

COMMONWEALTH OF KENTUCKY  
BEFORE THE  
PUBLIC SERVICE COMMISSION

RECEIVED  
MAR 28 2013  
PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

CLARK MCCOY; DEBBIE MCCOY;	)	
DAVID VARGO; PATRICIA VARGO;	)	
MIKE COCHRAN; IRENE COCHRAN; AND	)	
DARRELL OWENS	)	PETITIONERS
	)	CASE No.
	)	2013 -
	)	00092
VS:	)	
	)	
MOUNTAIN WATER DISTRICT	)	RESPONDENT

.....

**ANSWER**

Respondent, Mountain Water District, by and through counsel, and for its response to the Petitioners' Petition states as follows:

1. The Petition should be dismissed for failure to state a cause of action for which relief can be granted.
2. The Respondent has insufficient knowledge to either admit or deny the allegations contained in paragraph A and therefore denies the same.
3. The Respondent admits the allegations contained in paragraph B.
4. The Respondent has insufficient knowledge to either admit or deny the allegations contained in paragraph C and therefore denies the same.

5. The Respondent admits the allegations contained in paragraph D.

6. In response to paragraph E the Respondent states that it has yet to provide Petitioners with public waste water disposal system, but denies all the remaining allegations therein.

7. Respondent denies the allegations contained in paragraph F.

8. In response to paragraph G the Respondent admits that there is existing wastewater disposal system located near the Belfry-Pond Creek area, but denies that it can be expanded to provide waste water treatment services to the Petitioners with available funding.

9. Respondent admits the allegations contained in paragraph H.

10. By way of further defense, the Respondent pleads all the affirmative defenses set out in the Civil Rules of Civil Procedure as if fully set out herein.

11. By way of further defense, the Respondent states that it has worked since 2000 to bring waste water treatment facilities to the Belfry-Pond Creek area of Pike County. A summary of the history is attached as Exhibit A. The following is a summary of its actions, which illustrate its efforts:

A. In 2001 the District directed Summit Engineering ["Summit"] to review the project area and perform appropriate hydraulic analysis to find the property that would hydraulically "flow" the sewage into a plant. It found only one suitable location that would meet the necessary Division of Water criteria. The property was located on Pegs

Branch and owned by a coal company that had the property under lease for mining.

B. The District spent the next five years developing the project, which would allow for funding required to support a 6.2 Million Dollar project that requires a 400,000 gallon plant to serve potentially 1,100 customers.

C. The District submitted applications to both Pride and Commonwealth of Kentucky for coal severance funding. It was awarded Two Million Eight Hundred Fifty Thousand Dollars (\$2,850,000.00) to be spread over the 2008 - 2010 budget periods.

D. Even though this was not enough money to fund the project, the District moved forward with RFQ's for engineering firms to design the plant, as the Division of Water indicated it wanted the waste water plant constructed first; however, it was not feasible to have a finished plant sitting dormant with no flow going into it. Subsequently, Summit was selected and directed to work on other funding scenarios.

E. Another option that was considered was the relocation of an existing plant at Mossey Bottom. It was subsequently determined that the cost of dismantling and moving the plant was not financially feasible.

F. In 2009 contact was made with The Tierney Company regarding the property at Pegs Branch, and the Pike County School Board for an adjacent tract. It was discovered the Tierney property was under lease to Massey Coal Company, which had already permitted the property for mining. The cost of acquiring the property essentially doubled because it required the District to purchase the "lost coal".

While negotiations with the School Board were successful, negotiations with Tierney were never completed. Tierney had to get a release on that portion of Massey's lease that was impacted. Massey had a number of other issues at that time and the matter was not resolved. Massey subsequently sold to Alpha Energy and everything was in limbo during that time period.

G. In 2009 the Board authorized a redesign of the plant to reduce the size in half in order to try to reduce the cost. The redesign reduced the size from 400,000 to 200,000 and then down to a 100,000 gallon plant which would serve approximately 100 customers in an effort to move the project forward within the available funding.

H. In 2010 the State awarded 2.85 Million Dollars and Division of Water approval was received for construction of the waste water treatment plant. The District requested another One Million Dollars to help complete the scaled down version of the plant or change the project to make it viable by reversing the flow toward Williamson; but no additional funding was received. The Board then voted to reject all bids for this project due to the lack of funding.

I. In 2011 the Board revisited the project to see what could again be done and learned that the cost of the plant had gone up and that the Massey acquisition by Alpha was still on-going. Another design change was made to reduce the plant to 50,000 gallons, but it did not significantly impact the cost. The Board requested an additional 1.5 Million Dollars for the 2012-2014 budget periods, but was only awarded \$308,846.00.

J. In 2012 the Board continued to have the engineers and the District administrator investigate alternative scenarios for the project looking at different technologies and different locations for a plant. A possible alternative site was identified, along with possible new alternative technologies.

K. Late in 2012, the Pegs Branch site became available. The District has made an offer to Tierney and it has made a counter-offer, which is currently being considered.

L. The District had Summit draw up other options that would include new debt (shown as additional cost below), which the District hoped to avoid. See Exhibits B-1, B-2, B-3 and B-4. Three of these options would create a new wastewater treatment plant at Peg's Branch which would serve between 206 - 471 residences, for an additional cost ranging from \$3,580,000 to \$3,700,000. The fourth priority option would utilize the Williamson wastewater treatment plant, and would serve 278 residences, for an additional cost of \$290,000. However, this option would incur additional unknown cost to upgrade the Williamson plant to handle the additional volume. The District's four priorities are options 2, 1, 4, 3.

12. Given the location of the Petitioners' properties, there is not one option described in Exhibits B that would serve all of them.

A. Clark & Debbie McCoy, 277 Hillcrest Drive, would get service in Option 3, 4 and 2, with a small modification to option 2.

B. Patricia & David Vargo, 49 Hillcrest Ave., would get service under Options 3, 4 and 2, with a small modification to option 2.

C. Mike & Irene Cochran, 109 Murphy Bottom, would get service under Options 2, 3 and 4.

D. Darren Owens, 31 Cherry Court, would not get service under any option as his home is outside the scope of the project.

### **LEGAL STANDARD**

Energy Regulatory Comm'n v. Kentucky Power Co., Ky. App., 605 S.W.2d 46, 50 (1980) says: "Applicants before an administrative agency have the burden of proof." The standard for determining if Mountain Water District is in violation of the applicable standard for providing service is stated in KRS 278.030(2), which requires all utilities to render "adequate, efficient and reasonable service."

The Commission has jurisdiction to review complaints limited to the issues described in KRS 278.260:

278.260 Jurisdiction over complaints as to rates or service -- Investigations -- Hearing.

(1) The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is **unreasonable**, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, ...

Specifically as to extensions of service, KRS 278.280 provides:

278.280 Orders by commission as to service --  
Extension of service.

(3) Any person or group of persons may come before the commission and by petition ask that any utility subject to its jurisdiction be compelled to make any **reasonable** extension. The commission shall hear and determine the reasonableness of the extension, and sustain or deny the petition in whole or in part.

The common factor in each of these statutes is the reasonableness of the utility's actions. In Case No. 2010-00049, Wilmer and Pauline Conn v. Fleming County Water District, Order dated June 21, 2011, the Commission addressed the issue of reasonableness: "In summary, the Commission must consider the totality of circumstances surrounding the requested extension to determine its reasonableness."

For the Petitioners to succeed in this action, they must prove that the District has acted unreasonably. Based on the investigations into various options by the District, its efforts to obtain a suitable site for a new treatment facility and to obtain adequate funding cannot be declared to be unreasonable.

807 KAR 5:071(3) provides the standard of service for a sewer utility:

Adequacy of facilities. The capacity of the sewage utility's sewage treatment facilities for the collection, treatment and disposal of sewage and sewage effluent must be sufficiently sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

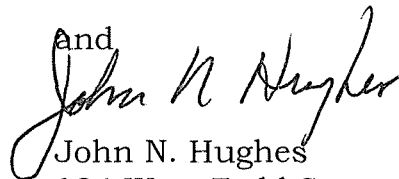
Applying this standard, the District meets the statutory requirements for adequate service. It has sufficient capacity to serve

current customers and all normal demands of those customers. It continues to investigate options to extend service to un-served areas. Given the totality of the circumstances, the Petitioners cannot prove that the actions of the District are unreasonable or that there is a reasonable means to serve their properties.

For these reasons, the Respondent asserts:

1. That the Petition should be dismissed for failure to state a cause of action for which relief can be granted.
2. That the Petition should be dismissed for affirmative defenses set forth herein.

Stratton, Hogg & Maddox, P.S.C.  
Post Office Box 1530  
Pikeville, Kentucky 41502  
Telephone: (606) 437-7800  
Facsimile: (606) 437-7569  
dpstratton@setel.com

and  


John N. Hughes  
124 West Todd St.  
Frankfort, KY 40601  
(502) 227 7270  
jnhughes@fewpb.net

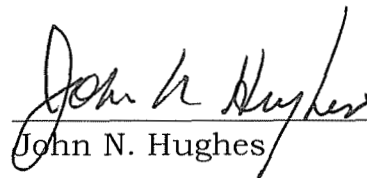
*Attorneys for Respondent*



**CERTIFICATE OF MAILING**

This is to certify that a true copy of the foregoing was served on  
Petitioner's attorney by first class mail on March 28th, 2013, to:

Christian R. Harris, Esq.  
719 Forest Hills Road  
Forest Hills, KY 41572  
Attorney for Petitioners

  
\_\_\_\_\_  
John N. Hughes

**PROJECT SUMMARY**  
**BELFRY POND SEWER PROJECT**  
**MOUNTAIN WATER DISTRICT**

**EXHIBIT A**

The Belfry Pond Sewer Project has been a work in progress since the year 2000. In an effort to both provide the citizens of Pond Creek with the factual information that they need, as well as to determine the true nature of the interest for the project among those who will be most affected, the District has held this public meeting and summarized the history of the project to help everyone better understand the Belfry Pond Sewer Project and to be able to then decide if they want to participate in receiving the service once the project is completed.

As with most great ideas, turning them to action takes vision and courage to see it through to its conclusion. In 2001, the Mountain Water District directed Summit Engineering to review the project area and perform the appropriate hydraulic analyses to find the property that would hydraulically "flow" the sewage into the plant and found only one location that would meet the necessary Division of Water criteria for a wastewater plant location. The property was located at Peg's Branch. The next five (5) years were spent developing a project description, cost estimate for the phases of the project, amending the 201 Facilities Plan for the Pond Creek area that would allow funding to be requested for the project, and submitting applications to both PRIDE and the state of Kentucky for Coal Severance funding. The original cost estimate for the full project was approximately \$6.2 million dollars. That amount would construct a 400,000 gallon per day wastewater treatment plant and connect approximately 1,100 customers.

The District was awarded \$2,850,000 for the project to be spread out over the 2008-2010 budget period. This was not enough to construct the project, however knowing it could move forward more quickly if the project was already designed, the Board advertised for Requests for Qualifications for engineering firms in February, 2008 and subsequently chose Summit Engineering as the firm to design the project. The Division of Water indicated that they wanted the wastewater plant constructed first; however, it is not feasible to have a finished plant sitting around with no flow going to it. It would deteriorate rapidly and be a waste of time and money sitting empty until funding could be secured to construct the lines to connect the number of customers that would be needed to run the plant properly. Summit Engineering was directed to work on other funding scenarios in May, 2008. The possibility of moving the Mossy Bottom plant to this project was also suggested during this time and many thought that it would work. However, since the project was severely underfunded and the Mossy Bottom plant would have had to have been cleaned, dismantled and stored somewhere until the project could be constructed, and with the added issue of the Pike County IDEA Board anxious to reacquire the property where the Mossy Bottom plant was located for expansion, it was not an economically viable option. The cost of dismantling and moving the plant, storing it and taking the risk that it would not even be usable by the time funding for construction of the project was received, made it a difficult but necessary decision for the Board to abandon the use of the Mossy Bottom plant in favor of the plan to build a new plant for the Belfry Pond Sewer Project.

In 2009, contact was made with Tierney Land Company regarding the property at Peg's Branch. An appraisal on the property was done but property negotiations were unsuccessful. The engineer scaled back the design for the project in an effort to bring it within funding available. The project was reduced

from a 400,000 gallon plant to a 200,000 gallon plant serving fewer customers and then again to a 100,000 gallon plant serving approximately 100 customers in an effort to move the project forward. Issues with the property continued because of proposed mining on the property that Tierney Land Company wanted mined before the property negotiations went forward, and then Alpha's involvement when they acquired Massey slowed the process even further. The project was Advertised for Bid in November of 2009 and the bids came in well over the funding availability. The Board was advised by legal counsel that until the property issue was resolved on this project, it was in danger of not moving forward and bid awards should be delayed until the property was secured.

In 2010, uncertainty regarding the property acquisition from the coal company and insufficient funding plagued the project. The low bidders on the project agreed to several bid holds in an effort to see if the project would move forward. The agreement from the state regarding the awarded \$2.85 million dollars was received and executed, Division of Water approval was received and construction permits were granted. The District requested another \$1 million dollars to help with completing the scaled down version of the project or to change the project to make it viable by reversing the flow toward Williamson, but no additional funding was received. The Board then voted to reject all bids for this project due to the lack of requested funding. The property issue continued to stall for the next several months.

In 2011, the Board revisited the project anticipating prices may have improved since the last time the project was bid given that the economy was down and many contractors were actively seeking work. However, Mr. Hunt from Summit Engineering reported to the Board that he thought the numbers had actually increased about 10% - 15% over the two (2) year period since the project was bid. The acquisition of Massey by Alpha Energy was continuing to hold up progress on the property as well. The plant took another design change in the summer of 2011 to a 50,000 gallon plant but it didn't impact the cost significantly due to excavation of the site. The Board requested an additional \$1.5 million dollars for the 2012-2014 budget period, but was only awarded \$308,846.

In 2012, the Board continued to have Summit Engineering and District Administrator Roy Sawyers to investigate alternative scenarios to make the project work. The possibility of membrane technology was revealed as an alternative to the designed plant and had a smaller footprint, suggesting a smaller site location for the plant. A meeting was held in November, 2012 regarding the use of the new technology and moving the plant site location.

In the last few months, the acquisition of the property at Peg's Branch has finally begun to move forward and a plan for the property acquisition developed. There are now four (4) possible project scenarios for constructing this project within project funding availability which will be presented during the public meeting to the citizens in attendance.

The Board of Commissioners of the Mountain Water District wish to communicate to the citizens of Pond Creek and the Belfry area that seeing this project to completion has been their goal since the beginning and they have no plans of abandoning the project or the citizens of the Belfry area. It is their sincere hope that, given the facts surrounding the struggle to get this project off the ground, every resident will participate in the service once it is available.

**Belfry / Pond Creek**  
**Sanitary Sewer Collection System and Wastewater Treatment Plant**  
 Summary of Alternates  
 2/21/2013

<b>FUNDING AVAILABLE</b>	
Coal Severance	\$2,850,000.00

<b>RATE SCHEDULE AND AVERAGE REVENUE</b>	
First 2,000 Gallons (Minimum Monthly Bill):	\$14.00
Every 1,000 Gallons Over 2,000:	\$6.00
Average Usage per User, Gallons per Month:	4,500
Average Monthly Revenue per User:	\$29.00

<b>ALTERNATE 1 - FLOW REVERSAL FOREST HILLS TO NEW BELFRY 0.1 MGD WWTP</b>	
<b>Description</b>	
Construct force main from existing Forest Hills lift station to new 100,000 GPD wastewater treatment plant at Pegs Branch near Belfry. Includes new lift station near Toler and service connections to Southside Elementary and Belfry Middle School. No residential service connections are included.	
<b>Project Cost and Funding</b>	
Total Project Cost for Collection System:	\$1,030,000.00
Total Project Cost for VVWTP:	\$2,400,000.00
Combined Total Project Cost:	\$3,430,000.00
Additional Funds Needed:*	\$580,000.00
RD Grant Amount Needed:	\$174,000.00
RD Loan Amount Needed:	\$406,000.00
<b>Users Served</b>	
Residential Users Served (Forest Hills Only):	215
Schools Served:	3
<b>Projected Revenues</b>	
Anticipated Monthly Revenue from Residential Users:	\$6,235.00
Anticipated Average Monthly Revenue from Schools:	\$2,598.00
Total Anticipated Monthly Revenue:	\$8,833.00
Total Anticipated Annual Revenue:	\$105,996.00
<b>Expenditures and Balance</b>	
RD Annual Loan Payment Amount (Assume 40-year Loan at 2.85% Interest):	\$17,141.17
Remaining Annual Balance After RD Loan Payment:**	\$88,854.83
*Additional funds to be borrowed by MWD	
**Expenses above DSC	

EXHIBIT B-1

**Belfry / Pond Creek**  
**Sanitary Sewer Collection System and Wastewater Treatment Plant**  
 Summary of Alternates  
 2/21/2013

<b>FUNDING AVAILABLE</b>	
Coal Severance	\$2,850,000.00

<b>RATE SCHEDULE AND AVERAGE REVENUE</b>	
First 2,000 Gallons (Minimum Monthly Bill):	\$14.00
Every 1,000 Gallons Over 2,000:	\$6.00
Average Usage per User, Gallons per Month:	4,500
Average Monthly Revenue per User:	\$29.00

<b>ALTERNATE 2 - FLOW REVERSAL FOREST HILLS TO NEW BELFRY 0.2 MGD WWTP</b>	
<b>Description</b>	
Construct force main from existing Forest Hills lift station to new 200,000 GPD wastewater treatment plant at Pegs Branch near Belfry. Includes new lift station near Toler and service connections to Southside Elementary, Belfry Middle School, and 256 additional businesses and residences from Forest Hills to Murohy Bottom.	
<b>Project Cost and Funding</b>	
Total Project Cost for Collection System:	\$3,000,000.00
Total Project Cost for WWTP:	\$3,550,000.00
Combined Total Project Cost:	\$6,550,000.00
Additional Funds Needed:	\$3,700,000.00
RD Grant Amount Needed:	\$1,110,000.00
RD Loan Amount Needed:	\$2,590,000.00
<b>Users Served</b>	
Residential Users Served (Includes Forest Hills):	471
Schools Served:	3
<b>Projected Revenues</b>	
Anticipated Monthly Revenue from Residential Users:	\$13,659.00
Anticipated Average Monthly Revenue from Schools:	\$2,598.00
Total Anticipated Monthly Revenue:	\$16,257.00
Total Anticipated Annual Revenue:	\$195,084.00
<b>Expenditures and Balance</b>	
RD Annual Loan Payment Amount (Assume 40-year Loan at 2.85% Interest):	\$109,348.86
Remaining Annual Balance After RD Loan Payment:	\$85,735.14

EXHIBIT B-2

**Belfry / Pond Creek**  
**Sanitary Sewer Collection System and Wastewater Treatment Plant**  
 Summary of Alternates  
 2/21/2013

<b>FUNDING AVAILABLE</b>	
Coal Severance	\$2,850,000.00

<b>RATE SCHEDULE AND AVERAGE REVENUE</b>	
First 2,000 Gallons (Minimum Monthly Bill):	\$14.00
Every 1,000 Gallons Over 2,000:	\$6.00
Average Usage per User, Gallons per Month:	4,500
Average Monthly Revenue per User:	\$29.00

<b>ALTERNATE 3 - BELFRY TO FOREST HILLS LIFT STATION / WILLIAMSON WWTP</b>	
<b>Description</b>	
Construct force main from Murphy Bottom near Belfry to existing Forest Hills lift station and on to the Williamson WWTP. Includes new lift station near Toler and service connections to Southside Elementary, Belfry Middle School, and 278 additional businesses and residences in the Toler and Belfry areas.	
<b>Project Cost and Funding</b>	
Total Project Cost for Collection System:	\$3,140,000.00
Total Project Cost for WWTP:	\$0.00
Combined Total Project Cost:	\$3,140,000.00
Additional Funds Needed:	\$290,000.00
RD Grant Amount Needed:	\$87,000.00
RD Loan Amount Needed:	\$203,000.00
<b>Users Served</b>	
Residential Users Served:	278
Schools Served:	2
<b>Projected Revenues</b>	
Anticipated Monthly Revenue from Residential Users:	\$8,062.00
Anticipated Average Monthly Revenue from Schools:	\$1,408.00
Total Anticipated Monthly Revenue:	\$9,470.00
Total Anticipated Annual Revenue:	\$113,640.00
<b>Expenditures and Balance</b>	
RD Annual Loan Payment Amount (Assume 40-year Loan at 2.85% Interest):	\$8,570.59
Agreement with Williamson WWTP at \$3.58 per 1,000 Gallons for Additional Users:	\$63,795.60
Remaining Annual Balance After RD Loan and Additional Williamson Payment:	\$41,273.81

EXHIBIT B-3

**Belfry / Pond Creek**  
**Sanitary Sewer Collection System and Wastewater Treatment Plant**  
 Summary of Alternates  
 2/21/2013

<b>FUNDING AVAILABLE</b>	
Coal Severance	\$2,850,000.00

<b>RATE SCHEDULE AND AVERAGE REVENUE</b>	
First 2,000 Gallons (Minimum Monthly Bill):	\$14.00
Every 1,000 Gallons Over 2,000:	\$6.00
Average Usage per User, Gallons per Month:	4,500
Average Monthly Revenue per User:	\$29.00

<b>ALTERNATE 4 - BELFRY ONLY TO NEW BELFRY 0.1 MGD WWTP</b>	
<b>Description</b>	
Construct force main in the Belfry area only to new 100,000 GPD wastewater treatment plant at Pegs Branch. Includes service connections to Belfry Middle School and 206 businesses and residences from Murphy Bottom to Cow Branch.	
<b>Project Cost and Funding</b>	
Total Project Cost for Collection System:	\$2,050,000.00
Total Project Cost for WWTP:	\$2,400,000.00
Combined Total Project Cost:	\$4,450,000.00
Additional Funds Needed:	\$1,600,000.00
RD Grant Amount Needed:	\$480,000.00
RD Loan Amount Needed:	\$1,120,000.00
<b>Users Served</b>	
Residential Users Served:	206
Schools Served:	1
<b>Projected Revenues</b>	
Anticipated Monthly Revenue from Residential Users:	\$5,974.00
Anticipated Average Monthly Revenue from Schools:	\$884.00
Total Anticipated Monthly Revenue:	\$6,858.00
Total Anticipated Annual Revenue:	\$82,296.00
<b>Expenditures and Balance</b>	
RD Annual Loan Payment Amount (Assume 40-year Loan at 2.85% Interest):	\$47,286.00
Remaining Annual Balance After RD Loan Payment:	\$35,010.00

EXHIBIT B-4