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PUBLIC SERVICE
COMMISSION

In the Matter of:

ALTERNATIVE RATE FILING OF
HILLRIDGE FACILITIES, INC.

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)

CASE NO. 2010-00426

**HILLRIDGE FACILITIES, INC.'S MOTION TO COMPEL THE LOUISVILLE &
JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT TO PROVIDE
COMPLETE ANSWERS TO REQUEST FOR INFORMATION**

Comes Hillridge Facilities, Inc. ("Hillridge"), by counsel, and for its Motion requesting the Public Service Commission ("Commission") to compel the Louisville & Jefferson County Metropolitan Sewer District ("MSD") to provide full and complete answers to the Request for Information served upon it by Hillridge, states as follows.

1) Pursuant to the Commission's Order of February 11, 2011, Hillridge served its Request for Information upon MSD on March 28, 2011. The Answers to Hillridge's Request for Information were due on April 11, 2011. However, MSD requested an additional two days to provide its answers to Commission Staff's Request for Information and Hillridge's Request for Information, as did Hillridge. Accordingly, MSD's answers to Hillridge's Request for Information were filed with the Commission on April 13, 2011, and served on the parties on April 13, 2011.

2) A review of MSD's answers to Hillridge's Request for Information reflects that MSD failed to fully and completely answer the Requests for Information, and, as set forth below, MSD failed to make a reasonable effort to provide answers to the Request for Information.

3) Hillridge's Request for Information No. 1 stated:

For the time period between 2007 and March 28, 2011, please provide a copy of all written communications between employees, representatives, or agents of MSD and the employees, representatives or agents of the Kentucky Division of Water that concern or relate to Hillridge Facilities, Inc., or the Hillridge Waste Water Treatment Plant, including but not limited to letters and emails.

MSD's Answer stated: "No such documents were found." However, in MSD's March 11, 2011 response to an open records request served by Hillridge, MSD provided a copy of a letter dated May 7, 2010 from Kentucky Division of Water Director, Sandra L. Gruzesky to MSD Executive Director, Bud Schardein with the subject line referencing the "Hillridge Waste Water Treatment Plant", and in MSD's March 22, 2011 supplement to its response to Hillridge's open records request, MSD provided a copy of a letter dated March 16, 2011 from Mark J. Johnson, Director of Engineering and Chief Engineer of MSD, to Mr. Shafiq Amawi with the Kentucky Division of Water with the subject line referencing the "Hillridge Waste Water Collection Systems". (See Attachment A.) MSD's failure to provide either of these letters, which were clearly communications between MSD and the Kentucky Division of Water, as well as any other responsive documents establishes that it failed to make any real attempt to answer Hillridge's Request for Information No. 1.

4) Hillridge's Request for Information No. 2 stated:

For Zip Code area 40299, please identify each sanitary sewer overflow ("SSO") from MSD's sanitary sewer system ("sewer system") in 2008, 2009, 2010 and 2011, the location of the SSO, the amount of water discharged from the SSO, the date of the SSO, how long the SSO has been known to exist and the date it was or will be eliminated.

The relevant portion of MSD's response stated:

ANSWER: SSO information exists on MSD's website in publically available documents:

<http://www.msdlouky.org/proiectwin/docs.htm>

- Consent Decree Fiscal Years 2007-2010 Annual Reports

- Project WIN Quarterly Reports Volumes 6-21
<http://www.msdloukv.org/projectwin/ioap.htm>
- Integrated Overflow Abatement Plan Volume 3

Instead of providing an answer to Hillridge's Request for Information, MSD merely refers Hillridge to documents on its website. These documents consist of annual reports that are approximately 1908 pages long, 16 quarterly report volumes and the 23 separate documents that make up volume 3 of the Integrated Overflow Abatement Plan. Of course, MSD does not indicate the amount of water discharged from each SSO, how long each SSO has been known to exist or the date it was or will be eliminated. MSD responded in similarly inadequate manner in answering Hillridge's Request for Information Nos. 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, and 14. Therefore, the Commission should compel MSD to provide full and complete answers to Hillridge's Request for Information.

5) The Commission's regulations do not specifically address a parties' failure to answer a request for information. Should the Commission refer to Civil Rule 33.30 for guidance, the provisions of this rule provide further support for issuing an order requiring MSD to provide full and complete answers.

Civil Rule 33.30 states:

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, *and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served*, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. (emphasis added)

To rely upon CR 33.03 by making business records available to a party instead of providing answers to an interrogatory, the producing party must show that "the burden of deriving or

ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served..." CR 33.03. Furthermore,

When an answer is readily available in a more convenient form, this Rule should not be used to avoid giving the information to the parties seeking discovery. Rule 33 requires the answering party to show specifically why the interrogatory should not be answered.

See Philipps, Kramer, Rules of Civil Procedure Annotated, Rule 33.03 p.839, Sixth Edition (2005). Here, it is far more burdensome for Hillridge to have to sift through the approximately 2,000 pages of the annual reports identified by MSD, as well as the 16 quarterly report volumes and the 23 separate documents that make up volume 3 of the Integrated Overflow Abatement Plan than to require MSD to answer the Request for Information. Accordingly, CR 33.03 provides no excuse for MSD's failure to answer Request for Information Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14.

6) Hillridge's Request No. 11 states:

Please identify the sewer mains and/or lines and the wastewater treatment plant that MSD plans to use to convey and/or treat the wastewater that is now treated by Hillridge ("Hillridge Flow") in the event that MSD is allowed to accept the Hillridge Flow.

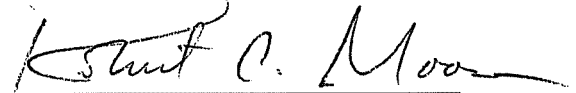
MSD's Answer stated, "If MSD treats the flow from Hillridge it will use the Derek R. Guthrie Water Quality Treatment Center."

MSD failed to identify in its answer any of the Sewer mains and/or lines that MSD plans to use to convey the wastewater that is now treated by Hillridge in the event MSD is allowed to accept the Hillridge flow.

7) As indicated above, MSD has failed to provide full and complete answers to Hillridge's Request for Information Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. Indeed, MSD's answers to Hillridge's Request for Information reflect that MSD failed to make

any real effort to provide answers to same. Therefore, the Commission should compel MSD to provide full and complete answers to Hillridge's Request for Information Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 on or before Wednesday, April 27, 2011, so that Hillridge can properly prepare for the April 28, 2011, hearing scheduled in this matter.

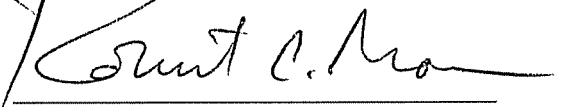
Respectfully Submitted,



Robert C. Moore
Hazelrigg & Cox, LLP
415 West Main Street, 1st Floor
P.O. Box 676
Frankfort, Kentucky 40602-0676

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602, and by first class mail, postage prepaid and facsimile upon David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 and Laurence J. Zielke and Janice M. Theriot, Zielke Law Firm PLLC, 1250 Meidinger Tower, 462 S. 4th Street, Louisville, Kentucky, on the 22nd day of April, 2011.



Robert C. Moore



ENERGY AND ENVIRONMENT CABINET

Steven L. Beshear
Governor

Department for Environmental Protection
Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
Phone: (502) 564-3410
Fax: (502) 564-2741
www.water.ky.gov
May 7, 2010

Leonard K. Peters
Secretary

R. Bruce Scott
Commissioner

Executive Director Bud Schardein
Metropolitan Sewer District
700 West Liberty
Louisville, KY 40203-1911

Subject: Hillridge Wastewater Treatment Plant

Dear Bud,

The Kentucky Division of Water is appreciative of MSD's efforts to negotiate a purchase of the wastewater treatment plant at the Hillridge facility. As you are aware, this plant has been a source of citizen complaints for several years now, is within MSD's 201 facility area, and is in close proximity to a trunk line.

Since the negotiations have proven to be unfruitful, we would request that MSD, pursuant to KRS 65.112(2), begin eminent domain proceedings in Jefferson Circuit Court. It is in the best interest of the environment and public health for MSD to acquire this facility.

Thank you for your time and consideration. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

Sandra L. Gruzesky, P.E.
Director
Kentucky Division of Water

Cc: Hon. Douglas Scott Porter



Louisville and Jefferson County Metropolitan Sewer District
700 West Liberty Street
Louisville Kentucky 40203-1911
502-540-6000
www.msdlouky.org

March 16, 2011

Mr. Shafiq Amawi
Division of Water
Kentucky Natural Resources and Environmental Protection
4th Floor
200 Fair Oaks Drive
Frankfort, KY 40601

Subject: Hillridge Waste Water Collection System

Dear Mr. Amawi:

Requirements for sewer line extension within the revised 401KAR5:005 state that "the applicant shall demonstrate that the portion of the sewer system used by the connection has adequate capacity to transport the current and anticipated peak flow to the Water Quality Treatment Center, KPDES Number 0022411 and that the portion of the sewer system used by the connection is not subject to excessive infiltration or excessive inflow."

The above-proposed development is in the Derek R. Guthrie Water Quality Treatment Center service area. The proposed project is in compliance with the current West County Action Plan. The water quality treatment center and sanitary sewers, to which this development will connect, are owned and operated by MSD and have sufficient capacity to service this development at this time. MSD will own, operate and maintain this public sanitary sewer system once the project has been completed and accepted by MSD.

MSD has made substantial improvements to the Lea Ann Way Pump Station and the upstream collection system. MSD certifies that the accessible portions of the Hillridge Wastewater Collection System have been reviewed and that MSD understands the general condition and characteristics of the system. MSD commits to perform additional system improvements in accordance with the MSD System Capacity Assurance Program (SCAP) within one year of accepting the additional flow in an amount of the estimated flows within the existing Hillridge Collection System. Future flows will be handled as outlined in the SCAP document.

The project chiefly consists of: ~~Hillridge Wastewater System, excluding the Treatment Facilities.~~

Sincerely,

Mark J. Johnson, P.E.
Director of Engineering and Chief Engineer

cc: Peter Goodmann

Larry Zielke

W. Brian Bingham



Beneficial Use of Louisville's Biosolids
www.louisvillegreen.com