

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AUG 11 2008
PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF FARMDALE DEVELOPMENT)
CORPORATION FOR AN ADJUSTMENT IN RATES) CASE NO. 2007-00436
PURSUANT TO THE ALTERNATIVE RATE FILING)
PROCEDURE FOR SMALL UTILITIES)

**MOTION FOR RECONSIDERATION OF FARMDALE DEVELOPMENT
CORPORATION AND FOR ORAL ARGUMENT**

Comes the Applicant, Farmdale Development Corporation (“Farmdale”), by counsel,
and for its Motion for Reconsideration and Oral Argument states as follows:

I. Farmdale Engaged in Substantial and Reasonable Efforts to Locate a More Cost-Effective Billing and Collection Agency.

The Commission stated in its July 30, 2008 Order (hereinafter “Order”) that:

Farmdale has acted in an unreasonable manner by failing to undertake reasonable efforts to consider alternative billing and collection services and to study the possibility of performing such services.

(See Order, p. 15). In making this statement, the Commission failed to consider the evidence in the record establishing that Farmdale made substantial and reasonable efforts to locate a more cost-effective billing and collection service than that provided by the Farmdale Water District (hereinafter “FWD”).

A review of the evidence establishes that Farmdale contacted the FWD in an effort to persuade it to reduce the fee that it charges. When this request for a reduced fee was denied, Farmdale requested the FWD to agree to cut off water service to its customers that failed to pay its sewer bill in accordance with KRS KRS 96.930. (See March 26, 2008, Notice of Filing, Attachment 1). Pursuant to KRS 96.930, the use of water in any manner tending to

contaminate it raises a duty to provide for the proper disposition of the waste water according to the highest public health standards and such duty includes the full responsibility for paying the cost of such disposition. This request was also denied.

Throughout the years, Commission Staff has requested utilities to obtain 3 quotes to determine whether the cost of equipment or service was reasonable. Accordingly, Farmdale contacted both private and public entities to obtain quotes to provide billing and collection services. The evidence in the record establishes that Farmdale contacted four different companies, Bluegrass Billing Services, with offices in Bagdad and Louisville, Kentucky, DVG Services, Inc., in LaGrange, Kentucky, Liberty Billing LLC in Frankfort, Kentucky, and Cap Billing Service in Greenville, Indiana, to obtain quotes. However, none of these companies could provide these services at a cost less than that charged by the FWD or would even agree to perform this type of billing. It is also important to note that the evidence establishes that Liberty Billing contacted Cash-Pro, Inc., out of Evansville, Indiana, to discuss the collection of delinquent sewer bills, but Cash-Pro was not aware of any company specializing in billing and collection services for a wastewater treatment plant.

Bluegrass Billing stated that it would perform these services for a fee of ten percent (10%) of the gross amount collected. However, based on the information contained in Bluegrass Billing's response to the request for a quote (Attachment H to Applicant's Exhibit No. 1), once the average percentage of delinquent customers and the collection costs incurred in collecting these accounts is considered, Bluegrass Billings' cost exceeded the fee charged by the FWD. This un rebutted fact is set forth in the testimony of Carroll Cogan. (See Applicant's Exhibit No. 1, Paragraph 14(c)). (See Applicant's Exhibit No. 1, Attachment I).

Furthermore, the record also establishes that Brocklyn Utilities, another sewer utility,

was required to pay a fee of 30% where it engaged a collection agency to collect delinquent accounts, which is consistent with the fee charged by Bluegrass Billing. Contrary to the finding of the Commission, Farmdale did not limit its search for a billing and collection agency to only Frankfort, Kentucky, and in fact, made every effort to locate a cheaper and equally effective billing and collection agency.

When Farmdale was unable to find a private commercial entity that would be willing to provide billing and collection services, it requested the public utility companies providing service in the Farmdale area to perform the needed billing and collection services. As established by the record, the Frankfort Plant Board and Blue Grass Energy declined to provide these services. This evidence was un rebutted.

The record also establishes that Farmdale determined whether it could perform these billing and collection services itself, and, based on its analysis, it anticipated that the cost to hire an employee to perform such services would exceed the fee charged by the FWD. (See Applicant's Exhibit No. 1, Paragraph 146). This evidence was un rebutted.

The Commission apparently wishes that a billing and collection agency will agree to provide such services on a per customer basis. However, the record reflects that entities providing these services are unwilling to do so. The record establishes that the Louisville Water Company and the FWD refuse to provide such services at a flat rate.

The Commission improperly relied upon Commission Staff's statement that the rate charged by the FWD exceeds the billing and collection fee paid by other jurisdictional utilities around the state who list Agency Collection Fees in their PSC annual reports. (See Order, p. 11). Commission Staff failed to state the percentage of delinquent customers and/or non-paying customers and also failed to state whether such utilities incurred higher legal bills than

does Farmdale due to legal collection costs. Therefore, it is impossible to compare these collection fees to the billing and collection fee paid to the FWD. Of course, the testimony that the FWD's billing and collection process is very efficient and results in the avoidance of attorneys fees was un rebutted.

As reflected by the evidence in the record referred to above, the Commission erred in finding that Farmdale failed to engage in reasonable efforts to locate an alternative to the billing and collection services provided by the FWD. For this reason alone, the Commission should reconsider its Order.

II. The Commission Ignored Past Precedent in Disapproving the FWD Billing and Collection Fee.

The Commission quoted extensively from its decision entered in 1982, over 25 years ago, in determining that the FWD 15% billing and collection fee is unreasonable. In doing so, the Commission ignored the fact that in rate case 97-456 the 15% FWD fee of \$7,949.00 was approved. A review of the Agency Collection Fee contained in the application filed by Farmdale in rate case 97-456 reflects that the fee was 15%, and this Agency Collection Fee was approved by the final Order entered in that case. Jack Kaninberg with the Commission agreed in his testimony that in Farmdale's 1997 rate case the Commission had approved the payment of the FWD's billing and collection fee of 15%. (Transcript, pp. 142 & 144). In fact, Mr. Kaninberg testified that Farmdale has paid the FWD a 15% fee for billing and collection services since 1981. (Transcript, p. 143).

In Farmdale's rate case number 2006-00028, Commission Staff noted in its Staff Report that the FWD billing and collection fee approximated 15%, and further stated that Coolbrook Sanitation had been advised in 1999 to "consider public bids or renegotiation of the terms of the billing and collection contract." (See Attachment A to Staff Report, Case No. 2006-

00028). Of course, Farmdale, as set forth in detail in the record, did seek to obtain quotes for the billing and collection service and attempted to renegotiate the fee charged by the FWD. Importantly, the evidence reflects that the Commission did not reject this 15% fee. Furthermore, when the Agency Collection Fee of \$8,097 included in the rate approved in Case No. 2006-00028 is compared to the approved annual revenue of \$80,976, the fee was 10% of revenues.

The Commission erred in relying on a decision made in 1982, in a rate case filed by a prior owner, when the Commission approved the FWD fee in rate cases filed by the current owner of Farmdale. This is particularly true where Farmdale engaged in substantial efforts to locate a reasonable alternative to the FWD. At the very least, the Commission should approve a billing and collection fee of 10% of the amount to be collected by the FWD, as authorized in Case No. 2006-00028. Indeed, in setting the Agency Collection Fee at \$8,097, the Commission did not even include the annual inflation rate of three percent, which is the interest rate used by the Commission in Case No. 2007-00134. Applying this inflation rate to the \$7,949.00 Agency Collection Fee approved in Case No. 97-456 through this case results in an Agency Collection Fee of \$10,682.79.

III. The Commission Should Grant Farmdale Thirty Days to Locate an Alternative to the Billing and Collection Services Provided by the FWD.

In reliance upon the decisions of the Commission in Case Nos. 97-00456 and 2006-00028, Farmdale has paid the FWD 15% collection fee on both its normal rate and its surcharge rate since the implementation of rate authorized by the Commission in Case No. 2006-00028. Where Farmdale has relied upon the past decisions of the Commission in paying the FWD 15% fee, it would be improper to penalize the utility to prevent it from recovering this fee through the date of the final Order in this case. Accordingly, in the event that the

Commission decides that its approval of the FWD fee in Case Nos. 97-00456 and 2006-00028 were improper, the Commission should grant Farmdale 30 days from the final Order in this case to implement a new billing and collection procedure, methodology. This is particularly true where a review of the filings in Case Nos. 97-00456 and 2006-00028 establishes that Commission did not advise Farmdale that its proposed Agency Collection Fee was denied or that it was required to cease paying the FWD 15% billing and collection fee. Certainly Farmdale was entitled to rely upon the decisions issued by the Commission in the rate cases that it filed.

IV. The Commission Should Amortize Legal Fees Over a Three Year Period.

The Commission's Order indicates that the approved legal fees of \$14,046.66 should be amortized over a five year period. The Commission should approve the amortization of the legal fees over a three year period in order to allow Farmdale to recover this expense in a timely manner, as it has done in previous cases. (See Case No. 2005-00235 and Case No. 99-176.) The Commission has ruled that these were legitimately incurred legal fees¹ and it is aware that Farmdale previously had to obtain a loan from National City Bank in order to pay its operating costs, including legal fees. The Commission rejected Farmdale's request to recover the interest charged on this loan. To require Farmdale to amortize this expense over a five year period will require Farmdale to enter into additional loans, which will result in additional interest expense, in order to pay the attorneys fees due. This would be a disincentive to file a rate case, which is contrary to Commission policy. (See Case No. 99-176.) The Commission should amortize the recovery of this legal fee over a three year period

¹ The Commission is aware that Farmdale requested Staff to prepare its application for rate adjustment, but Staff declined to do so. Additionally, much of the attorneys fees incurred by Farmdale resulted from the need to answer data requests posed by Commission Staff and present information to Commission Staff.

to minimize any interest expense to be borne by Farmdale, which expense it will not be allowed to recover in its rates. Amortizing the legal fee is particularly appropriate where Mr. Kaninberg testified that the Commission says that a rate case should be filed every three to five years or sooner if needed. (T, p. 199). Here, a new rate case will probably need to be filed upon the Commission's decision in the pending application for a 9% rate increase filed by Blue Grass Energy in Case No. 2008-00011, and additional attorneys fees will be incurred in the new rate case.

In the past, the Commission has authorized the recovery of legal expenses resulting from a rate case over a three year period. The Commission should do so here.

V. Farmdale Should Be Allowed to Recover the Extraordinary Fuel/Power Costs It Incurred in 2006.

The Commission's order rejected the 2006 test year Fuel/Power expense of \$19,150 and also stated that Farmdale could not recover the difference between the 2005 fuel/Power expense and the 2006 test year expense of \$3,847. The Commission found that Farmdale could not recover the \$3,847 difference because it would constitute retroactive rate-making. It is un rebutted that this was a legitimate expense and that it was for the benefit of Farmdale's customers. It is also un rebutted that the operation of a WWTP is affected by variable conditions, including weather and the amount of flow. (See Applicant's Exhibit No. 1, Paragraph 12). Accordingly, Farmdale should be allowed to recover as a nonrecurring expense the \$3,847 that it incurred in extraordinary Fuel/Power expense. In the event that the Commission does not allow Farmdale to recover this expense, it should add an inflation factor of three percent to the 2005 Fuel/Power expense of \$15,303 to arrive at a Fuel/Power expense of \$16,722.

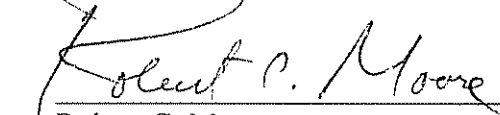
Conclusion

The Commission should reconsider its Order entered in the above styled action based on the above referenced evidence, and issue an amended order finding:

- 1) Farmdale presented substantial evidence establishing that the FWD fee is reasonable, or in the alternative allowing Farmdale to use the FWD services until 30 days from the date of the Order;
- 2) Authorizing Farmdale to amortize the legal expenses incurred in this case over 3 years; and
- 3) Authorize Farmdale to recover the \$3,847 expense in the extraordinary Fuel/Power expenses.

Finally, Farmdale requests the Commission to schedule oral argument on this Motion for Reconsideration in order to provide the Commission with the opportunity to request clarification on any issue where necessary.

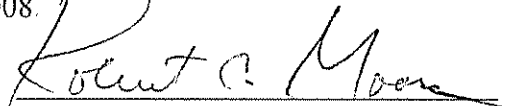
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Stephanie Stumbo, Executive Director, Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602, David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204, Kenny and Marilyn Glass, 223, Briarwood Drive, Frankfort, Kentucky 40602, and Tiffany Bowman, Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602 by placing same in the U.S. Mail, postage pre-paid, this the 11th day of August, 2008.



Robert C. Moore