

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AIRVIEW UTILITIES, LLC)	
AND MARTIN COGAN AND LARRY)	
SMITHER IN THEIR INDIVIDUAL)	CASE NO.
<u>AND OFFICIAL CAPACITIES</u>)	2006-000558
ALLEGED FAILURE TO COMPLY WITH)	
THE COMMISSION'S ORDER)	

RESPONSE TO PUBLIC SERVICE COMMISSION'S ORDER OF SEPTEMBER 29, 2008

Comes Airview Utilities, LLC (formerly known as Elizabethtown Utilities LLC), Martin Cogan and Larry Smither, in their individual and official capacities, by counsel, and for their response to the Public Service Commission's ("Commission") Order of September 29, 2008, state as follows:

The Commission's September 29, 2008 Order required the parties to submit a written request for a hearing in this matter or written statements setting forth their positions on issues identified in the Commission's December 23, 2006 Order. The issues identified in the December 23, 2006 Order were:

- (a) The parties' alleged failure to comply with the Commission's Order in case number 2005 – 00022;
- (b) The parties were required to show cause why they should not be jointly and severally subject to the penalties prescribed in KRS 278.990 (1); and
- (c) The parties were to explain why Airview's surcharge should not be revoked and why Airview should not be required to refund the monies already collected plus interest.

The parties have previously submitted information responsive to these issues¹, but request the Commission to consider these further comments.

1. Airview purchased the Airview Wastewater Treatment Plant (“WWTP”) from Airview Estates, Inc., on October 4, 2005. The WWTP was built in 1972 and at the time of the purchase was in very poor condition. The Kentucky Division of Water encouraged Airview to purchase the WWTP because it would be able to properly operate the WWTP. The Commission’s April 28, 2005 Order entered in Case No. 2005 – 00022, at Paragraph 13, recognized that Airview had operated the WWTP since September 1, 2004 and stated “there were no reported instances during this period in which the sewage treatment system has been out of compliance with applicable state statutes and regulations.”

2. Prior to Airview’s purchase of the WWTP, at the request of Airview Estates, Inc., the Commission had approved a monthly surcharge for a period of 36 months or until \$118,990 had been collected. The items to be replaced, repaired or performed using surcharge funds were the replacement of the remote lift station, installation of two blower motors and control panel, installation of 13 1/4" diffuser drops with 3/8" diffusers, pump out and dispose of lagoon sludge and the video inspection of the mains. The cost of the work on each item was based on bids received by Airview Estates, Inc. and was set forth in the Commission’s Order entered in Case No. 2003 – 00484.

3. By its Order of April 28, 2005 (“Surcharge Order”), the Commission approved the

¹ See Airview’s Response to Public Service Commission’s Order of December 22, 2006 (“First Response”), letter dated May 30, 2007 forwarded to then Executive Director Elizabeth O’Donnell, and Documents Submitted by Airview Utilities, LLC in Response to the Request of Commission Staff Made During the May 15, 2007 Informal Conference (“Second Response”).

transfer of the WWTP from Airview Estates, Inc., to Airview. Paragraph 1 (e) of the Surcharge Order required Airview to abide by the conditions regarding Airview Estate's surcharge that were set forth in Appendix A to the Surcharge Order ("Appendix A").

4. Prior to its purchase of the WWTP, Airview had never administered a surcharge, and had no experience with a surcharge.

5. It is undisputed that Airview complied with the requirements of paragraphs 2, 3, 5, 7, and 9 of Appendix A.

- (1) The monthly surcharge collections were transferred from gross revenues prior to gross revenues being dispersed for another purpose;
- (2) Airview filed the required quarterly activity reports with the Commission within 15 days of the close of the reporting quarter.
- (3) Billing and collection of the surcharge ceased on June 30, 2007;
- (4) Airview notified the Commission and parties of record that it had ceased to bill the surcharge;
- (5) The surcharge appeared as a separate line item on the customer's bill;
- (6) Airview complied with the construction schedule set forth in the Commission's Order in Case No. 2003-00494 or as subsequently directed by the Commission.

6. With respect to the requirements of Paragraph 8 of Appendix A, Airview submits that it fully complied with same. With respect to the requirements of Paragraphs 1 and 4 of Appendix A, Airview submits that it is now in full compliance with same

7. Paragraph 8 of the Surcharge Order provided that if an affiliate of Elizabethtown Utilities (now known as Airview Utilities) was used to perform any of the surcharge construction projects, Elizabethtown Utilities was to obtain bids or estimates from three nonaffiliated sources. Airview Estates, Inc., had obtained bids to do the surcharge work and the amount authorized by the Commission for each construction item in the surcharge was based on these bids. Then, prior to Airview Estates, Inc.'s sale of the WWTP and as reflected in Airview's First Response, the work

to make the surcharge repairs to the remote lift station, blower motors and control panel and diffuser drops and diffusers was initiated prior to the date Airview Estates, Inc., sold the WWTP to Airview. Murphy Excavating and Martin Sanitation, both nonaffiliated companies, did the video of the main and cleaned the lagoon, respectively. Therefore, there was no violation of the requirements of Paragraph 8.

8. With respect to the requirements of Paragraph 4 of Appendix A, Airview used surcharge funds to pay for needed repairs to the WWTP. As stated in its First Response, shortly before Airview purchased the WWTP it discovered that the chlorinator building was in such bad shape that it would not provide the needed protection to the chlorinator during the winter season. Therefore, the old chlorinator building was demolished and a new chlorinator building was built by Covered Bridge Utilities at a cost of \$4,202.40. The work on the chlorinator building began on October 3, 2005 and was completed on October 12, 2005. Then, in early January 2006, the chlorinator failed and it had to be replaced immediately because it must be operating in order to disinfect the discharge from the WWTP to comply with its KPDES permit. Therefore a new chlorinator was installed on January 5, 2006, at a cost of \$1303.15.

9. The repairs to the chlorinator building and the chlorinator were mistakenly paid for out of surcharge proceeds as no cash reserves were on hand because the WWTP had just been purchased with no transfer of unrestricted funds to Airview, there was insufficient time to attempt to obtain long-term financing, in Airview's experience banks would not make loans to privately owned WWTP's, and the cost of financing would have increased the cost of the necessary repairs to the ratepayers. Accordingly, after discussions with Mark Frost of the Commission concerning whether to repay the surcharge account or submit a request to extend the

surcharge, on February 27, 2006 Airview submitted to the Commission its request to extend the time of the surcharge and to include the cost of the replacement of the chlorinator building and chlorinator in the surcharge. The Commission denied this request. Airview then repaid the surcharge account for the amount (\$5,505.55) spent on the chlorinator building replacement and chlorinator.

10. Paragraph 2 of Appendix A required surcharge collections to be placed in a separate interest bearing account and the monthly transfers into the surcharge account were to be no less than \$3,306.21. A review of Airview's Second Response reflects that the approximate amount of \$3,500.00 was billed for the surcharge each month. However, due to changes in occupancy, customer delinquencies and defaults the amount received averaged \$3,273.83 per month. For example, the amount billed for the surcharge in March 2007 was \$3,462.00 and Airview received a payment of \$3,211.34 from the Hardin County Water District. Airview deposited all of its surcharge receipts in an interest bearing account on a monthly basis. The total surcharge funds received by Airview was \$117,858.02, and Airview was able to complete the surcharge repairs with this amount.

11. The information set forth above, as well as the information provided to the Commission in Airview's First Response and Second Response establishes that any surcharge monies improperly spent were used only to make needed repairs to the WWTP. No monies were used for any other purpose. Once Airview realized that it should not have used surcharge funds to pay for the replacement of the chlorinator building and the chlorinator, it did not attempt to hide the problem; but instead sought help and assistance from Commission Staff. Then, when the Commission denied its request to extend the surcharge to cover these repairs, it repaid the

amount of \$5,505.55 into the surcharge account. Therefore, there was no harm to the customers of the WWTP. Likewise, Airview was able to successfully complete the surcharge repairs with the surcharge receipts of \$117,858.02 and there has been no harm to the customers of the WWTP even though customer delinquencies, changes in occupancy and defaults caused it to collect an average of \$3,273.83 per month.

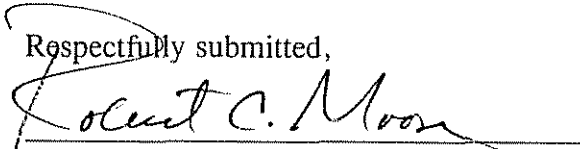
12. As further evidence of Airview's good faith in addressing these issues, Airview participated in two Informal Conferences held in this matter. Then, by letter dated October 4, 2007, forwarded to Robert Cowan, the former PSC attorney assigned to this case, Airview made a settlement offer to the Commission. This letter offered to pay a fine of \$500.00, which fine would be probated or held in abeyance if the work required by the Surcharge Order was completed by December 15, 2007. In its letter of November 1, 2007, the Attorney General did not object to this settlement offer. Airview and its counsel never received a response to this settlement offer, but the surcharge work was completed by November 30, 2007.

13. As the above information reflects, Airview did not willfully violate the provisions of Appendix A, and once it was advised that surcharge monies could not be used to replace the chlorinator building and the chlorinator, it made the necessary reimbursement into the surcharge account. Additionally, the proper surcharge amount was billed, and all receipts were deposited into the surcharge account. The information also reflects that neither Martin Cogan or Lawrence Smither intentionally violated the requirements of Appendix A. Accordingly, Airview, Mr. Cogan and Mr. Smither did not violate KRS 277.990(1).

14. For the above stated reasons and the fact that none of Airview's customers suffered prejudice as a result of the mistakes made by Airview in administering the surcharge

account, the above referenced case should be concluded with no penalty or sanction imposed upon Airview, Martin Cogan or Lawrence Smither

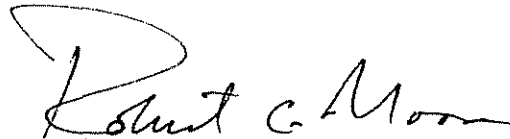
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Hon. David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Ky., 40601-8204 on this the 20th day of October, 2008.


Robert C. Moore