



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

January 20, 2011

PARTIES OF RECORD

Re: Case No. 2010-00049

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact M. Todd Osterloh at 502-564-3940, Extension 439.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

TO/kar

Attachments

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File

FROM: Todd Osterloh, Staff Attorney

DATE: January 20, 2011

RE: Case No. 2010-00049
Wilmer and Pauline Conn v. Fleming County Water Association
Conference of January 12, 2011

On January 12, 2011, Commission Staff held an informal teleconference to discuss both substantive and procedural issues of this case. The following individuals participated in the informal conference:

Marvin W. Suit	Fleming County Water Association
Gene Jett	Fleming County Water Association
J. E. Smith	Fleming County Water Association
Wilmer Conn	Complainant
Todd Osterloh	PSC Staff
Eddie Beavers	PSC Staff

Beginning the conference, Commission Staff stated that it would prepare minutes of the conference for the case record, that a copy of the minutes would be provided to all parties, and that all parties would be given an opportunity to submit written comments upon those minutes. Staff also noted that its statements and opinions are not necessarily binding on the Commission.

In response to questions from Commission Staff, Mr. Conn stated that he was building a house approximately 500 feet to the east of Lot Number 65, which is shown on Exhibit 4B of Fleming County Water Association's ("Fleming District") Responses to Commission Staff's Information Request. Fleming District stated that it believed that Mr. Conn desired water service significantly further west, which is why it proposed to serve Mr. Conn through Willie Gregory's property. Fleming District had not considered attempting to serve Mr. Conn through other properties because of its understanding as to where Mr. Conn wanted water service.

Fleming District explained the Declaration of Restrictions that is Exhibit 4-C of its Responses to Commission Staff's Information Request specifically applied to property previously owned by John and Eula Vise but that there were identical restrictions placed on other properties in the buffer zone purchased by the state. Commission Staff

requested, and Fleming District agreed to provide, copies of the other properties' deed restrictions. (Fleming District filed those documents on January 18, 2011).

Commission Staff also referenced three letters, which are attached to this memorandum, that Mr. Conn uses to support his complaint, and asked the utility whether it had contacted any state agency to resolve any differences of opinion. Fleming District stated that it had not contacted any agencies. On specific questioning on one of the letter's statements that "the water line in question is not impacted in any way by any deed restrictions," Fleming Association stated that it presumed that the Commissioner at the Finance and Administration Cabinet was merely ill-informed.

In response to Commission questioning, Fleming District stated that it had not considered how the two-mile radius limitation of the release agreement that it signed in 1997 could impact this case. It stated that other water lines within a two-mile radius of the Maxey Flat nuclear site, such as the one located on Ky. Hwy. 1895, were not a concern because they were located uphill of the site.

Mr. Conn stated that he wanted an evidentiary hearing. Staff stated that it would attempt to set a hearing date with the Commission in early February. Staff also stated that the parties would hold a telephone conference during the week before the hearing to discuss the hearing process and any witnesses or evidence that the parties will present. That teleconference has since been set for 2 p.m. on January 27, 2011. The hearing will be held on February 3, 2011.

The conference then adjourned.



ENERGY AND ENVIRONMENT CABINET

Steven L. Beshear
Governor

Department for Environmental Protection
Division of Waste Management
200 Fair Oaks Lane
Frankfort, Kentucky 40601
www.kentucky.gov

Leonard K. Peters
Secretary

July 15, 2009

Mr. Wilmer Conn
P.O. Box 218
Clearfield, Kentucky 40313

RE: Water Line
Maxey Flats Superfund Site

Dear Mr. Conn,

You contacted the Kentucky Division of Waste Management (KDWM) to determine whether the Division would have any objections to the re-establishment of the city water line on your property which is located in the buffer zone of the Maxey Flats Superfund Site.

The KDWM has no opposition to the water line being re-established for this resident at this time, especially since it would warn against the use of well water on this property due to the groundwater contamination in the adjacent area.

While the KDWM can not state with absolute certainty that any area of the Commonwealth is not contaminated, the KDWM currently does not have any information in its files which indicates that soil contamination exists in the area where the water line is to be re-established.

If you have any questions, do not hesitate to contact me at (502) 564-6716.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn A. Cecil".

Shawn A. Cecil, P.G.,
Superfund Branch Manager
Kentucky Division of Waste Management

cc: Scott Winburn, DWM
Virginia Gorley, OLS
Tim Hubbard, DWM
Patrick McGee, Finance OGC



FINANCE AND ADMINISTRATION CABINET
DEPARTMENT FOR FACILITIES AND SUPPORT SERVICES

ERNE FLETCHER
GOVERNOR

OFFICE OF THE COMMISSIONER
Capitol Annex, Room 194
702 Capitol Avenue, Frankfort KY 40601
Phone: (502) 564-0402 Fax: (502) 564-0569
james.abbott@ky.gov

Robert M. Burnside
Secretary
James F. Abbott
Commissioner

August 27, 2007

Fleming County Water Association, Inc.
2772 Morehead Road
Flemingsburg, KY 41041

Re: Inquiry of Wilmer Conn

Dear Sirs:

It is our understanding that Wilmer Conn, a Fleming County resident owning land adjacent to the Maxey Flats Project (MFP) site and buffer area, is requesting that Fleming County Water Association (FCWA) re-establish water service for his property utilizing a previously disconnected line that crosses part of the MFP buffer area. A water line previously offered service to the area in question but was disconnected some years ago. Apparently, some questions were raised, in connection with Mr. Conn's request, about ownership of the water line and the possible impact of restrictions on future use of a water line in the affected area.

A thorough investigation of our records by the Finance and Administration Cabinet and the Environmental and Public Protection Cabinet reveals to us the following:

1. The Commonwealth does not own the water line in question; said water line was installed by FCWA through an easement granted FCWA by the Commonwealth of Kentucky;
2. The water line in question also appears to lie within a county road right-of-way; and,
3. The water line in question is not impacted in any way by any deed restrictions or similar instruments or record.

In light of the foregoing, the Commonwealth of Kentucky has no objections to FCWA re-establishing water service to Mr. Conn through the previously disconnected water line.

We hope this answers any questions raised by Mr. Conn or FCWA in connection with Mr. Conn's request for water service. If you have questions or need any further information from the Commonwealth, please do not hesitate to contact me by phoning (502) 564-0402.

Respectfully,

James F. Abbott, Commissioner
Department for Facilities and Support Services

JFA/PM/rws

cc: Wilmer Conn, Virginia Baker, Fazi Sherkat



ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Ernie Fletcher
Governor

Department for Environmental Protection
Division of Waste Management
14 Reilly Road
Frankfort, Kentucky 40601-1190
www.kentucky.gov

Teresa J. Hill
Secretary

December 13, 2007

Fleming County Water Association, Inc.
P.O. Box 327
Flemingsburg, Kentucky 41041

RE: Inquiry of Wilmer Conn

Dear FCWA:

The Kentucky Division of Waste Management (KDWM) was contacted by Mr. Wilmer Conn to determine whether the Division would have any objections to the re-establishment of the city water line on his property which is located in the buffer zone of the Maxey Flats Superfund Site.

The KDWM has no opposition to the water line being re-established for this resident at this time, especially since it would warn against the use of well water on this property due to the groundwater contamination in the adjacent area.

While the KDWM can not state with absolute certainty that any area of the Commonwealth is not contaminated, the KDWM currently does not have any information in its files which indicates that soil contamination exists in the area where the water line is to be re-established.

If you have any questions, do not hesitate to contact me regarding this matter at 502-564-6716.

Sincerely,

Fazi Sherkat, P.E., Manager
Superfund Branch
Division of Waste Management

cc: Hon. Glennis Harris
Virginia Baker Gorley, OLS