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December 1, 2000

Robert C. Moore, Esq.
Hazelrigg and Cox
415 West Main Street
P. O. Box 676
Frankfort, KY 40602-0676

Re: Hunters Hollow Wastewater Treatment System

Dear Mr. Moore:

On November 14, 2000, the Commission received your letter requesting an opinion on behalf of Hunters Hollow Wastewater Treatment System regarding its right to charge the customer a contribution in aid of construction ("CIAC") fee for connecting to Hunters Hollow's sewer system. The facts, as Commission Staff understands them, are as follows:

Hunters Hollow operates a wastewater treatment plant in parts of Jefferson and Bullitt counties. One of the system's existing commercial customers has constructed a new building that the customer wishes to connect to Hunters Hollow's system. The customer intends to use this building as commercial rental property. Hunters Hollow has not informed the Commission how many units are in the new building, if each unit will have its own sewer connection or who will be responsible for paying the sewer charges associated with the building.

The utility alleges that because the property will be used for commercial rental property that the customer is not the ultimate user. Therefore, Hunters Hollow may charge the CIAC independent of Commission approval. The utility bases its position upon a decision by the Commission in 1991 that it can charge the CIAC without approval by the Commission.¹ This Order directed Hunters Hollow to amend its tariff to include the following language:

¹ The Commission assumes this is the decision rendered in Case No. 91-167. A copy of the final order in this case is attached to this letter as Appendix A.



B. Other Connections:

Any prospective customer, and any subdivider, developer, contractor, or other entity which is not a prospective customer, requiring service for a defined undeveloped area that is determined feasible to serve, will be charged full cost of installation. In such instances the prospective customer, subdivider, developer, contractor, or other entity which is not a prospective customer will be charged a contribution in aid of construction.

If any prospective customer is directly charged a contribution in aid of construction, the contribution charged shall be subject to Public Service Commission approval. If any subdivider, developer, contractor, or other entity which is not a prospective customer is directly charged a contribution in aid of construction, the contribution charged shall be subject to negotiation between the utility and the subdivider, developer, contractor or other entity which is not a prospective customer, and such charge shall not be subject to Public Service Commission approval.

Any customers ultimately connected under this arrangement shall be charged according to the utility's current approved rates filed with the Public Service Commission.

For the purposes of this provision the term "prospective customer" shall mean any person, firm or corporation which expresses a present intent to become an ultimate user or customer of the utility at the time of the contribution in aid of construction is charged.

All utilities must file a tariff with the Commission setting forth its rates. KRS 278.160(1). Utilities may not charge a rate not set forth in its tariff. KRS 278.160(2). Therefore, Hunters Hollow is limited to the rates and conditions set forth in its tariff.

This new tariff language allows Hunters Hollow to charge a CIAC to certain customers without Commission approval only if the customer being charged is not a "prospective customer". Otherwise, the charge is wholly subject to Commission approval.

Pursuant to KRS 278.030(1), a utility may charge a fair, just and reasonable rate for the services it provides to any person. A sewer system such as Hunters Hollow is clearly a utility as defined in KRS 278.010(3)(f). A "person" is defined as "natural persons, partnerships, corporations and two (2) or more persons having a joint or



common interest." KRS 278.010(2). A "customer" is "any person, form, corporation or body politic applying for or receiving service from any utility." 807 KAR 5:006 § 1(2).

The term "prospective customer" is not defined in any statute or regulation. It is defined, however, in Hunters Hollow's tariff as "any person, firm or corporation which expresses a present intent to become an ultimate user or customer of the utility at the time of the contribution in aid of construction is charged." See Hunters Hollow tariff, revised sheet 4-B (attached as Appendix B) and Appendix A, p. 4.

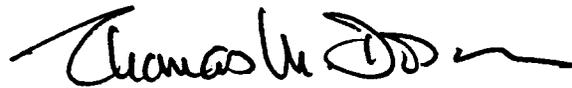
The key issue in this matter is whether the current customer constructing the building is the "prospective customer" or "ultimate user or customer" of the utility. Based upon the information provided by the utility in its request, the current customer who has constructed the building has requested the service. Therefore, it is the "customer" as defined in 807 KAR 5:006 § 1(2).

Nothing in the November 14, 2000 letter indicates who will bear the responsibility of paying the monthly sewer charge. The fact that this is a commercial building is not relevant to this opinion. The current customer has requested a sewer connection that will supply sewer service to its lessees. If, however, each individual lessee will be responsible for its own sewer charges, then that lessee is the "ultimate user or customer", not the current customer who constructed the building.

Therefore, based upon the foregoing, Hunters Hollow may charge the CIAC if, in fact, only the lessees of the person paying the charge will be the customers for sewer service.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Doug Hendrix, Staff Attorney, at (502) 564-3940.

Sincerely,



Thomas N. Dorman
Executive Director

