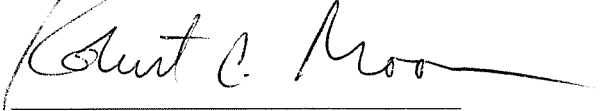
3. As reflected in the March 11, 2010 letter forwarded by MSD's Mark J. Johnson to Rick Greenberg, then counsel for Hillridge, MSD has offered to purchase the Hillridge system for the amount of \$285.077 contingent upon Hillridge's rehabilitating its collection system at a cost estimated by MSD to be in excess of One Million Six Hundred Thousand Dollars. (Attachment A). Of course, Hillridge has provided quotes to the Commission indicating that the cost to rehabilitate its collection system to be approximately \$300,000.

4. The above information reflects that competition does in fact exist, and Hillridge's request for confidential treatment should be granted.

5. In the alternative, Hillridge requests that the Commission order that any party receiving the subject information be subject to an Order such as that entered in Case No. 2002-00018 dated April 12, 2002, prohibiting parties from using the material for which confidential treatment was sought for purposes other than to prepare for or try this case. (See Attachment B).

WHEREFORE, Hillridge respectfully requests that the Commission reconsider its previous ruling and enter all necessary orders or rulings granting confidential treatment to the *List of Invoices* and the Invoices attached to its Answers to Commission Staff's First Information Requests, or in the alternative, enter an order such as that set forth in Attachment B prohibiting parties from using the material for which confidential treatment was sought for purposes other than to prepare for or try this case.

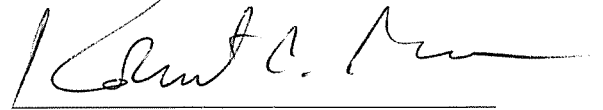
Respectfully Submitted,



Robert C. Moore
Hazelrigg & Cox, LLP
415 West Main Street, 1st Floor
P.O. Box 676
Frankfort, Kentucky 40602-0676

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602, David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 and Laurence J. Zielke and Janice M. Theriot, Zielke Law Firm PLLC, 1250 Meidinger Tower, 462 S. 4th Street, Louisville, Kentucky, on the 7th of March, 2011.



Robert C. Moore



700 West Liberty Street
Louisville Kentucky 40203-1911
502-540-6000
www.msdlouky.org

March 11, 2010

Hon. Richard A. Greenberg
Smith Greenberg & Napier, PLLC
2321 Lime Kiln Ln., Ste. C
Louisville, KY 40222

RE: Hillridge Wastewater Treatment Plant

Dear Rick:

MSD has completed its preliminary evaluation of the Hillridge Wastewater Collection System and has performed a feasibility estimate and cost analysis for the purpose of purchasing the system. In light of the information gathered during the evaluation, MSD has been able to calculate what it would cost to rehab and repair the system to determine its value in the event MSD would acquire the system. These costs directly impact the analysis as to what the value of the system is to MSD. I am writing to summarize the conclusions of said evaluation.

In order to evaluate the monetary worth and value of the system as an asset as opposed to a liability, and to determine the overall fitness of the system, MSD conducted a TV inspection of the Hillridge service lines. The amount of line inspected was over 41,000 feet or close to 8 miles of line. For your reference, I have included a copy of the PACP TV inspection report as Attachment #1.

The report confirmed a great deal of MSD's suspicions and concerns about the overall shape and fitness of the system. Although the system is functioning, the report has raised grave concerns due to the heavy amount of root infestation throughout the system. I have included a map of the system detailing the location and severity of the root infestation on the system as Attachment #2. As the map depicts, the majority of the impact of roots to the system is classified as a medium to high severity threat level. During the TV inspection, MSD encountered multiple root balls and in many locations, the concentration and mass of the roots was so heavy that the camera could not pass and the inspection had to be abandoned in that particular segment. Attachment #3 is a map and spreadsheet denoting the 18 locations where the survey had to be abandoned. As noted, in 10 of the 18 locations the concentration of roots was so heavy that the survey had to be abandoned.

Due to the presence of roots in the vast majority of the system, in order to perform the inspection, MSD was forced to cut hundreds of feet of roots, and absorb the cost for this cleanout. MSD's cost for the inspection and root removal was in excess of \$19,000 just for the evaluation and inspection. What the inspection did uncover though is even more troubling



Beneficial Use of Louisville's Biosolids
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ATTACHMENT A

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in light of the fact that the inspection was limited to the main lines and connections and the roots were extremely heavy. MSD did not inspect every individual customer's connection. This is typically where the presence of roots is normally at their heaviest. Every one of these connections is a likely service project with a cost associated. The report details the problems that roots has caused to the system, and this heavy infestation is a great concern in regard to the potential value of the system as an asset to MSD.

Another problem that the report confirmed was the heavy amount of inflow and infiltration ("I/I") of groundwater and storm water that the system is experiencing. Attachment #4 is a map showing the locations that are experiencing problems with I/I and the severity of the problem at each location. Inflow and infiltration are terms used to describe the ways that groundwater and storm water enter the sewer system. Inflow is water that is dumped into the sewer system through improper connections, such as downspouts and groundwater sump pumps. Infiltration is groundwater that enters the sewer system through leaks in the pipe. When this water gets into the sanitary sewers, it must be moved and treated like sanitary waste. Based on MSD's experience, it takes an average \$8 - \$10 per gallon to construct a treatment facility and approximately \$2.50 per gallon thereafter to treat each gallon of wastewater. A 200,000 GPD plant that experiences a 10% flow increase due to I/I similar to what was observed in the Hillridge system results in an additional 10,000 gals that must be treated in a wet weather event. This will cost MSD approximately \$25,000 per 24 hour rain event. Likewise, to go in and fix leaks in the system, MSD estimates that it costs \$1/gallon for line work rehabilitation. Additionally, due to the Federal Consent Decree, MSD is under an obligation to abate and eliminate sanitary sewer overflows (SSO's) and is subject for fines for overflows. As the report and map details, the significant amount of I/I impacts the value of the system because of the substantial work that MSD would be required to undertake and because of the regulatory issues posed by the I/I.

Lastly, MSD's analysis has also raised serious concerns about the overall structural integrity of the system. Many of the connections have a displaced or offset joint which affects the flow. Further many of the connections are at such severe angles that the flow is impeded. Of greater concern though is that the inspection identified multiple circumferential and longitudinal fractures in the pipes. In several locations, fractures have turned into gaping holes. These cracks and holes have also increased the flow of I/I and have allowed silt, rocks and mud to enter the system and clog up the works. These locations are identified in both Attachment #3, where the survey had to be abandoned in certain locations, and in Attachment # 5. This map depicts all of the structural defects and their respective severity. As the system continues to age, these cracks and holes certainly could spread and grow worse until the sewer collapses. Therefore, based on the evaluation as illustrated in these two maps and Attachment #6, which is a complete overview of all of the system's defects, it is MSD's opinion that the system's integrity is seriously compromised.

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Your contention that MSD damaged the system and is responsible for repairs is simply not valid. As the roots were removed when the main lines were cleaned out, any broken pipe that was brought back was due to the poor condition of the lines. The inspection clearly documented, much of the system is not only heavily infested and impacted with roots, but also has multiple cracks, fractures and holes, and simply is not in good shape. The overwhelming presence of roots certainly impacts the system. MSD spent its own resources to perform a great deal of root removal to clean out the system just in order to complete the inspection, yet still had to abandon the inspection due to roots in ten different locations. It is fair to say based on the amount of roots removed, Hillridge and its customers benefitted by the work done by MSD. Further, any assertion that removed roots were dumped back into the system is not accurate. MSD employees work hard to perform the necessary clean out work just to make the inspection responsible and showed the proper respect to the system and to the people living in the area. The work was handled in a competent professional manner.

To summarize, the inspection has determined and verified that the system is poor shape and is in need of substantial repairs in order to ensure its viability as a functioning system. Based upon the results of the inspection, MSD has been able to approximate what work that would be needed to be performed to repair and rehab the system and to calculate the cost for this work. Attachment #7 is the proposed worksheet for the rehab project. The system is comprised of 47,505 linear feet of line and contains 277 manholes. The proposed estimate is conservative in that it estimates that 55% of the sewer system needs rehabbed, but this estimate focuses only on repairs to the main lines and not the individual connections in which MSD would be responsible for up to 30 feet from the street if the system were to be acquired. Needless to say, these individual residential connections could add to the cost. The proposed project cost does estimate that 55% of the manholes would need to be replaced, however, since manholes were not inspected this could either be a low or high estimate. Thus, MSD believes the overall cost estimate analysis is a conservative estimate. MSD estimates the cost to rehab the system to be \$1,632,282.30. Needless to say this is a substantial amount and may not be reflective of the total cost. Further, before MSD would finalize the acquisition of the system, a Sanitary Sewer Evaluation Study (SSES) would also need to be performed to determine the integrity of the entire system. Attachment #8 details the work to be done as part of an SSES and the cost associated with the study. An SSES is a more thorough analysis on the system. The cost for this SSES is \$326,924. Based on the costs reflected in Attachments #7 and #8, MSD estimates the costs associated with the rehab, repair and inspection of the system to be \$1,959,206.30.

Although the acquisition of the system would add customers to MSD's roles, the costs for these much needed repairs, maintenance and upkeep and the potential for even more long term repair and maintenance obligations far outweigh any potential value to MSD especially

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in light of the fact that the system can eventually be connected to MSD's system in late 2010 or early 2011. Complicating the matter and further minimizing the commercial viability of any proposed acquisition is the Federal Consent Decree and the regulatory issues such that MSD would be required to operate under. Chief among these concerns are the documented I/I problems in the Hillridge system and the fact that, as per the Consent Decree, MSD would be required to reduce wet weather flow in an a ratio of 3:1 gallons. In addition to the costs set forth herein, this compliance requirement will add additional expenses to MSD. Further, in light of the fact that the Division of Water has not renewed Hillridge's permit and the facility has had NOV's for non-compliance, there is the real possibility that if MSD would acquire the system, there will be substantial costs associated with bringing the facility into regulatory compliance.

Although it may be true that if MSD acquired the system, MSD would get customers, but based on the \$24.13 PSC customer tariff that Hillridge currently charges, the potential liability and costs far outweigh the commercial viability of the system. Documents submitted to the Public Service Commission (PSC) by Hillridge confirm that the system has very little commercial viability. The 2008 reports submitted to the PSC reported that Hillridge lost \$73,908.25 during this year. Hillridge also reported a negative retained earnings value of \$267,205 which indicates that Hillridge has lost this much since the inception of operations. Accordingly, based upon the economic data indicating that the facility is operating at a loss along with the costs to rehab and repair the system (\$1,959,206.30), plus the unknown costs associated with bringing the facility into regulatory compliance, MSD has concluded that there is little economic incentive for purchasing the system because the liabilities far outweigh the potential source of revenue due to the system's current shape. Therefore, based on the current state of the system at this time, MSD is unable to make an offer for the acquisition of the system.

However, in light of the fact that Hillridge does have 712 customers, as an alternative, if the Ridges would take on the responsibility to rehab and repair the system and to bring it into compliance with the Division of Water's regulations, including obtaining a new permit, then MSD could realistically consider purchasing the system. The Ridges could perform the repairs to the system at a lesser cost than MSD could due to factors associated with the bid process which MSD is required to go through, and which could expedite the process of bringing the system into shape. MSD would be willing to meet with the Ridges and their engineers to review what work would be required to be performed to rehab the system. Based upon the amount of customers that MSD would then acquire, if the system would be completely rehabbed and brought into regulatory compliance, then MSD has determined that the system has an approximate value of \$ 285,977. This figure is based upon the following calculation and consideration. Hillridge currently has 712 customers that pay \$24.13 per month (\$17,180.56). It would take Hillridge 114 months or 9.5 years to recover the repair

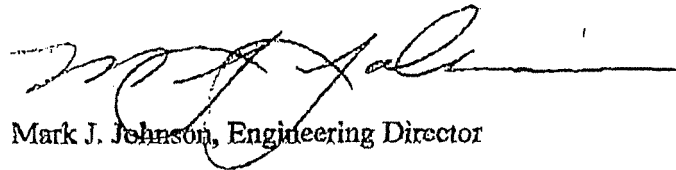
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and rehabilitation costs based on their current rates. Treating the \$17,180.56 as an annuity and calculating the present value using a 6% interest rate over 114 monthly payments, the approximate value of the facility is \$285,977. Accordingly, MSD would extend the offer of \$285,077 **contingent upon** the Ridge's rehabbing and repairing the system and bringing it into full regulatory compliance and final approval of the MSD Board.

In the event that the Ridges are unwilling to perform the needed work to rehab the system and bring it into regulatory compliance, then MSD cannot extend an offer due to the potential liabilities associated with the system. If that is what the Ridge's choose, then MSD will meet with the Division of Water and inform them that MSD will not be proceeding with a purchase of the system. At that point, MSD and DOW will review all regulatory options. MSD will also continue to move forward with construction of the Leanne Way lift station, with the ultimate goal of being able to take the treatment plant off line and connect to MSD's system. Until then though, the operation of the system and the obligation to comply with the applicable regulatory requirements remains the Ridges.

After you have had a chance to review the report with your clients, I am sure they would like to meet with MSD and discuss the findings and conclusions. At that point, the Division of Water may have weighed in and issued directions as well so that all parties may know where this is headed. Please feel free to contact me or Scott Porter to discuss the matter.

Sincerely,



Mark J. Johnson, Engineering Director

cc: Herbert J. Schardein, Jr.
Brian Bingham
Marion Gee
Dennis Thomasson
Scott Porter

APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2002-00018 DATED APRIL 12, 2002

CONDITIONS UNDER WHICH A REQUESTING PARTY SHALL BE ENTITLED TO RECEIVE MATERIAL AFFORDED TEMPORARY OR PERMANENT CONFIDENTIAL TREATMENT

- The Requesting Party shall not use the material for purposes other than to prepare for or try this case.
- The Requesting Party shall not use the material for any other purpose in this jurisdiction or in any other jurisdiction.
- The Requesting Party shall not disclose or permit the disclosure of this material to any persons, including officers, employees and consultants, except as expressly permitted herein.
- The Requesting Party shall take all steps reasonably necessary to see that no person receiving access to this material shall use, disclose, copy or record this material for any purpose other than the preparation or conduct of this case.
- The Requesting Party shall maintain a register in which counsel shall currently record the name and position of persons who have had access to this material.
- The Requesting Party shall not disclose this material except to counsel regularly employed by Intervenors, secretaries, paralegals, and other staff of such attorneys or counsel, and bona fide outside experts or consultants and their employees. Where the Requesting Party is a governmental entity whose officers are elected officials and govern the Requesting Party's actions in this case, the material may be disclosed to those officials.
- The Requesting Party shall not disclose this material to any outside experts or consultants who at any time during their employment or retention by the Intervenors are also employed or retained by a competitor of the Joint Applicants.
- The Requesting Party shall inform in writing each person to whom the material is disclosed of these conditions and shall obtain a written acknowledgement from such person that he or she has been informed of these conditions and agrees to be bound by them. It shall further advise each person that failure to comply with these provisions may result in the imposition of civil or criminal sanctions under KRS 278.990.
- The Requesting Party shall provide counsel for the Joint Applicants with a copy of each written acknowledgement.

- The Requesting Party shall not disclose the material in whole or in part during any aspect of this proceeding except under seal and shall not refer to such material in open proceedings except in a manner which maintains the confidentiality of the material.