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PUBLIC SERVICE
COMMISSION

Commonwealth of Kentucky
Before the Public Service Commission

In the Matter of:

APPLICATION OF MALLARD POINT DISPOSAL)
SYSTEMS, INC. FOR AN ADJUSTMENT OF RATES) Case No. 2005-00235
PURSUANT TO THE ALTERNATIVE RATE FILING)
PROCEDURE FOR SMALL UTILITIES)

WRITTEN COMMENTS
OF THE ATTORNEY GENERAL

The Attorney General submits his Written Comments on the Public Service Commission Staff Report on Mallard Point Disposal Systems, Inc.

Expenses, even those having a minimal effect on operating income, are borne by shareholders unless such expenses are proven to be beneficial to ratepayers in furnishing utility service. The burden of proving that the expenses are beneficial is upon the Applicant. The mere inclusion of an expense amount in an application is wholly unremarkable and does not compel anything. Overall, the Staff Report reflects the application of these principles. There is, however, one expense category that Mallard Point fails to justify, and the Commission should eliminate the corresponding amounts.

In Mallard Point's last rate adjustment case, the Commission eliminated legal fees relating to representation at the Mallard Point Homeowners' Association.¹ Mallard Point may call upon its ratepayers to share the reasonable legal expense associated with providing service to them or otherwise furthering

¹ Case No. 2003-00284, Order, 27 May 2004, page 11.

their interests. It may not, however, call upon its ratepayers to fund activity that it does not establish as necessary for providing reasonable sewer service. To this extent, consistent with the Commission's Order in Mallard Point's prior case, the Commission should exclude the legal expense associated with Mr. Smith's litigation with Jeroen Van Der Gaag.²

It is not the responsibility of this Commission or the Attorney General to demonstrate why the fees associated with the case are not recoverable. The burden is upon Mr. Smith to demonstrate that they are valid expenses in furtherance of the ratepayers' interest. There is nothing in the record to support such a conclusion. Mr. Smith's theory, in summary, is that Mr. Van Der Gaag has wronged Mark Smith. He seeks a personal recovery for relief. He does not seek recovery on behalf of Mallard Point. Further, the legal expenses have nothing to do with the legitimate costs of presenting this request for a rate adjustment. Accordingly, the Commission should, at minimum, eliminate the following:

- Aug-08-05 Draft email to NDuncliffe \$75.00
- Aug-23-05 Telephone call to NDuncliffe \$225.00
- Aug-24-05 Travel, Attend, Scott Cir. Ct. \$675.00
- Jul-08-05 Duncliff communication \$150.00
- Jul-14-05 Duncliff communication \$37.50
- Jul-27-05 Duncliff communication \$37.50

² *Mark S. Smith v. Jeroen Van Der Gaag*, Scott Circuit Court, Division I., Case No. 05-CI-239.

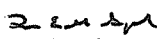
Further, while a portion of the expense of the following may be recoverable, it falls upon the Applicant to demonstrate the recoverable amount. In the absence of such a demonstration, the Commission should eliminate the following.

- Jul-22-05 Duncliff communication \$337.50

WHEREFORE, the Attorney General submits his Written Comments.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL


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Certificate of Service and Filing

Counsel certifies filing of the original and ten photocopies of the Attorney General's Written Comments by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, service of the filing was by mailing a true and correct of the same, first class postage prepaid, to James M. Mooney, Mooney, Mooney, & Mooney, 208 South Limestone, Lexington, KY 40508-2502 and Mark S. Smith, President, Mallard Point Disposal Systems, Inc., 104 Teal Court, Georgetown, KY 40324, all on this 17th day of October 2005.

[Signature]
Assistant Attorney General