

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT HAWKINS)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2013-00017
FOUNTAIN RUN WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

On January 14, 2013, Complainant, Robert Hawkins (“Complainant”) filed a formal complaint against Fountain Run Water District (“Fountain Run”). Complainant set forth two primary allegations. First, he alleged Fountain Run has impermissibly assessed and continues to impermissibly assess a monthly fee for sewer service after water service was discontinued at his unoccupied commercial rental property. Second, Complainant asserted his belief that the members of the Fountain Run Board of Commissioners failed to comply with the new commissioner training requirements as set forth in KRS 74.020 and the water district commissioners should therefore be removed from their positions.

Fountain Run is divided into two divisions – water and sewer. Fountain Run provided both water and sewer service to Complainant. Complainant discontinued both water and sewer service in 2003. In 2007, service was briefly recommenced before again being discontinued. Complainant alleged that during the discontinuance periods

he did not receive a sewer bill. However, he alleged that in late 2008 he began to receive monthly sewer bills.¹ In responding to the Complaint, Fountain Run contended that Complainant signed a User Agreement that contractually required him to pay the minimum monthly sewer bill and asserted that sewer service may not be discontinued.²

On August 16, 2013, an evidentiary hearing was held in this matter. Testifying at the hearing were Complainant, Robert Hawkins, Fountain Run Sewer Superintendent Kenneth Jackson, Fountain Run General Manager Ricky Ross, Fountain Run Office Manager Louise Veach, Fountain Run Commissioners Joe Cornwell, Raven Propes, and Brenda Steenbergen Turner and former Fountain Run Commissioner Ronnie Smith.

Having reviewed the record and being otherwise advised, the Commission finds that:

1. Fountain Run is a water district organized pursuant to KRS Chapter 74. It operates both water and sewer divisions and is administered by a five-member board of commissioners. Fountain Run provides service to customers in Monroe, Allen, and Barren counties, Kentucky.³

2. The Fountain Run sewer division provides sewer service to approximately 124 customers.⁴

¹ Complaint at 5.

² Fountain Run's Response to Order entered March 20, 2013 at 4.

³ *Annual Report of Fountain Run Water District to the Public Service Commission for the Calendar Year Ended December 31, 2012* at 21.

⁴ *Annual Report of Fountain Run Water District, Sewer Division to the Public Service Commission for the Calendar Year Ended December 31, 2012* at 8.

3. Fountain Run assesses monthly charges on all properties connected to its sanitary sewer system.

4. The city of Fountain Run, Kentucky, has an ordinance that requires residents to connect to the sanitary sewer system, if available.⁵

5. Fountain Run currently bills approximately 21 customers for sewer service at unoccupied properties that do not receive water service.

6. Fountain Run has billed approximately 138 customers for sewer service at unoccupied properties that did not receive water service.

7. KRS 278.030(1) provides that “[e]very utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.”

8. In 1988, the Commission rejected an assessment of water service charges for unoccupied units in a multi-unit building, holding that “assessing a [water] charge for an unoccupied unit where no means to discontinue service to it exists . . . is unfair.”⁶

9. Relying upon the holding of the 1988 case, two years later, the Commission rejected a proposed rule permitting the assessment of a minimum bill for unoccupied units connected to a sewer system.⁷ The Commission reasoned that the means to disconnect and reconnect sewer service was economically prohibitive, except for extended non-use of service. The proposed minimum assessment for unoccupied

⁵ Fountain Run’s Response to Commission Staff’s Initial Request for Information, Tab E.

⁶ Case No. 10132, *Charles Combs & K. J. Woodruff v. Jessamine County Water District No. 1* (Ky. PSC Aug. 22, 1988).

⁷ Case No. 90-293, *The Proposal of B & H Incorporated to Assess a Minimum Charge for Sewer Service to Unoccupied Premises* (Ky. PSC Dec. 13, 1990).

units connected to the sewer system was, therefore, rejected as unjust and unreasonable.⁸

10. On August 29, 2013, the Commission rejected a similar proposal by a different utility to assess a monthly sewer charge for unoccupied dwellings that have discontinued water service. The Commission held that “[r]equiring payment of a monthly sewer charge under these circumstances would be unfair, unjust, and unreasonable and contrary to KRS 278.030(1).”⁹

11. Fountain Run’s User Agreement requires a user to comply with the district’s regulations. It does not contractually preclude a customer from discontinuing service.¹⁰

12. Fountain Run’s regulations set forth a minimum bill for sewer customers without a water meter.¹¹

13. The Commission has previously held that “[a] property owner is not receiving service from a sewer utility when the dwelling is unoccupied and the water service has been disconnected.”¹² Therefore, property owners who have discontinued water service and whose properties are unoccupied are no longer users or customers within the meaning of Fountain Run’s User Agreement and regulations. Fountain Run

⁸ *Id.* at 2.

⁹ Case No. 2013-00012, *Tariff Filing of River Road Disposal Systems to Revise its Disconnect Policy* (Ky. PSC Aug. 29, 2013).

¹⁰ Fountain Run’s Response to Commission Staff’s Initial Request for Information, Tab H.

¹¹ Fountain Run’s Response to Commission Staff’s Initial Request for Information, Tab F.

¹² Case No. 2013-00012, *Tariff Filing of River Road Disposal Systems to Revise its Disconnect Policy* (Ky. PSC Aug. 29, 2013).

has not provided any reason for the Commission to diverge from its recent 2013 decision.

14. Fountain Run's filed tariff states that a customer may discontinue service upon three days' notice. The tariff does not set any limitations upon the manner of discontinuance.

15. KRS 278.160 precludes a utility from charging rates other than those in its filed rate schedules.

16. In continuing to assess monthly sewer bills for unoccupied properties that have discontinued water service, Fountain Run has assessed charges not authorized by KRS 278.160.

17. Complainant has been arbitrarily charged for sewer service from 2008 to present and Fountain Run may not recover such sums.

18. Customers billed for sewer service at unoccupied properties where water service has been discontinued are entitled to refunds.

19. The Commission has historically applied the five-year statute of limitations period set forth in KRS 413.120 for refunds of over-collections.¹³

20. KRS 74.020(8)(b) requires water district commissioners to attend 12 hours of approved new commissioner training within the first 12 months of their appointment.

21. Fountain Run Commissioners Joe Cornwell, Brenda Steenbergen Turner, and Raven Propes were initially appointed as board members prior to the 2010 enactment of KRS 74.020(8)(b) and are, therefore, not subject to the training requirement.

¹³ See e.g., Case No. 2000-00379, *The Harbor at Harrods Creek Condominium Association v. Fourth Avenue Corporation – Long Corporation, Joint Venture D/B/A Shadow Wood Subdivision Sewer Service at 2* (Ky PSC June 2, 2002).

22. Fountain Run Commissioners Kelly Veach and Francis Howard were appointed in 2013, received training in 2013, and are, therefore, in compliance with their training obligations.¹⁴

23. None of the Fountain Run Commissioners have violated KRS 74.020.

24. The Commission recognizes that the decision to preclude Fountain Run from continuing to assess a monthly charge when a property is unoccupied and water service discontinued will result in a financial loss to the utility. Fountain Run may file for a rate increase using the Alternative Rate Adjustment procedure for small utilities pursuant to 807 KAR 5:076.

IT IS THEREFORE ORDERED that:

1. Fountain Run shall discontinue assessing payment of monthly sewer charges for unoccupied properties that have discontinued water service.

2. Fountain Run shall not recover from Complainant any charges for sewer service from 2008 through the present during which time Complainant discontinued water service.

3. Fountain Run shall refund all amounts paid for sewer service by customers of unoccupied properties that discontinued water service at any time during the five-year period preceding the date of this Order.

4. Within 30 days of the date of this Order, Fountain Run shall submit to the Commission detailed documentation regarding the number of customers, that discontinued water service, that were billed for sewer service at any time during the five-

¹⁴ Certificates of attendance at a 2013 water training seminar are attached as Exhibit A.

year period prior to the date of this Order, the amounts billed to each customer, and the date and manner in which refunds will be applied.

By the Commission

ENTERED ^{CP}
MAR 06 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

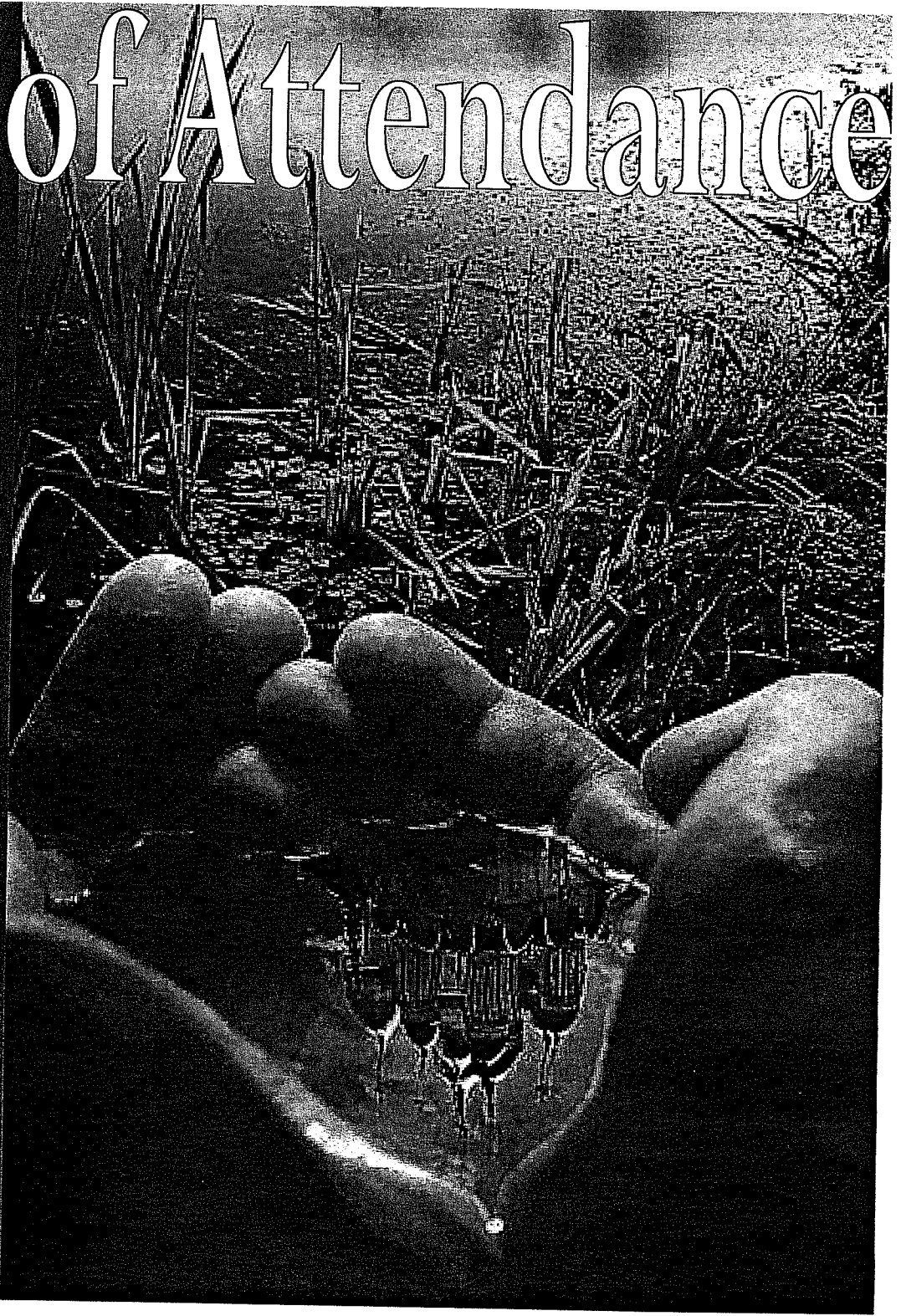
Case No. 2013-00017

Exhibit A

Certificate of Attendance

Presented by the
Kentucky Public Service
Commission

This certificate is presented to
Kelly Veach for attending
12.75 hours of Water Training
on August 13-14, 2013
in Jamestown, Kentucky.

A black and white photograph of a hand holding a glass of water. The hand is in the foreground, and the glass is filled with water. In the background, there is a field of tall grass or reeds, possibly a wetland or a water treatment area. The lighting is dramatic, with strong highlights and deep shadows.

Dwight A. Cunningham

Chairman, KPSC

10/10/13

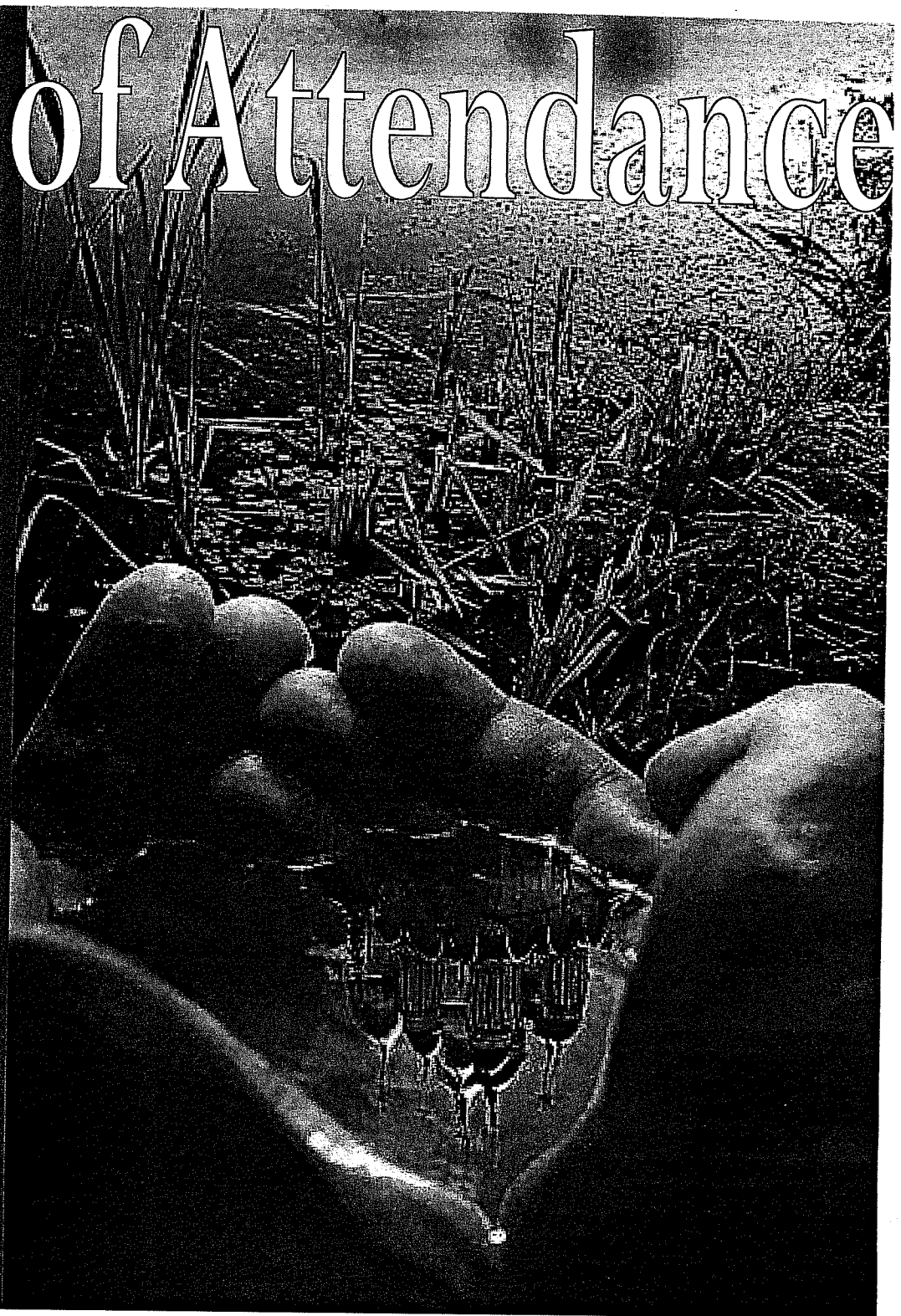
Certificate of Attendance

Presented by the
Kentucky Public Service
Commission

This certificate is presented to
Francis Howard for attending
12.75 hours of Water Training
on August 13-14, 2013
in Jamestown, Kentucky.

David H. Cantelero

Chairman, KPSC



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