

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF AIRVIEW UTILITIES,	)	
LLC TO EXTEND THE MONTHLY	)	CASE NO. 2006-00094
SEWER SURCHARGE APPROVED IN	)	
CASE NO. 2003-00494	)	

O R D E R

On March 1, 2006, Airview Utilities, LLC ("Airview") tendered its application to the Commission for authority to extend the collection period for its construction surcharge by 4 months. Airview stated that construction costs have increased since the original bids were received on October 2, 2003 and that Airview has used the surcharge proceeds to fund two additional items that needed immediate replacement.

In Case No. 2003-00494,<sup>1</sup> the Commission authorized Airview's predecessor to collect a monthly surcharge of \$17.31 per customer for a period of 36 months or until \$118,990 had been collected. Airview was directed to use its surcharge proceeds to fund certain system repairs pursuant to a specific construction schedule. The Commission placed several conditions on Airview's surcharge. In its Order, the Commission found that if Airview failed to follow those conditions or the construction schedule, that Airview could be required to refund all of its surcharge collections, with interest.

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<sup>1</sup> Case No. 2003-00494, Application of Airview Estates, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities (Ky. PSC June 14, 2004).

On January 7, 2005, Airview Estates, Inc. and Elizabethtown Utilities, LLC (now Airview Utilities, LLC<sup>2</sup>) (“Airview” or “Elizabethtown Utilities”) jointly applied for Commission approval of the proposed transfer of Airview Estates, Inc.’s assets to Airview, a Kentucky limited liability company whose only members are Martin Cogan and Larry Smither.<sup>3</sup> In the Order granting approval for the transfer, the Commission placed the following conditions:<sup>4</sup>

1. The surcharge collections will be placed in a separate interest-bearing account and the monthly transfers to the surcharge account will be no less than \$3,306.21.
2. The transfer of the monthly surcharge collections from gross revenues will be made prior to those revenues being dispersed for another purpose.
3. Quarterly activity reports will be filed with the Commission within 15 days of the close of the reporting quarter. The quarterly reports shall contain the monthly surcharge billings and collections, the monthly surcharge bank statement, a detailed listing of the payments made from the surcharge account, and copies of the invoices supporting the payments made from the surcharge account.
4. Except as provided in paragraph 5, no revisions to the surcharge approved in Case No. 2003-00494 shall be made unless the Commission so orders.
5. Elizabethtown Utilities shall cease billing and collecting the surcharge for service provided on and after

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<sup>2</sup> See [http://apps.sos.ky.gov/business/obdb/\(jg4dujbwk5ofu545yxztc255\)/show-entity.aspx?id=0603025&ct=06&cs=99998](http://apps.sos.ky.gov/business/obdb/(jg4dujbwk5ofu545yxztc255)/show-entity.aspx?id=0603025&ct=06&cs=99998), showing that Elizabethtown Utilities, LLC is now known as Airview Utilities, LLC.

<sup>3</sup> Case No. 2005-00022, Joint Application of Airview Estates, Inc. and Elizabethtown Utilities, LLC for Approval of the Transfer of Wastewater Treatment Plant to Elizabethtown Utilities, LLC (Ky. PSC April 28, 2005).

<sup>4</sup> Mr. Smither and Mr. Cogan personally accepted the conditions in their July 25, 2005 Acknowledgement.

June 30, 2007 or after Elizabethtown Utilities and its predecessor have collected \$118,900 in proceeds from the surcharge, whichever occurs first.

6. Upon ceasing to bill the surcharge, Elizabethtown Utilities shall give notice of such action to the Commission and all parties of record in Case No. 2003-00494.

7. The surcharge will appear as a separate line item on the customer's bill.

8. If an entity or person that is affiliated with Elizabethtown Utilities is used to perform any of the surcharge construction projects, Elizabethtown Utilities shall obtain bids or estimates from 3 nonaffiliated sources. Copies of the three competitive bids, an explanation of the criteria used in awarding the construction, and the affiliated entity bid should be filed with the next quarterly report.

9. Elizabethtown Utilities shall comply with the construction schedule set forth in the Commission's Order of June 14, 2003 in Case No. 2003-00494 or subsequently directed by the Commission.

10. Elizabethtown Utilities' failure to comply with the conditions 1 through 9 will warrant the revocation of the surcharge and the refunding of the monies already collected, plus interest.

In its application herein, Airview admitted that, contrary to the Commission's Order, it funded projects not contained in the original list. Airview did not obtain Commission approval prior to funding those construction projects. In the transfer proceeding, Mr. Cogan and Mr. Smither stated that they had the necessary financial reserves to loan Airview the funds necessary to assure the continued operations of the plant. However, in a response to Commission Staff's request, Airview stated that long-term financing was not obtained from its members because funding the construction with the surcharge proceeds was the least cost to the ratepayers.

Mr. Cogan and Mr. Smither purchased Airview's wastewater treatment plant and associated sanitary sewers, pumping stations, force mains, equipment, and sewer easements upon which the wastewater treatment plant is located for \$1. In this proceeding, the Airview members, Mr. Cogan and Mr. Smither, admit that they have not invested or loaned Airview any additional funds. In establishing reasonable rates for a sewer utility, the Commission uses an 88 percent operating ratio to allow a return to owners for their capital investment in the utility. In this instance, Mr. Cogan and Mr. Smither have no true capital investment in Airview. Also, Airview continues to use associated companies to perform the surcharge construction without obtaining the required "[b]ids or estimates from 3 nonaffiliated sources."

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that Airview has violated the Commission's Order of April 28, 2005 by failure to obtain prior Commission authorization before spending the surcharge proceeds for construction not identified in the construction schedule and for using associated companies to perform the surcharge construction without obtaining the required "[b]ids or estimates from 3 nonaffiliated sources."

IT IS THEREFORE ORDERED that Airview's petition to extend the collection period for its construction surcharge by 4 months is denied.

Done at Frankfort, Kentucky, this 22<sup>nd</sup> day of December, 2006.

By the Commission

ATTEST:

  
Executive Director

Case No. 2006-00094