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**Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet**

**Thomas M. Dorman
Executive Director
Public Service Commission**

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602-0615
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460**

**Martin J. Huelsmann
Chairman**

**Gary W. Gillis
Vice Chairman**

**Robert E. Spurlin
Commissioner**

July 15, 2002

Mr. Tom Green
Commonwealth Technology, Inc.
2526 Regency Road
Lexington KY 40503-2921

Re: Henry County Water District No. 2 Offsetting Improvement Charge

Dear Mr. Green:

Your letter of July 5, 2002 to Commissioner Spurlin has been referred to me for response. You have expressed concern that cases before the Commission concerning the offsetting improvement charge have not been resolved within a shorter amount of time. You also indicate a certain amount of confusion regarding why, if a water district may not require an offsetting improvement charge, it may nevertheless enter into agreements with developers that include such a charge.

First, we regret that the issues to which you refer have not been handled as expeditiously as we all would wish. They involve, however, important questions of first impression before this Commission, as well as issues with which our ongoing promulgation process regarding system development charges is concerned. Moreover, our administrative resources are limited, and the burden on those staff members who process water matters has been unusually heavy in recent months.

We also regret any confusion regarding the issue of whether Henry County Water District No. 2 ("HCWD2") may require a developer to sign a contract including an offsetting improvement charge. At present, it lacks authority to do so under either regulation or tariff. As noted in the Commission's Order in *Randall C. Stivers v. Henry County Water District No. 2*, Case No. 2002-00045 (June 11, 2002), no utility may "require" a customer to comply with terms and conditions that are not included in its filed tariff. KRS 278.160. As you know, the offsetting development charge is not included as

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Mr. Tom Green, Commonwealth Technology, Inc.

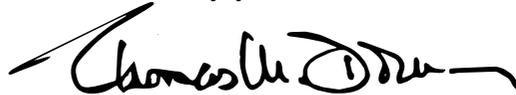
Henry County Water District No. 2 Offsetting Improvement Charge

a condition for service in HCWD2's filed tariff. Accordingly, Mr. Stivers was entitled to assert his right to receive service pursuant to the tariffed conditions.¹

Negotiated contracts, freely negotiated by a utility and a developer, and incorporating the offsetting development charge, are permissible, as Mr. Wuetcher has previously informed you. A special contract is itself a "tariff" applicable to a particular customer and, while 807 KAR 5:066 prescribes requirements concerning payments to, and refunds from, developers (and does not specify additional payments for system improvements), section 11(4) of that regulation permits "different arrangements" for such extensions with "prior approval of the commission." The Commission has generally approved special contracts containing such "different arrangements" under justifying circumstances and with the understanding that, as the tariffed rules are public documents, signatories to contracts are on notice of their rights under those tariffed rules.

I trust that the foregoing assists you. Once again, we at the PSC regret any inconvenience to HCWD2 or its customers.

Sincerely yours,



Thomas M. Dorman
Executive Director

/DTE/rst

cc: David Spenard, Office of the Attorney General
State Senator Marshall Long
State Representative Royce Adams
Don Heilman, HCWD2
Berry Baxter, HCWD2
Gary Larimore, KRWA
File

¹ You express surprise in your letter that, although Mr. Stivers' complaint was filed after HCWD2's tariff case, it was decided first. However, the complaint case was resolved pursuant to long-established law. HCWD2's tariff involves major policy issues and necessarily has taken longer to process.