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November 10, 2008

Russell Givens
Classic Construction, Inc.
P.O. Box 4113
Frankfort, KY 40604

Mr. Givens:

I am writing in response to your letter dated October 20, 2008, in which you express some concerns related to the Public Service Commission and advice provided to you by our staff. I hope my letter alleviates your concerns and clears up any confusion created in your discussions with various members of Commission Staff.

Based on your letter and conversations you have had with Commission Staff, we understand that you, as President of Classic Construction, own two sewage treatment facilities located in Franklin County. You are in the process of transferring the Coolbrook Subdivision facility to another entity, but you will retain the facility at Ridgewood Estates. You have expressed some difficulties in having customers of the Ridgewood Estates pay their sewer rates, and you have been seeking options that might decrease the number of customers who fail to pay their sewer bills.

Commission Staff understands that you have contracted with Peaks Mill Water District ("Peaks Mill"), which has agreed to provide a billing service for Classic Construction's Ridgewood Estates facility in return for a fee of 15 percent of the sewer bill payments. In addition, we understand that Peaks Mill has agreed to terminate water service to any non-paying sewer customer.

It is Commission Staff's position that Peaks Mill may begin billing for sewer service on behalf of Classic Construction immediately. Prior to disconnecting water service for nonpayment of a sewer fee, Peaks Mill would need to place such a condition in its tariff, which would require a deviation from Administrative Regulation 807 KAR 5:006, Section 14(1)(f). In order to be approved for this deviation, Peaks Mill would have to file an application with the Commission.

A second option that may encourage customers to pay their sewer bill is to disconnect service for nonpayment. All utilities are entitled to disconnect or terminate their utility service for nonpayment, so long as the utility complies with applicable laws

and regulations. A utility cannot disconnect the service of another utility on its own. For example, a sewer utility cannot shut off a customer's water.

Sewer utilities often have concerns about disconnecting sewer service to a customer for nonpayment because of the high cost related to digging up the sewer lines and capping off access to the system. Many sewer utilities have high non-recurring charges associated with disconnecting service, similar to the \$750 charge listed in Classic Construction's tariff. As long as Classic Construction adheres to the applicable laws and regulations, it may disconnect sewer service for nonpayment and charge its customer the disconnection fee. Classic Construction cannot, however, disconnect one of its customer's water service for nonpayment of the sewer bill.

Commission Staff understands that you are hesitant to disconnect sewer service for nonpayment because of the high cost to disconnect a customer. Accordingly, you have pursued a route that would have Peaks Mill disconnect water service for nonpayment of the sewer bill. I would like to take this opportunity to elaborate on why Peaks Mill would have to file a case with the Commission and obtain a deviation from our regulations in order to cut off water service for nonpayment of a sewer bill.

There is an Administrative Regulation that permits a utility to terminate the utility service that it provides for nonpayment of its bills, but the regulation does not extend to termination of a utility's service for nonpayment of another utility's bills. See 807 KAR 5:006, Section 14(1)(f). The Commission has previously stated that a water district may terminate its provision of water to a customer for nonpayment of that customer's sewer bill, but only after it receives permission to deviate from that Administrative Regulation. See Administrative Case No. 347 (Ky. PSC Jan. 9, 1995).

In your letter, you state that "the water district and I have been advised that we need to open a case regarding the billing." Neither Classic Construction nor Peaks Mill needs to open a case regarding billing, but if Peaks Mill wants to disconnect water service for nonpayment of Classic Construction's sewer bill, Peaks Mill would be required to file a request for deviation with the Commission.

Your letter raises a few other points that I want to make sure everyone clearly understands. Peaks Mill initially filed the contract for billing services on June 12, 2008. The letter of July 1, 2008, in which Commission staff rejected the filing, indicated problems with the contract. Specifically, Staff was concerned that the 15% billing fee was not reflective of actual costs of providing service. Peaks Mill re-filed the contract on August 25, 2008. Shortly thereafter, you visited our offices and discussed the situation with Commission Staff. After further consideration, Staff determined that because the contract between Peaks Mill and Classic Construction did not involve the rates and service of the utilities, the contract did not need to be on file with the Commission. Staff cautioned Classic Construction that the entire 15% billing fee may be higher than what would be considered reasonable if the utility's rates were to be evaluated, and accordingly, those fees may not be entirely recoverable through rates.

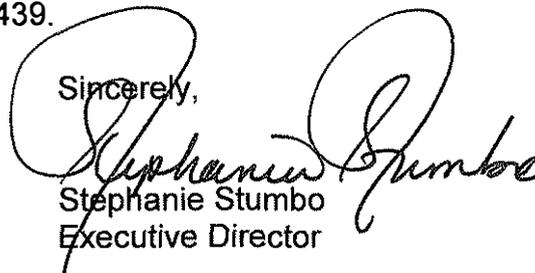
You also stated in your letter that Commission Staff informed you that the utility "was not allowed to bill owners of renters, or cut off renters who were not paying the monthly sewer fee." These two points need clarification. A utility must charge its filed rates to its customers. Similarly, a utility's customers must pay the rates found in the utility's tariff. The Commission has long held that one party cannot be held liable for a third party's consumption of service or a utility's charges. In other words, a landlord cannot be held liable for utility charges when it is the tenant who is a customer of the utility. The contractual relationship between landlord and tenant, however, may dictate that the landlord open the utility account and pay those charges associated with utility service. With respect to disconnecting service for nonpayment, all utilities are entitled to disconnect or terminate their utility service for nonpayment regardless of whether their customer is an owner or a tenant, so long as the utility complies with applicable laws and regulations.

I hope this letter clarifies some of the issues surrounding the Ridgewood Estates sewer facility and Peaks Mill's contract with Classic Construction.

I would like to address one more issue, which was raised by attorney Robert Moore with Commission Staff. He requested an opinion as to how long you must retain your letter of credit backed by a certificate of deposit for your Coolbrook Subdivision facility, which you intend to transfer to Coolbrook Utilities. Classic Construction was required by Commission Order to provide an irrevocable letter of credit of \$15,000 for a ten year term when it was approved to acquire the utility in Case No. 2003-00495. 807 KAR 5:071, Section 3(1)(a), requires provision of a third-party beneficiary agreement or other evidence of financial integrity that will ensure the continuity of sewage service. In the Commission's Order approving the transfer of your facility to Coolbrook Utilities, the Commission required Coolbrook Utilities to acquire its own irrevocable letter of credit. So long as Classic Construction no longer has a legal interest in the facility and the purchasing entity has obtained its irrevocable letter of credit, it is Staff's position that Classic Construction may "cash in" its security.

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 to the Commission for resolution. Questions concerning this opinion should be directed to Todd Osterloh, Staff Attorney, at (502) 564-3940, extension 439.

Sincerely,



Stephanie Stumbo
Executive Director

cc: Robert Moore, Hazelrigg & Cox