

# Zielke Law Firm PLLC

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March 16, 2011

RECEIVED

MAR 17 2011

PUBLIC SERVICE  
COMMISSION

Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

RE: **Case No.: 2010-00426 – Alternative Rate Filing Application of Hillridge Facilities, Inc.**

Dear Mr. Derouen:

Enclosed please find an original and eleven copies of MSD's Opposition to Request for Confidential Treatment by Hillridge Facilities; and an original and eleven copies of MSD's Response to PSC Staff Report regarding the above-referenced matter. Please file the original and ten copies with the Commission and return a filed-stamped copy back to me in the enclosed postage prepaid envelope.

Thank you in advance for your assistance.

Sincerely,

Nancy L. Palmer, Legal  
Assistant to Janice M. Theriot

NP  
Enclosures

RECEIVED

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

MAR 17 2011

In the Matter of:  
ALTERNATIVE RATE FILING APPLICATION OF )  
HILLRIDGE FACILITIES, INC. )

PUBLIC SERVICE  
COMMISSION

) Case No. 2010-00426

**MSD’S OPPOSITION TO REQUEST FOR CONFIDENTIAL TREATMENT  
BY HILLRIDGE FACILITIES, INC.**

Comes the Louisville and Jefferson County Metropolitan Sewer District (“MSD”), by counsel, and for its opposition to the motion for reconsideration of petition for confidential treatment filed by Hillridge Facilities, Inc., (“Hillridge”) states as follows:

The Public Service Commission denied Hillridge’s request for confidential treatment of certain data on February 14, 2011. On March 8, 2011, Hillridge sought reconsideration of that decision based on the erroneous conclusion that MSD is a competitor of Hillridge and that the information would somehow provide MSD a competitive advantage. This assumption is factually and legally wrong; thus, the reconsideration should be denied.

MSD is not a competitor of Hillridge. MSD is public body corporate created under Kentucky Revised Statute Chapter 76 and operating a municipal regional sewer system with several regional plants. Hillridge is a private corporation regulated by the PSC. Hillridge has operated its aging, polluting and temporary package treatment plant unlawful without a discharge permit from the Kentucky Division of Water since December 31, 2007.

MSD has no plans to operate the unlawful Hillridge plant or occupy the Hillridge plant at all. Any information or data Hillridge has regarding the plant has no commercial value to MSD. The sewer system, as opposed to the Hillridge plant, however, must be

connected to MSD's sewer system pursuant to an order of the Kentucky Division of Water. This order does not concern the Hillridge plant. The DOW included as a condition to each and every discharge permit issued to Hillridge a proviso that once a regional sewer system is available, the temporary Hillridge plant will shut down allowing its customers to connect to the regional system:

This treatment unit is temporary and in no way supersedes the need of a regional sewer system. The permittee will eliminate the discharge and treatment unit by connection to a regional sewer system when it becomes available as defined in 401 KAR 5:002.

The Hillridge sewer system, the pipes running under the streets and connected to the houses, is held by Hillridge, as a matter of law, for the benefit of the households that are connected to it. Hillridge holds mere "bare legal title" to the sewer system. *Louisville & Jefferson County Metropolitan Sewer District v. Douglas Hills Sanitation Facility*, 592 S.W.2d 142, 150 (Ky. 1979).

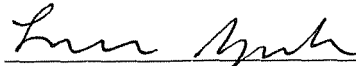
Furthermore, pursuant to KRS 76.080(12) empowers MSD to approve any changes that Hillridge makes to its plant or sewers as follows:

To approve or revise the plans and designs of all trunk, intercepting, connecting lateral and outlet sewers, storm water drains, pumping and ventilating stations, disposal and treatment plants and works proposed to be constructed, altered or reconstructed by any other person or corporation, private or public in the whole county, in order to insure that such proposed construction, alteration or reconstruction shall conform to and be a part of a comprehensive sewer and drainage system of the said county. No sewers, drains, pumping and ventilation stations, or disposal and treatment plants or works shall be constructed, altered or reconstructed without approval by the board of the district. Any such work shall be subject to inspection and supervision of the district.

It is preposterous that MSD, with such enumerated powers, cannot have access to any information material to Hillridge's system.

As the PSC noted in its denial of confidential treatment the information Hillridge attempts to keep confidential does not fall within any exemption to the Open Records Act. Not only is there no competition to Hillridge's operation and ownership of the aging polluting plant, but the information sought concerns normal operations which cannot be protected as trade secrets. The PSC's decision is correct and should not change.

Respectfully submitted,



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**Certificate of Service**

Counsel certifies that, on this the 16<sup>th</sup> day of March 2011, an original and ten copies of this Motion to Intervene was filed by overnight delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601. A copy was served on the following by U.S. Mail, first-class, postage prepaid:

Robert C. Moore  
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415 West Main Street, 1<sup>st</sup> Floor  
P.O. Box 676  
Frankfort, KY 40602-0676

David Edward Spenard  
Assistant Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204



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Counsel for MSD

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In the Matter of:

ALTERNATIVE RATE FILING APPLICATION OF )  
HILLRIDGE FACILITIES, INC. )

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) Case No. 2010-00426

**MSD's Response to PSC Staff Report**

Comes the Louisville and Jefferson County Metropolitan Sewer District ("MSD"), by counsel, and for its Response to the PSC Staff Report regarding the rate filing application of Hillridge Facilities, Inc., ("Hillridge") states as follows:

MSD supports the findings of the PSC staff in its Staff Report but urges the PSC to deny any rate increase because the Kentucky Division of Water has denied a discharge permit ("KPDES Permit") to Hillridge and ordered Hillridge to connect to the regional municipal sewer. Once the connection is made Hillridge's rate payers will pay a different rate that, on average, will be lower than the proposed rate.

Hillridge in its Supplement to Staff's Second Request for Information, filed one business day before the Staff Report, provided Notices of Violations received from the Kentucky Division of Water since November 13, 2003. The NOVs note that Hillridge's discharge permit expired on December 31, 2007, and a new permit will not be issued. Therefore, Hillridge is operating an unlawful plant and thus should not obtain any rate increase. On the first NOV issued after expiration of the permit, DOW included as Violation #11 the following:

The KPDES program requires permits for the discharge of pollutants from a point source into the waters of the Commonwealth. [401 KAR 5:055 Section 1]

**Description of Non Compliance:** The facility does not hold an active KPDES permit. The permit expired Dec. 31, 2007. The new permit has not been issued because a regional sewer system is now available.

**The remedial measure(s), and date(s) to be completed by are as follows:** Stop all non-permitted discharges of wastewater from entering the waters of the Commonwealth of Kentucky. Comply with all of the terms of the KPDES permit and connect to the regional municipal sewer. [401 KAR 5:055 Section 1]

*NOV dated 2/5/2008.*

The NOV also contains a Violation #12 which holds Hillridge in violation for continuing to operate its plant, the same plant it now wishes the PSC to allow a rate increase for. Violation #12 is based on the permit conditions which has been in every Hillridge permit that requires the plant to shut down once a regional sewer is available for Hillridge rate payers to use. Violation #12 reads as follows:

The permittee shall comply with all conditions of the permit. Any permit non-compliance shall constitute a violation of KRS 224, among which shall be the following remedies: Enforcement action, permit revocation, revocation and reissuance, or modification; or denial of permit renewal application. [401 KAR 5:065 Section 1(1)(a)].

**Description of Non Compliance:** The facility has failed to comply with the terms of the permit. A regional sewer system is now available. The owner of the sewer system has failed to connect to the regional sewer system.

**The remedial measure(s), and date(s) to be completed by are as follows:** Stop all non-permitted discharges of wastewater from entering the waters of the Commonwealth of Kentucky. Comply with all of the terms of the KPDES permit and connect to the regional municipal sewer. You will be required to attend an administrative enforcement meeting to the scheduled by the Division of Enforcement. Additional remedial measures will be determined at that time. [401 KAR 5:055 Section 1]

*NOV dated 2/5/2008.*

The NOV dated 1/05/2011 reiterates these two violations ordering Hillridge the cease discharging and connect to the regional municipal collection system. The enforcement action threatened by the DOW has been filed and is ongoing.

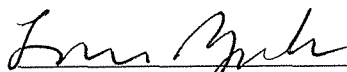
The NOVs also illustrate that Hillridge has not properly operated the plant. In wet weather the plant is bypassed with untreated flows entering the creek. The plant routinely discharges solids to the creek and fails dissolved oxygen, fecal coliform and suspended solids discharge limitations. The creek is cloudy below the discharge and clear above it. The chlorination system is not operated correctly on numerous occasions; and bypasses and spills are not reported as required by law on numerous occasions. In light of the unlawfulness of Hillridge's operations, any rate increase should be denied.

If the Hillridge ratepayers were discharging into the regional sewer system operated by MSD, the ratepayers would pay less on average than the rate proposed by the PSC staff. Currently, the average residential sewer bill for MSD customers is \$33.44 per month. Sewage would not be treated at the Hillridge plant, but at a regional plant that, because of its size, is able to provide more treatment before discharge and, because of its location, is able to discharge into a stream better able to take the discharge. The Hillridge neighbors will not have odor issues which have plagued them for years. Any repairs to the collection system would be made without surcharge or financial burden on the Hillridge ratepayers.

As noted by the PSC Staff, Hillridge's proposed surcharge to pay for repairs to the system is improper. Hillridge has a duty to keep its system repaired without charging its ratepayers when it fails to do so.



Respectfully submitted,



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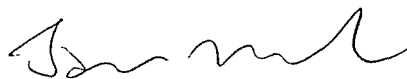
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Counsel for MSD