

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BUSH GARDENS)
ENTERPRISES, LLC FOR APPROVAL OF)
INITIAL SEWER RATES PURSUANT TO THE) CASE NO. 2015-00306
ALTERNATIVE RATE FILING PROCEDURES)
FOR SMALL UTILITIES AND TARIFF)

NOTICE OF FILING

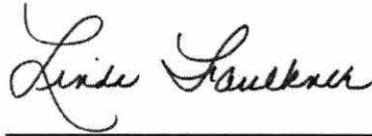
Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on March 2, 2016 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on March 2, 2016 in this proceeding;
- A written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on March 2, 2016.

A copy of this Notice, the certification of the digital video record, hearing log, and exhibits have been electronically served upon all persons listed at the end of this Notice. Parties desiring an electronic copy of the digital video recording of the hearing in Windows Media format may download a copy at: http://psc.ky.gov/av_broadcast/2015-00306/2015-00306_02Mar16_Inter.aspx. Parties wishing an annotated digital video

recording may submit a written request by electronic mail to pscfilings@ky.gov. A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 17th day of March 2016.

A handwritten signature in cursive script, reading "Linda Faulkner".

Linda Faulkner
Director, Filings Division
Public Service Commission of Kentucky

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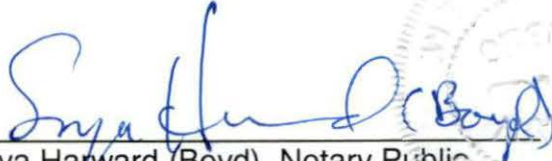
APPLICATION OF BUSH GARDENS ENTERPRISES,)
LLC FOR APPROVAL OF INITIAL SEWER RATES) CASE NO. 2015-00306
PURSUANT TO THE ALTERNATIVE RATE FILING)
PROCEDURES FOR SMALL UTILITIES AND TARIFF)

CERTIFICATE


I, Sonya Harward, hereby certify that:

1. The attached DVD contains a digital recording of the Hearing conducted in the above-styled proceeding on March 2, 2016. Hearing Log, Exhibit List, and Witness List are included with the recording on March 2, 2016.
2. I am responsible for the preparation of the digital recording.
3. The digital recording accurately and correctly depicts the Hearing of March 2, 2016.
4. The Exhibit List attached to this Certificate correctly lists all Exhibits introduced at the Hearing of March 2, 2016.
5. The Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Hearing of March 2, 2016 and the time at which each occurred.

Given this 4th day of March, 2016.



Sonya Harward (Boyd), Notary Public
State at Large
My commission expires: August 27, 2017





Session Report - Detail

2015-00306_02Mar2016

Bush Gardens Enterprises, LLC

Date:	Type:	Location:	Department:
3/2/2016	General Rates	Public Service Commission	Hearing Room 1 (HR 1)

Judge: Jim Gardner; Dan Logsdon; Roger Thomas
 Witness: Eddie Beavers - PSC Staff; David Bowling - Bush Gardens; Linda Bowling - Bush Gardens; Mark Frost - PSC Staff
 Clerk: Sonya Harward

Event Time	Log Event
11:07:29 AM	Session Started
11:07:31 AM	Chairman James Gardner Note: Harward, Sonya
	Introduces Vice Chairman Dan Logsdon and Commissioner Roger Thomas.
	Note: Harward, Sonya
	Introduces Case No. 2015-00306.
11:07:58 AM	Atty. Aaron Davis for Bush Gardens Enterprise, LLC ("Bush Gardens" or "the Company") Note: Harward, Sonya
	Davis Law Firm in Pikeville ,KY
11:08:13 AM	Attys. Angela Goad and Greg Dutton for the Office of the Attorney General
11:08:23 AM	Attys. John Park, Jonathan Beyer, and Jeb Pinney for the PSC
11:08:36 AM	Public Notice has been given and filed into the case record.
11:08:46 AM	No Outstanding Motions
11:09:13 AM	Call for Public Comments Note: Harward, Sonya
	No one on the telephone line but the line was left open in case someone called in.
11:09:32 AM	Public Comment - Ashley Litteral Note: Harward, Sonya
	He is a resident of this subdivision. He understands that there must be a rate but wants it to be reasonable. He is concerned about some property owners not being able to afford it. He is also concerned about property value with such a high rate.
11:12:09 AM	Public Comment - John Crider Note: Harward, Sonya
	He is a resident of this subdivision. He talks about when he was looking for his home and how the sewage plant was a big factor in making the choice. He was told that there would someday be a rate, but that it would be low. He says that the \$127 per month is an outrageous fee and there is no reason for that to be imposed on the residents. He also states his concern about people not wanting to move into the neighborhood with such a high sewage rate.
11:16:00 AM	Public Comment - Douglas Melvin Note: Harward, Sonya
	He lives directly across from the plant. He has approached the County Judge/Executive, the Health Dept., and his State Senator. On three occasions he spoke with Mr. Bowling asking what the sewer bill was going to be. He never got a bill and has never paid one, though he never expected to get free service. Regarding the sewer system, he discusses a problem with his septic tank, which he did not even realize he had. He has pictures of the plant and shows one as he speaks that shows the view from his front porch. He also talks about the noise from frogs, the frogs coming onto their property, and the potential that the area is contaminated. He also references a document filed in the case regarding the system being sited for seven violations from 2005 to 2015. He also states that the plant was left on continuously for three months at one time, whereas now it kicks itself on and off, suggesting the owners were trying to inflate the cost to operate.

11:19:40 AM	Public - Exhibit 1	
11:33:29 AM	Public Comment - Roger Recktenwald	
	Note: Harward, Sonya	He is an employee of the Kentucky Association for Counties and was asked by County Judge/Executive Tucker Daniels in late December to look at the situation to see if anything can be done. He asks that you consider something out of the norm and engage with other agencies to get a firm resolution.
11:35:03 AM	Public - Exhibit 2	
	Note: Harward, Sonya	Comments submitted by Roger Rectenwald.
11:35:16 AM	Douglas Melvin - Additional Public Comments	
	Note: Harward, Sonya	Returns to speak about an inspection by the Division of Water and problems with the plant.
11:36:52 AM	Witness David Bowling takes the stand and is sworn in.	
11:37:32 AM	Atty. Davis Direct Exam of Witness D. Bowling	
	Note: Harward, Sonya	Witness is here on behalf of Bush Gardens. The Witness has no changes to documents or information submitted in the recored.
11:38:38 AM	Atty. Goad - General Question	
	Note: Harward, Sonya	Asking if this Witness had prefiled testimony.
11:39:21 AM	Atty. Goad Cross Exam of Witness D. Bowling	
	Note: Harward, Sonya	Asking what the Witness's postition is in Bush Garden Enterprises, LLC.
11:40:36 AM	Atty. Goad to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness what he sees his role is in Bush Garden Enterprises going forward.
11:42:19 AM	Atty. Goad to Witness D. Bowling	
	Note: Harward, Sonya	Asking if the company has filed an alternative rate filing and the amount of revenue being requested per year.
11:42:21 AM	Camera Lock Camera 6 Activated	
11:43:59 AM	Atty. Goad to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness who owned the plant for the past 10 years, when was Bush Gardens Enterprises created, and why it was created.
11:44:22 AM	Camera Lock Deactivated	
11:44:25 AM	Camera Lock Camera 6 Activated	
11:44:34 AM	Camera Lock Deactivated	
11:44:37 AM	Camera Lock Camera 6 Activated	
11:44:52 AM	Camera Lock Deactivated	
11:45:15 AM	Camera Lock Camera 6 Activated	
11:45:35 AM	Camera Lock Deactivated	
11:46:21 AM	Atty. Goad to Witness D. Bowling	
	Note: Harward, Sonya	Asking if Witness's name was intentionally left off the company due to his past violations, and discusses some of the violations and his sentence in prison and fines assessed.
11:46:50 AM	Objection by Atty. Davis	
	Note: Harward, Sonya	Chairman Gardner overruled objection and allowed questioning to continue.
11:48:35 AM	Atty. Goad to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness if he has owned or been associated with any other sewer systems.
11:48:48 AM	1. POST HEARING DATA REQUEST by Atty. Goad	
	Note: Harward, Sonya	Provide the entire list of sewage collection and treatment systems David Bowling and/or Linda Bowling have owned or have been associated with, and what has happened to each.
11:49:42 AM	Atty. Goad to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness why the Commission should allow his family to provide sewer service after being made aware of all his violations.

11:50:51 AM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness if he was willing to work with the residents on an alternate solution since he does not want to charge the very high rate.
11:51:11 AM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness who developed the subdivision, and why Mountain Housing stepped out of the deal.
11:53:47 AM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking the Witness who made the decision to put in the treatment plant.
11:54:51 AM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness about signing an affidavit regarding the accuracy of filed information and now not agreeing with the information he presented.
11:56:30 AM	2. POST HEARING DATA REQUEST by Atty. Goad Note: Harward, Sonya	Provide responses regarding what happened to the construction permit to install the treatment plant, applied for with DOW, and if they ever attempted to file or obtained a Certificate of Convenience and Necessity with the Commission.
11:57:04 AM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness if he believed the sewage plant was the best option when the land was developed. After the Witness responds, it is noted that he responded differently to what was filed previously as his response to the Staff's Request,
12:00:48 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness about seven violations of the plant by DOW.
12:01:20 PM	AG - Exhibit 1 Note: Harward, Sonya	Copy of several violations from Division of Water, dated February 7, 2005; July 24, 2007 (2 forms); December 10, 2012; October 15, 2014; April 13, 2015 (2 forms); September 28, 2015; and February 23, 2016. (Note that the dates on the cover letters to each are different from the dates of the inspection reports.)
12:02:18 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya Note: Harward, Sonya	[Witness states that he cannot see close up and cannot read the exhibit.] Asking Witness generally about continuing to operate the plant in disregard of the violations.
12:03:17 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness if he was aware that DOW inspected the plant on February 23, 2016. (This inspection is the last two pages of AG - Exhibit 1 to this Hearing.)
12:04:37 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking if Witness was excavating around the plant yesterday evening, and if it was because of a broken pipe and to dig a ditch for drainage of the sewage water into a creek.
12:07:01 PM	AG - Exhibit 2 Note: Harward, Sonya	Five pictures of events that took place on March 1, 2016.
12:08:42 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking about the pictures and who is pictured in them.
12:09:31 PM	Atty. Davis - Interjection Note: Harward, Sonya	States that his understanding of the violation is that it lists the standing water as coming from a discharge pipe that releases treated water.
12:12:02 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking about the treatment plant being obtained by barter, rather than the previously stated cost of \$25,000.

12:13:39 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking about the amount Bush Gardens requested for insurance being higher than the actual cost.
12:14:41 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness about appointing his son as manager of the plant.
12:15:14 PM	3. POST HEARING DATA REQUEST by Atty. Goad Note: Harward, Sonya	Provide a list of people that have been interviewed for the manager position.
12:15:43 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking about Witness and his son owning Tri-County Concrete and them doing work that accounted for thousands of dollars for Bush Gardens.
12:18:32 PM	Atty. Goad - Comments Regarding Lance Bowling's Absence Note: Harward, Sonya	Chairman Gardner allows questions to be asked of Witness D. Bowling regarding Lance Bowling.
12:19:15 PM	Atty. Dutton Assumes Cross Exam. of Witness D. Bowling Note: Harward, Sonya	This questioning regards questions intended for Lance Bowling, but Lance Bowling is not in attendance today.
12:20:48 PM	AG - Exhibit 03 Note: Harward, Sonya	Copy of a Public Service Commission Order in Case No. 2006-00569, dated December 18, 2007.
12:21:29 PM	Atty. Dutton to Witness D. Bowling Note: Harward, Sonya	Reading from the second full paragraph on page 3 in the Order submitted as AG - Exhibit 03 to this Hearing.
12:22:03 PM	Atty. Dutton to Witness D. Bowling Note: Harward, Sonya	Asking Witness if Lance Bowling once owned a company called East Kentucky Waste.
12:22:45 PM	AG - Exhibit 4 (Not accepted into the record.)	
12:23:50 PM	Atty. Dutton to Witness D. Bowling Note: Harward, Sonya	Asking Witness about his son also being charged for the crimes for which the Witness was sentenced to prison.
12:25:40 PM	Atty. Dutton - General Statement Note: Harward, Sonya	States that the Witness's statements directly contradict statements from the AG press release that was originally submitted as AG - Exhibit 4 to this Hearing.
12:26:57 PM	Atty. Goad resumes Cross Exam of Witness D. Bowling Note: Harward, Sonya	Asking Witness about the conflict of interest created by the purchases and work done by his company, Tri-County Concrete.
12:31:49 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness about the economic issues in eastern Kentucky with the loss of coal jobs, etc.
12:32:22 PM	AG - Exhibit 5 (Not accepted into the record.)	
12:33:14 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Reading to Witness (from a document that was submitted as AG - Exhibit 5 to this Hearing), regarding the income and poverty level of Johnson County, Kentucky.
12:34:25 PM	Objection - Atty. Davis Note: Harward, Sonya	There is no way to know if the information regarding the average income for Johnson County is reflective of the homeowners.
12:35:17 PM	Chairman Gardner - Response to Objection Note: Harward, Sonya	There is no connection with the income on the exhibit to the income of the homeowners in Bush Gardens.
12:36:01 PM	Atty. Goad to Witness D. Bowling Note: Harward, Sonya	Asking Witness about discussing the cost of service with residents over the years.

12:38:37 PM	Break for lunch	
12:38:54 PM	Session Paused	
1:42:31 PM	Session Resumed	
1:42:33 PM	Hearing Resumes	
1:42:39 PM	Atty. Park Cross Exam of Witness D. Bowling	
1:43:16 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Follow-up questions regarding developing the subdivision.
1:45:06 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking if Witness is the organizer of Bush Gardens Enterprises, LLC, and whether he owns it.
1:45:52 PM	4. POST HEARING DATA REQUEST by Atty. Park	
	Note: Harward, Sonya	Provide a list of the owners of Bush Gardens Enterprise, LLC.
1:46:13 PM	5. POST HEARING DATA REQUEST by Atty. Park	
	Note: Harward, Sonya	Provide a list of the officers of Bush Gardens Enterprise, LLC.
1:48:00 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking about his role and his wife's role in taking care of the sewer system.
1:48:29 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness if he is aware of the Commission Staff Report filed in the record in this case, and the comments and objections filed by the company.
1:50:43 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking about the work done on the day before this hearing regarding repairs being made.
1:51:46 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness about the electric charge expense, and the Commission Staff Report that suggests that it be decreased by \$64.
1:54:00 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness how the company would adjust its rates to cover a tax bill.
1:54:59 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness about the operating margin.
1:56:11 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness what the manager would do to earn the Manager Fee.
1:58:18 PM	Atty. Park to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness if he is aware that there is a \$3 per customer fee allowed for billing.
1:58:44 PM	Vice Chairman Logsdon Cross Exam of Witness D. Bowling	
	Note: Harward, Sonya	Asking who Mike Connelly is, and how long he's been the certified operator at Bush Gardens.
2:00:28 PM	Vice Chairman Logsdon to Witness D. Bowling	
	Note: Harward, Sonya	Asking how much time the operator spends per month at the site.
2:00:56 PM	6. POST HEARING DATA REQUEST by Vice Chairman Logsdon	
	Note: Harward, Sonya	Provide a copy of the contract with Mike Connelly, the certified operator of the system.
2:01:55 PM	Vice Chairman Logsdon to Witness D. Bowling	
	Note: Harward, Sonya	Asking Witness why he hasn't sought a rate before now.
2:02:51 PM	Commissioner Thomas Cross Exam of Witness D. Bowling	
	Note: Harward, Sonya	Asking about the current and prior operators at the system.
2:04:14 PM	Commissioner Thomas to Witness D. Bowling	
	Note: Harward, Sonya	Referencing AG - Exhibit 1 to this Hearing, and reads from p. 7, under General Comments, from July 24, 2007, regarding Ms. Bowling being the certified operator of the system.

2:06:00 PM Commissioner Thomas to Witness D. Bowling
Note: Harward, Sonya Asking Witness about Mr. Standball being released from his duty after violations were found at the system.

2:06:45 PM Atty. Davis Re-Direct Exam of Witness D. Bowling
Note: Harward, Sonya Asking whether Witness will continue to operate the plant in any way if the rate is set.

2:08:02 PM Atty. Davis to Witness D. Bowling
Note: Harward, Sonya Asking Witness about the needs a manager of the system would have.

2:09:08 PM Atty. Davis to Witness D. Bowling
Note: Harward, Sonya Asking Witness if he or the company would get any of the Manager Fee.

2:10:35 PM Atty. Davis to Witness D. Bowling
Note: Harward, Sonya Asking Witness to describe the area that has been described as a swamp or cess pool.

2:11:37 PM Atty. Dutton Re-Cross Exam of Witness D. Bowling
Note: Harward, Sonya Asking Witness about water flooding over the top of the sewer plant.

2:13:08 PM Atty. Park Re-Cross Exam of Witness D. Bowling
Note: Harward, Sonya Asking Witness what his son, Lance Bowling, currently does to make a living.

2:13:52 PM Atty. Park to Witness D. Bowling
Note: Harward, Sonya Asking Witness where the money is coming from to purchase parts at this time.

2:14:15 PM Atty. Park to Witness D. Bowling
Note: Harward, Sonya Asking Witness how many times he has visited the system this year.

2:15:34 PM Atty. Park to Witness D. Bowling
Note: Harward, Sonya Asking Witness why a manager would need an office to send out bills and look at the system.

2:15:58 PM Witness D. Bowling dismissed from the stand.

2:16:12 PM Chairman Gardner - Exhibits
Note: Harward, Sonya AG - Exhibits 1 through 3 are admitted into the record, and AG - Exhibits 4 and 5 are not admitted into the record.

2:16:41 PM Discussion about AG - Exhibits 4 and 5

2:17:09 PM Witness Linda Bowling takes the stand and is sworn in.

2:17:44 PM Atty. Davis Direct Exam of Witness L. Bowling
Note: Harward, Sonya Witness is here on behalf of Bush Gardens. The Witness has no changes to documents or information submitted in the record.

2:19:00 PM Atty. Goad Cross Exam of Witness L. Bowling
Note: Harward, Sonya Asking Witness about her role in the company and her responsibilities.

2:20:48 PM Atty. Goad to Witness L. Bowling
Note: Harward, Sonya Asking Witness what the amount of revenue Bush Gardens is requesting per year.

2:21:50 PM Atty. Goad to Witness L. Bowling
Note: Harward, Sonya Asking Witness what her daily role was in the operations of the plant over the past decade, before Bush Gardens was created.

2:22:37 PM Atty. Goad to Witness L. Bowling
Note: Harward, Sonya Asking Witness why septic systems were not placed at each home when each was built, rather than a treatment plant.

2:25:00 PM AG - Exhibit 6
Note: Harward, Sonya Copy of letter dated August 27, 2003, to David Bowling from William B. Gatewood, P.E., Manager, Facilities Construction Branch, Division of Water, regarding Bush Gardens Subdivision, Project ID: 03-0140.

2:25:45 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Asking Witness what qualities and skills ___??___ she has to operate the plant.
2:27:30 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Referencing AG - Exhibit 1 to this Hearing. Witness is asked about the violations issued in the documents.
2:28:39 PM	Objection - Atty. Davis Note: Harward, Sonya	Chairman Gardner overruled the objection and allowed questioning to continue.
2:29:06 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Continues to question Witness about the violations in the documents in AG - Exhibit 1 to this Hearing.
2:36:50 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Referencing AG - Exhibit 1 to this Hearing, regarding the inspection cover letter dated January 7, 2016 for a violation observed on September 28, 2015. [Atty. Goad noted that this violation was not submitted by the Bowling's with the other violations.]
2:43:56 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Asking Witness about her responsibility for the problems with the system.
2:45:33 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Asking Witness about the difference in the information provided in the application versus the information provided to Staff during the field visit.
2:45:45 PM	Atty. Davis - Objection Note: Harward, Sonya	Chairman Gardner acknowledged the objection and allowed questioning to continue.
2:47:46 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Asking Witness about the conflict of interest in buying chemicals and services from her husband's company, Tri-County Concrete.
2:50:20 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Asking Witness about there being no advantage to negotiating prices with other companies rather than buying from her family's company.
2:50:58 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Referencing Witness's response to the AG's Initial Request for Information, Item 7.a., and asking Witness to read the third paragraph into the record, regarding the rate being high.
2:55:05 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Asking Witness if she thinks the homeowners would have purchased their homes if they knew the sewer rate would be so high.
2:56:30 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Referencing Witnesses' response to the AG's Initial Request for Information, Item 1, regarding the intention to build more homes in the subdivision.
2:59:10 PM	AG - Exhibit 7 Note: Harward, Sonya	Copy of a letter dated February 29, 2016, to Angela Goad, Assistant Attorney General, from Bob Pack, General Manager of Paintsville Utilities, regarding average monthly water usage of the eight homeowners in Bush Gardens.
3:01:05 PM	Atty. Goad to Witness L. Bowling Note: Harward, Sonya	Asking Witness about the current homeowners using only about 33 percent of the capacity of the treatment plant, and the fairness of those homeowners paying what was meant to support 20 homes.
3:04:44 PM	Atty. Park Cross Exam of Witness L. Bowling Note: Harward, Sonya	Asking Witness if she was involved in the installation of the plant.

3:05:46 PM	Atty. Park to Witness L. Bowling Note: Harward, Sonya	Asking Witness about being the certified operator during one of the violations, and how long she served as operator.
3:06:24 PM	Atty. Park to Witness L. Bowling Note: Harward, Sonya	Asking Witness for her role in the operation of the sewer system.
3:07:06 PM	Atty. Park to Witness L. Bowling Note: Harward, Sonya	Asking Witness who pays expenses, from what checking account they are paid, and if there is a system of accounts to track expenses and payments.
3:08:13 PM	Atty. Park to Witness L. Bowling Note: Harward, Sonya	Asking if Witness is the only owner of Bush Gardens.
3:08:31 PM	7. POST HEARING DATA REQUEST by Atty. Park Note: Harward, Sonya	Provide any documentation of the transfer of the plant from Linda/David Bowling to Bush Gardens.
3:09:56 PM	Atty. Park to Witness L. Bowling Note: Harward, Sonya	Asking Witness if it will be difficult to collect the rate if it is approved.
3:10:47 PM	Atty. Park to Witness L. Bowling Note: Harward, Sonya	Asking Witness about Lance Bowling having the time to serve in the capacity as manager of the plant.
3:11:45 PM	Atty. Park to Witness L. Bowling Note: Harward, Sonya	Asking Witness about having knowledge of the Commission Staff Report filed into this case.
3:13:31 PM	Atty. Park to Witness L. Bowling Note: Harward, Sonya	Asking Witness about accepting the conclusion of Commission Staff in the Report other than the two items they disagreed with.
3:14:36 PM	Break	
3:14:43 PM	Session Paused	
3:21:08 PM	Session Resumed	
3:21:09 PM	Hearing Resumes	
3:21:13 PM	Vice Chairman Logsdon Cross Exam of Witness L. Bowling Note: Harward, Sonya	Asking Witness why she was the operator and why they took her license.
3:22:00 PM	8. POST HEARING DATA REQUEST by Vice Chairman Logsdon Note: Harward, Sonya	Provide any correspondance regarding the loss of Linda Bowling's operators license.
3:22:56 PM	Commission Thomas Cross Exam to Witness L. Bowling Note: Harward, Sonya	Asking Witness about payments made in cash.
3:23:31 PM	9. POST HEARING DATA REQUEST by Commissioner Thomas Note: Harward, Sonya	Provide receipts for any payments made in cash.
3:23:54 PM	Atty. Davis Re-Direct Exam of Witness L. Bowling Note: Harward, Sonya	Asking Witness about her mailing address, who will do further work at the site, and Bush Gardens having a checking account if they ever get money.
3:26:16 PM	Witness L. Bowling is dismissed from the stand.	
3:26:28 PM	Chairman Gardner - Exhibits Note: Harward, Sonya	Accepts AG - Exhibits 6 and 7 are admitted into the record.
3:26:29 PM	Atty. Dutton - Statements Regarding AG - Exhibit 4 Note: Harward, Sonya	Gives argument to have AG - Exhibit 4 admitted into the record.
3:28:40 PM	Chairman Gardner - Response Regarding AG - Exhibit 4	
3:29:33 PM	Objection - Atty. Davis Note: Harward, Sonya	Wants AG - Exhibit 4 to still be disallowed.
3:30:00 PM	Chairman Gardner - Response Note: Harward, Sonya	The ruling stands and AG - Exhibit 4 is still disallowed.

3:30:23 PM	10. POST HEARING DATA REQUEST by Atty. Dutton Note: Harward, Sonya	Provide information regarding any arrests and convictions of Lance Bowling or David Bowling related to illegal dumping, operation of sewage facilities, etc.
3:33:52 PM	Mark Frost takes the stand and is sworn in. Note: Harward, Sonya	PSC Staff, Public Utilities Analyst
3:34:40 PM	Atty. Goad Cross Exam of Witness Frost Note: Harward, Sonya	Asking Witness about the operating ratio.
3:37:03 PM	Atty. Goad to Witness Frost Note: Harward, Sonya	Asking about scrutinizing particular expenses submitted in the application.
3:37:37 PM	Atty. Goad to Witness Frost Note: Harward, Sonya	Asking Witness why initial cost of insurance was allowed when it was later given as a lower rate.
3:39:21 PM	Chairman Gardner - Regarding Staff as Witnesses Note: Harward, Sonya	Offers Atty. Davis additional time, if needed, to prepare to cross examine PSC Staff since he was unaware that they would be called as witnesses.
3:39:59 PM	Atty. Davis Cross Exam of Witness Frost Note: Harward, Sonya	Asking Witness if he has worked with any situations like this one in his time at PSC.
3:41:47 PM	Atty. Davis to Witness Frost Note: Harward, Sonya	Referencing the response to Commission Staff's Initial Request for Information, Item 14.a., regarding invoice to replace a pipe.
3:43:23 PM	Atty. Davis to Witness Frost Note: Harward, Sonya	Referencing Exhibit 3 provided in the response to Commission Staff's Initial Request for Information, regarding the amount for power.
3:45:37 PM	Atty. Davis - Withdrawal of Objection to Fuel/Power Fee Note: Harward, Sonya	The \$64 was explained by Witness Frost, so the company wishes to withdraw their objection to the decrease in the fee listed in the Commission Staff Report.
3:46:00 PM	Atty. Davis to Witness Frost Note: Harward, Sonya	Asking Witness about the Owner/Manager fee.
3:47:58 PM	Chairman Gardner - Clarifying Question Note: Harward, Sonya	Asking Witness if the Owner/Manager fee is the only item to which the company still objects to regarding the Commission Staff Report.
3:48:24 PM	Atty. Goad Re-Cross Exam Witness Frost Note: Harward, Sonya	Asked how Witness found out the the plant was obtained by barter.
3:49:04 PM	Atty. Davis Re-Cross Exam of Witness Frost Note: Harward, Sonya	Asking Witness about trades being given value for accounting purposes.
3:50:02 PM	Witness Eddie Beavers takes the stand and is sworn in. Note: Harward, Sonya	PSC Staff, Public Utility Rate Analyst
3:50:57 PM	Atty. Dutton Cross Exam of Witness Beavers Note: Harward, Sonya	Asking Witness about the connection and late fees.
3:52:12 PM	Atty. Dutton to Witness Beavers Note: Harward, Sonya	Asking Witness about notice being given for the nonrecurring charges.
3:53:27 PM	Atty. Dutton to Witness Beavers Note: Harward, Sonya	Asking about the revenue requirement being divided by 8 (the current number of customers), and whether he is aware that the system was initially intended to serve 20 homes.
3:55:09 PM	AG - Exhibit 8 Note: Harward, Sonya	Copy of Public Service Commission Order in Case No. 2015-00267, dated December 1, 2015.

3:55:54 PM	Atty. Dutton to Witness Beavers Note: Harward, Sonya	Asking Witness to read from the Order, 2nd sentence on page 24 under Legal Standard, submitted as AG - Exhibit 8 to this Hearing, and asking about CPCNs and wasteful duplication.
3:57:06 PM	Objection - Atty. Park Note: Harward, Sonya	Chairman Gardner, sustains the objection - Witness can give his opinion, but not a legal conclusion.
3:58:30 PM	Atty. Dutton to Witness Beavers Note: Harward, Sonya	Asking Witness to read from the Order submitted as AG - Exhibit 8 to this Hearing, starting at page 25.
3:59:40 PM	Objections by Atty. Park and Atty. Davis Note: Harward, Sonya	The testimony is turning into testimony by counsel. Chairman Gardner sustains the objection.
4:00:20 PM	Atty. Dutton to Witness Beavers Note: Harward, Sonya	Asking Witness whether it is his testimony that this plant is deemed as wasteful duplication.
4:00:56 PM	Atty. Davis - Requests break to prepare to question Witness Beavers	
4:01:06 PM	Session Paused	
4:09:07 PM	Session Resumed	
4:09:13 PM	Atty. Davis Cross Exam of Witness Beavers Note: Harward, Sonya	Asking Witness if he is familiar with the revised customer notice.
4:11:34 PM	Atty. Davis to Witness Beavers Note: Harward, Sonya	Asking Witness about the reduction of the connection/inspection fee.
4:12:03 PM	Atty. Davis to Witness Beavers Note: Harward, Sonya	Asking Witness for the average gallon-per-day use for an average household.
4:13:28 PM	Atty. Davis to Witness Beavers Note: Harward, Sonya	Asking Witness, based on 400 gpd, whether a 3,400 gallon system was excessive.
4:14:23 PM	Atty. Park Cross Exam Witness Beavers Note: Harward, Sonya	Asking Witness about the difference in cost between operating a system for 8 customers versus 20 customers.
4:15:23 PM	Atty. Dutton Re-Cross Exam of Witness Beavers Note: Harward, Sonya	Asking Witness about his statement regarding serving 8 customers versus 20 customers.
4:16:20 PM	Atty. Dutton to Witness Beavers Note: Harward, Sonya	Asking Witness to read from the Order submitted as AG - Exhibit 8 to this Hearing, at page 25, regarding setting rates using least-cost principles.
4:17:12 PM	Atty. Davis Re-Cross Exam Witness Beavers Note: Harward, Sonya	Asking Witness if the chemical usage seemed to be normal for 8 homes.
4:18:46 PM	11. POST HEARING DATA REQUEST by Atty. Park Note: Harward, Sonya	Provide any information as to whether there was ever any intent to serve any customers outside the subdivision, or was the intent to serve just the 20 lots inside the subdivision.
4:19:31 PM	Review of all POST HEARING DATA REQUESTS Note: Harward, Sonya	Responses due March 11, 2016.
4:27:08 PM	Discussion Regarding Briefs Note: Harward, Sonya	A decision by the AG regarding whether they will submit a brief must be emailed by March 14. If there is a brief from the AG, it is to be short and is due by March 18.
4:29:52 PM	Briefs Due Note: Harward, Sonya	Briefs, if any, are due by March 18.
4:30:55 PM	Hearing Adjourned	

4:30:59 PM
10:41:40 AM

Session Paused
Session Ended



Name:	Description:
AG - Exhibit 1	Copy of several violations from Division of Water, dated Feb. 7, 2005; July 24, 2007 (2 forms); Dec. 10, 2012; Oct. 15, 2014; Apr. 13, 2015 (2 forms); Sept. 28, 2015; and Feb. 23, 2016. Note that the dates on the cover letters to each are different.
AG - Exhibit 2	Five pictures of events that took place on March 1, 2016.
AG - Exhibit 3	Copy of a Public Service Commission Order in Case No. 2006-00569, dated December 18, 2007.
AG - Exhibit 4 - Not Accepted into the Record	
AG - Exhibit 5 - Not Accepted into the Record	
AG - Exhibit 6	Copy of letter dated August 27, 2003, to David Bowling from William B. Gatewood, P.E., Manager, Facilities Construction Branch, Division of Water, regarding Bush Gardens Subdivision, Project ID: 03-0140.
AG - Exhibit 7	Copy of a letter dated February 29, 2016, to Angela Goad, Assistant Attorney General, from Bob Pack, General Manager of Paintsville Utilities, regarding average monthly water usage of the eight homeowners in Bush Gardens.
AG - Exhibit 8	Copy of PSC Order in Case No. 2015-00267, dated December 1, 2015.
Public - Exhibit 1	Pictures and comments submitted by Douglas Melvin.
Public - Exhibit 2	Comments submitted by Roger Rectenwald.

1. I would like to thank the Public Service Commission for this opportunity to speak.
2. As a resident of Bush Gardens I never thought I would get free sewer. On 3 different time I ask Mr. Dave Bowling for a bill. Mr. Bowling told me the 1st time that I called his office at tri county concrete that everyone got the first year free. The next time I spoke to him he said they hadn't got to it [setting a price or rate]. The third time he said the same thing again. I ask him what he thought the rate would be and he said about \$30.00.
It is true I have never paid a sewer bill because I have not been able to get one from him.
3. Mr. Bowling offered me the sewer system and I told him no.
Mr. Bowling has told me and other resident he was going to close the plant.
I have never met with anyone but Mr. Dave Bowling and his Attorney Mr. Davis in reference to the sewer system. I have never meet with anyone representing them self's as Bush Gardens LLC.

The System

4. I bought my house in 2005. I didn't know I had a septic tank. Approx. 3 weeks after I moved in I started having a problem with the toilets flushing properly so I call Jason Slone the contractor and he told me Dave Bowling had put the tank in and he would call him. This is the first I knew about the tank. If I had known of the tank and that system wasn't working, I would not have bought my house The Sewer plant did not run for the first 6 months. This plant on several occasions has had long periods of not running. The view from my house I can see the plant and a large pond of black septic water. I believe this water could be a vector for disease. With the view from my house and if Bush Gardens LLC is given a high rate my house will become unsaleable.
5. I would like for someone to tell me what the system consists of are the tanks part of the system, are the lines from the tanks to the main line, is the main line Bush Gardens LLC?
In a meeting with the residents and Mr. Dave Bowling and his Attorney Mr. Davis. Mr. Bowling stated all he owned was the package plant. Mr. Bowling stated he did not own the tanks, he said he didn't even own the main line. I don't understand how you can have a sewer system and not even own the main line. If Bush Gardens LLC is given a rate and allowed to become a utility what does its system consist of, what is its responsibility's? What are the resident's responsibility's? The Electric company and the water company clearly state what is their responsibilities are what the customer responsibilities are.
6. From what I have been reading the plant was installed without a construction permit which was inconsistent with Kentucky Law according to a letter date August 27,2003. The Plant was issued a permit at a later time. I have counted at least 7 notices of violations dating from Feb.2005 to April 2015. It appears this plant was not installed and has not been maintained according to Kentucky's Law.
7. If Bush Gardens LLC is allowed to become a utility and give a rate. I think the rate should be based 21 not 8 homes. If you look on the plot map Bush Garden Subdivision is laid out for 21 lots. Mr. and Ms. Bowling intend and I believe they still do intend to develop the remainder of the 21 lots. We should not have to bear the burden of Mr. And Ms. Bowling business decisions.
8. I don't know if any of you have been to Eastern Kentucky. But time are hard there the coal business has all but died. Gas and Oil jobs are being lost. Good paying jobs are very hard to come by.

9. Tobacco road in Bush Garden has 8 families on it. If you were to turn onto Tobacco Road Mr. Crider would be the first and only house. Mr. Crider and his wife bought their retirement home and lives on his pension. Across the street lives Justin Arms and his wife with their two children. This is their first home and they started their family there. Stephanie Powers is the next home a working mother of three children. Stephanie lost her husband in a car wreck last year. The next house is Chester Sammons father of three children. Chester lost his job in the mines and now works a job that takes him away from home for days at a time. The next is Johnny Curtis and his wife and their child. Johnny and his wife are first time home owners. And then we come to Ashely Litteral and wife and child. They are first time home owners. Now you come to me and my wife we bought this house as our first house together. Bush Gardens is where we have bought our first house, starter our families, lost our loved ones and chose to retire. If Bush Gardens LLC is allowed to become a utility and given a high rate this could cause a hardship on these families or some of these families, may lose their home.
10. Thank you for your time and allowing me to speak.

2/29/16 2:11



2/29/16

















1-18-16 10:30 AM



1-18-12 10:30 AM



1-18-16 10:30 AM



2-22-16

11:00 AM



2-22-16

11:00 AM

Comments in regard to PSC Case # 2015-00306.

My name is Roger Recktenwald. I am currently and have been an employee of the Kentucky Association of Counties since 2006. Among other duties I respond to requests for assistance submitted by local elected officials, typically but not exclusively by a county judge executive, often relating to community water and sewer system problems. I have been involved in an array of local and regional water and wastewater infrastructure projects for a period of nearly thirty years – partially within the context of my current employment, and more extensively with the Big Sandy Area Development District and more intensely while with the Kentucky Infrastructure Authority.

In early January of 2016, Johnson County Judge/Executive R. Tucker Daniel requested that I check on a matter before the Kentucky Public Service Commission affecting the residents of Bush Gardens Subdivision, in Sitka, off KY 1559 in Johnson County.

To seek a comprehensive understanding of the situation confronting the residents of the subdivision, I have taken the following actions: reviewed all Commission filings available on the PSC website prior to and since the Judge's request; solicited information from the Kentucky Division of Water both at Frankfort and from the Regional Office in Hazard; and solicited background information relating to Mountain Housing Corporation from the Big Sandy Area Development District, which serves Johnson County. Further, I have also: contacted the Attorney General's Office, Office of Rate Intervention; visited the site in Johnson County on January 18, 2016 and again on February 22, 2016; and have spoken in person with five of the existing seven residents and by phone with one former resident who still owns a house in the subdivision. Finally, I have contacted and discussed typical small treatment plant construction and operations with KDOW personnel and community on-site wastewater treatment alternatives with the Johnson County Health Department Environmentalist as well as with a representative of an engineering firm that specializes in on-site and cluster wastewater systems.

Regulatory Process and Procedure Concerns:

1. It appears that the Commission has ignored the statutory directives set out in KRS 278.020 (1) and (4), by accepting the document submitted by the 'applicant' dated September 3, 2015 and received by the Commission on September 8, 2015, which was styled in the transmittal letter: "Application for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities and Tariff" and was set out on the Commission's standard form for the Alternative Rate Filing Procedure and published on the Commission website. Nowhere in the transmittal letter or the 'application' is there a request for or a reference to a 'certificate of convenience and necessity' yet a case number was assigned and proceedings initiated.
2. The 'applicant' clearly cites in other filings with the Commission that it was formed in 2015 and is a successor to Bush Gardens Subdivision, which operated under

an initial KPDES Permit granted to Mr. David Bowling wherein waste was to be discharged from the plant to Tom's Creek. However, a letter dated August 27, 2003 notified Mr. Bowling that plans and specs on the plant were being returned because the facility had already been constructed without a construction permit, triggering the first referral relating to Bush Gardens Subdivision to the Enforcement Branch. (See attached documents)

A cursory review of other KDOW records relating to the Bush Gardens wastewater system (some of which were supplied to the commission by the 'applicant' upon request of the Attorney General's Office) illustrates multiple Notices of Violations over the life of the system and another pending Enforcement Action by the Cabinet at the present time.

It would seem that the past and continuing environmental regulatory violations associated with this wastewater system are of consequence in this matter before the Commission, in that they relate to KRS 278.020(5), depending upon whether, if a rate is granted as requested, this 'applicant' is considered either to have or not to have been co-terminally granted a certificate of convenience and necessity -- since such determination is to be based on the applicant's demonstrated financial, technical and managerial capacities.

3. Finally, it seems to be the consensus among the residents that, since the owners of the wastewater system at Bush Gardens Subdivision, have been cited for violations multiple times and consistently by the KDOW with no apparent consequence, they, the residents may well be saddled with both a high operational rate (as proposed by the 'applicant' as well as by the Commission Staff) together with and the cost of the required corrective actions due to no fault attributable to them. Specifically, the wastewater plant has consistently been cited for operational deficiencies consequent upon receiving insufficient volume of solids which is required for its proper functioning. It is also known, that the waste collection system was designed to include a septic tank at each home which, by design, nearly eliminates solids from the treatment plant. (Note, based on the confusion between the initial construction permit rejection and the granting of a KPDES Permit, as cited above, it is not known if the actual design for this system was ever fully known to the KDOW. Regardless, for this plant to function properly it is known to require sufficient solids for bacteriological treatment to occur.) If the only waste delivered to this plant is the collected effluent from the septic tanks in this subdivision, and the very purpose of the septic tank is to hold solids -- it is reasonable to conclude that the plausible possibility of the plant having ever functioned properly or ever functioning properly in the future is all but eliminated.

Also of considerable concern to the residents, there is near constant ponding of the discharged effluent from the plant into what is now a large cess-pool/swamp-area adjacent to the treatment plant. By permit, this effluent is required to be discharged by pipe, directly into Tom's Creek. This issue affects all the residents of Bush Gardens Subdivision as well as several neighboring families living in the vicinity.

Possible Alternatives to the Existing Wastewater Treatment Plant

Despite that residents readily cite that lots were sold as having 'city water and sewer system' as opposed to what is, in fact, in place, namely a septic tank on each lot with effluent discharged gravity collection line to a package treatment plant intended for proper treatment and discharge into Tom's Creek, it is difficult to arrive at silver-bullet option.

The option first recommended by the 'applicant' to the residents in mid-2015, as cited in the filings to the Commission, relates to properly installed individual septic tanks and drain fields. Depending upon the respective results of individual site evaluations for each lot, the prospect of a properly designed and approved septic tank with drain field is the most obvious alternative and very likely the overall total least cost option in the current situation -- except that this cost is projected to be borne by the individual home owner. (This option has sound precedent, being very similar to the resolution of many other community-impacting environmental problems wherein typically the consumer bears the cost and the perp walks.)

An option focused on resolving the current system's 'solids' dilemma would require the excavation and laying of 4" piping to effect the by-pass of several of the septic tanks presently on the system, and bring the entire waste load – solids and liquid - from these test homes to the existing gravity collector line and then to the treatment plant, on an experimental basis. This would allow one to assure that the gravity line was properly installed and can accommodate solids as well as to determine that the treatment plant can, in fact, treat the solids-liquids flow, once KDOW violations at the plant are corrected. If and when this action is determined to be successful, the operator would gradually increase the solids to eventually take in all eight houses and monitor the plant to assure its operational functionality and capacity, so as to be operated within Permit limits.

Another option would be to continue to bring all liquid effluent from each septic tank to the current site of the wwtp, but eliminate the wwtp and rather discharge the collected effluent into a holding tank and pump by incremental dosing into a constructed wetlands, drip filter or cluster drain field. Initial estimates would require a site of approximately two acres. Although it is understood that much of the top soil has been removed from the valley floor, if the owner of the track would allow such alternative use, one or other of the systems field applications cited could be located such that the pumped effluent would be discharged so as to flow on a downward gradient and westerly, parallel with the entrance road to the subdivision starting at lot # 21 down to and approximately behind lot # 14, turn towards Top's Creek, and head back in an easterly direction toward Ensign Road. If the pumped effluent still ponded at the end of the wetland, dip filter or cluster drain field it could be collected, chlorinated and de-chlorinated and discharged into Tom's Creek, in accord with a revised KPDES permit.

Note, any one of these alternatives would require preliminary approval by the Johnson County Health Department and KDOW, as well as appropriate construction applications, complete with approvals of engineering designs, and plans and specifications prior to construction and possible plant decommissioning.

Final Comment

It appears to me to be in the best long term interest of the home owners and residents of Bush Gardens Subdivision and that of Bush Gardens Enterprises, LLC, for the Commission to terminate Case # 2915-00306 without any further action for causes the Commission can best determine and to direct these parties to seek resolution of their difficulties between themselves, assisted as set out below, or via the local court system.

It is also apparent that the interest of other citizens throughout the Commonwealth dealing with similar circumstances relating to small wastewater systems would be served if the principal agencies involved in this matter, including but not limited to the KDOW, the Kentucky Public Service Commission, the Kentucky Attorney General's Office, the Kentucky Department for Public Health, Environmental Management Branch, and the LRC, as staff to the appropriate House and Senate environmental committees, would:

1) empanel representatives of each agency to serve as an ad hoc work-group to review the circumstances and actions taken or not taken during the history of Bush Gardens Subdivision; and

2) authorize the work group to begin immediately to assist the residents and wastewater system owner at Bush Gardens Subdivision in jointly devising and implementing an appropriate corrective action plan that will address and eliminate the conditions that are now jeopardizing residents' and neighboring families' health, diminishing property values and compromising the natural environment of this small community; and

3) put in place appropriate methods of procedure and interagency communication to avoid any reoccurrence of this or other similar failure of basic utility services and thereby better achieve each agency's goal to serve citizens.

Thank you for the opportunity to submit comments.



March 2, 2016

Roger Recktenwald, Director, Research & Planning
Kentucky Association of Counties
400 Englewood
Frankfort, Kentucky 40601
502-223-7667 roger.recktenwald@kaco.org

KPDES



KENTUCKY POLLUTANT
DISCHARGE ELIMINATION
SYSTEM

PERMIT

PERMIT NO.: KY0103853

AUTHORIZATION TO DISCHARGE UNDER THE
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

Pursuant to Authority in KRS 224,

Mr. David Bowling
Post Office Box 230
Hager Hill, Kentucky 41222

is authorized to discharge from a facility located at

Bush Gardens
Highway 1559
Sitka, Johnson County, Kentucky

to receiving waters named


Tom's Creek (mile 9.15)

in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II, and III hereof. The permit consists of this cover sheet, and Part I 2 pages, Part II 1 page and Part III 1 page.

This permit shall become effective on **AUG 1 2003**

This permit and the authorization to discharge shall expire at midnight, March 31, 2006.

JUN 18 2003
Date Signed


Jeffrey W. Pratt, Director
Division of Water

Robert W. Logan
Commissioner

DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601

Printed on Recycled Paper

August 27, 2003

Mr. David Bowling
PO Box 230
Hager Hill, KY 41222

Re: Bush Gardens Subdivision.
Project ID: 03-0140
Activity ID: APE20030001
Bush Gardens Subdivision - 34976

Dear Mr. Bowling:

It has been brought to the attention of the Division of Water that your wastewater facility has been installed prior to the issuance of our construction permit. Construction of wastewater facilities without a permit is inconsistent with Kentucky Water Quality Regulation 401 KAR 5:005.

Since the wastewater facility has been constructed without approval, this office cannot issue a construction permit. Therefore, we are returning your plans and specifications. Additionally, your permit application is being referred to the Division's Enforcement Branch for appropriate action.

If you have any questions, please contact John V. Shupp, P.E. at (502) 564-2225, extension 435.

Sincerely,



William B. Gatewood, P.E., Manager
Facilities Construction Branch
Division of Water

WBG/JVS/dp

Enclosure

c: Johnson County Health Department
Hazard Regional Office
Permit Review Branch
Enforcement Branch
Division of Plumbing

Public Comments RE CASE # 2015-00306

Reyes Rockswold

March 21, 2016

ERNIE FLETCHER
GOVERNOR



LAJUANA S. WILCHER
SECRETARY

COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
HAZARD REGIONAL OFFICE
233 BIRCH STREET STE 1 & 2
HAZARD, KY 41701-2179
Phone (606) 435-6022
Fax (606) 435-6025

February 14, 2005

Mr. Dave Bowling
P. O. Box 230
Hagar Hill, KY 41222

Re: Bush Gardens
Routine
KPDES # KY0103853

Dear Mr. Bowling:

A routine inspection was conducted on the wastewater treatment plant serving the above referenced facility on February 14, 2005. As a result of that inspection and a review of the facility files, the following problems were found which need your attention.

- The facility was not operating at the time of the inspection.

If you have any questions concerning the inspection report, please contact this office at (606) 435-6022.

Sincerely

A handwritten signature in cursive script that reads "Denver Lee Pigman".

Denver Lee Pigman, Inspector III
Hazard Regional Office
Division of Water

DLP
Enclosures
C Central Office



Printed on Recycled Paper
An Equal Opportunity

AG – Exhibit 1

Environmental and Public Protection Cabinet
Department for Environmental Protection
Division of Water
Wastewater Inspection Report

AI ID: 34976 **AI Type:** RESIDENCE- Subdivision (nec)

AI Name: Bush Gardens Subd

AI Address: KY 1559

City: Sitka, **State:** Kentucky **Zip:** 41255

County: Johnson **Regional Office:** Hazard Regional Office

Latitude: 37.888111 **Longitude:** -82.822194

Site Contact:

Title: **Phone #:**

Inspection Type: WW Routine - Minor Non-municipal

Activity #: CIN20030002

Incident IDs:

Inspection Start Date: February 7, 2005 **Time:** 12:00 AM **End Date:** February 7, 2005 **Time:** 12:00 AM

Site/Permit ID: KY0103853

Lead DEP Investigator: Lee Pigman

Other DEP Investigators:

External Investigators:

Persons Interviewed:

General Comments: The facility was not operating at the time of the inspection.

Overall Compliance Status: Out of Comp- LOW

Investigation Results

SI: AIO034976

SI: GINS1

Requirement: C/A (2) - Have all required permits been obtained from the Division of Water prior to the construction, modification, or operation of the facility? . [401 KAR 5:005 Section 1]

Compliance Status: No Violations observed

Comment:

Requirement: R/OC (1) - Is the facility being operated under the supervision of a properly certified operator?. [401 KAR 5:010 Section 2(1)]

Compliance Status: Not Evaluated

Comment:

Requirement: R/OM (1) - Is the facility being properly operated and maintained as specified in regulation 5:065? This includes: (a) proper operation and maintenance of all facilities, systems of treatment and control, and related appurtenances which are installed or used by the permittee to achieve compliance with permit conditions;

(b) proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures;

(c) this provision also requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 1(5)]

Compliance Status: Out of Comp-LOW non-recurrent Adm. or O&M

Comment: The facility was not operating at the time of the inspection. The facility is to be properly maintained and operated in accordance with permit conditions.

Requirement: R/OM (2) - Are the disinfection unit(s) maintained and operated properly to allow for compliance with permit conditions? . [401 KAR 5:005 Section 11(1)]

Compliance Status: Out of Comp-LOW non-recurrent Adm. or O&M

Comment: At the time of the inspection no chlorination was being provided.

Requirement: R/DE (1) - Is the effluent causing degradation of the waters of the Commonwealth 401 KAR 5:031 Section 2 (1) (a, b, c, & d). [401 KAR 5:031 Section 2]

Compliance Status: Out of Comp-LOW non-recurrent Adm. or O&M

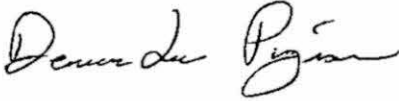
Comment: Failure to meet permit conditions.

Documentation

- Photos taken
- Documents obtained from facility
- Samples taken by outside source
- Request for Submission of Documents

- Record of visual determination of opacity
- Samples taken by DEP
- Regional office instrument readings taken
- Other documentation

Inspector:



Date: 2/7/05

Received By: _____ **Title:** _____ **Date:** _____

Delivery Method:

Certified Mail Number:



ERNE FLETCHER
GOVERNOR

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

TERESA J. HILL
SECRETARY

Division of Water
233 Birch St
Hazard, KY 41701
www.kentucky.gov

April 20, 2007

Certified No. 7000 1670 0008 4231 0762
Return Receipt Requested

Mr. David Bowling
PO Box 230
Hagerhill, KY 41222

Re: Notice of Violation
AI ID: 34976
AI Name: Bush Gardens Subd
Activity ID: ENV20070001
Permit No. KY0103853
Johnson County, KY

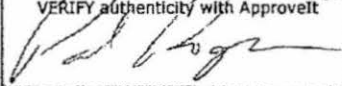
Dear Mr. David Bowling:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Due to the history of this facility, this issue has been referred to the Division of Enforcement. Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 606 435-6022

Sincerely,

E-Signed by Paul Rogers
VERIFY authenticity with ApproveIt



Paul Rogers,
Environmental Inspector
Division of Water

Enclosure

**COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water**

NOTICE OF VIOLATION

To: Mrs. Linda Bowling
PO Box 230
Hagerhill, KY 41222

AI Name: Bush Gardens Subd **AI ID:** 34976 **Activity ID:** ENV20070002
County: Johnson
Enforcement Case ID:
Date(s) Violation(s) Observed: 07/24/2007

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item GINS0000000001Wasterwater/Inspection/Field Staff/WWTP(KPDES Individual):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 1(5)]

Description of Non Compliance:

Skimmer was not operating at the time of inspection. Excessive solids have built up in both the clarifier and disinfection chamber.

The remedial measure(s), and date(s) to be completed by are as follows:

Properly operate and maintain the wastewater treatment facility according to Division of Water regulations and conditions of the KPDES permit. Come into compliance immediately upon receipt of this notice. [401 KAR 5:065 Section 1(5)]

2 Violation Description for Subject Item GINS0000000001Wasterwater/Inspection/Field Staff/WWTP(KPDES Individual):

All wastewater treatment plants shall have a disinfection process which meets the following requirements: An ultraviolet disinfection system designed to treat the anticipated peak hourly flow; a chlorination system with a flow or demand proportional feed system. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average flow, or fifteen (15) minutes based on the peak hourly flow, whichever requires the larger tank size. wastewater treatment plants shall also have a dechlorination system with a flow or demand proportional feed system if necessary to meet the effluent limits; or a chlorination system with a manually controlled feed system and a flow equalization basin designed to eliminate the diurnal flow variations. [401 KAR 5:005 Section 11(1)]

Description of Non Compliance:

Excessive amount of solids have built up inside the disinfection unit.

The remedial measure(s), and date(s) to be completed by are as follows:

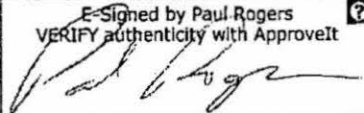
Properly maintain the disinfection unit serving this wastewater treatment facility according to Division of Water regulations and conditions of the KPDES permit. Come into compliance immediately upon receipt of this notice. [401 KAR 5:005 Section 11(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Hazard Regional Office
233 Birch St
Hazard, KY 41701
606 435-6022 (8:00 AM – 4:30 PM)
Paul Rogers, Environmental Inspector

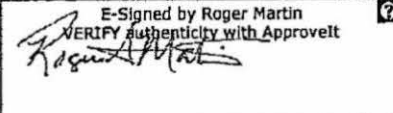
E-Signed by Paul Rogers
VERIFY authenticity with ApproveIt



Issued By:

Paul Rogers, Environmental Inspector
Date: July 24, 2007

E-Signed by Roger Martin
VERIFY authenticity with ApproveIt



Issued By:

Roger Martin, Environmental Control Supervisor
Date: July 24, 2007

How Delivered: Certified Letter

Certified/Registered # 7000 1670 0008 4231 0700

Environmental and Public Protection Cabinet
Department for Environmental Protection
Division of Water
Wastewater Inspection Report

AI ID: 34976 **AI Type:** RESIDENCE- Subdivision (nec)
AI Name: Bush Gardens Subd
AI Address: 1559 Sitka Rd
City: Sitka, **State:** Kentucky **Zip:** 41255
County: Johnson **Regional Office:** Hazard Regional Office
Latitude: 37.888111 **Longitude:** -82.822194
Site Contact: Linda Bowling
Title: Operator **Phone #:** 606 789-6800
Inspection Type: WW Routine-Min Nmun **Activity #:** CIN20070002
Incident IDs:
Inspection Start Date: July 24, 2007 **Time:** 08:30 AM **End Date:** July 24, 2007 **Time:** 09:15 AM
Site/Permit ID: KY0103853

Lead DEP Investigator: Paul Rogers

Other DEP Investigators:

External Investigators:

Persons Interviewed:

General Comments: Routine inspection conducted on 07/24/2007 on the wastewater treatment plant serving the Bush Gardens subdivision on Tobacco Road near Sitka, in Johnson County. The facility now has a properly certified operator in Linda Bowling. The facility was in operation at the time of inspection. Fencing was in place around the facility. Aeration basin had good coloration. Chlorine tablets were present in the chlorine tubes. However, the facility had the following problems at the time of inspection. The skimmer was not operating, allowing an excessive amount of solids to build up in the clarifier. Excessive solids were also observed throughout the disinfection chamber. Weeds were beginning to grow inside the disinfection chamber and inside the aeration basin. A notice of violation will be issued.

Overall Compliance Status: Out of Compliance- NOV

Investigation Results

SI: AIOO34976

SI: GINS1 Routine inspection conducted on 07/24/2007 on the wastewater treatment plant serving the Bush Gardens subdivision on Tobacco Road near Sitka, in Johnson County. The facility now has a properly certified operator in Linda Bowling. The facility was in operation at the time of inspection. Fencing was in place around the facility. Aeration basin had good coloration. Chlorine tablets were present in the chlorine tubes. However, the facility had the following problems at the time of inspection. The skimmer was not operating, allowing an excessive amount of solids to build up in the clarifier. Excessive solids were also observed throughout the disinfection chamber. Weeds were beginning to grow inside the disinfection chamber and inside the aeration basin. A notice of violation will be issued.

Requirement: R/OC (1) - Is the facility being operated under the supervision of a properly certified operator?. [401 KAR 5:010 Section 2(1)]

Compliance Status: No Violations observed

Comment: Linda Bowling is the certified operator for this facility.

Requirement: R/OM (1) - Is the facility being properly operated and maintained as specified in regulation 5:065?

This includes: (a) proper operation and maintenance of all facilities, systems of treatment and control, and related appurtenances which are installed or used by the permittee to achieve compliance with permit conditions;

(b) proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance

procedures; (c) this provision also requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 1(5)]

Compliance Status: Out of Compliance-NOV

Comment: Skimmer was not operating at the time of inspection. Excessived solids have built up in both the clarifier and disinfection chamber.

Requirement: R/OM (2) - Are the disinfection unit(s) maintained and operated properly to allow for compliance with permit conditions? . [401 KAR 5:005 Section 11(1)]

Compliance Status: Out of Compliance-NOV

Comment: Excessive amount of soilds have built up inside the disinfection unit.

Requirement: R/DE (1) - Is the effluent causing degradation of the waters of the Commonwealth 401 KAR 5:031 Section 2 (1) (a, b, c, & d). [401 KAR 5:031 Section 2]

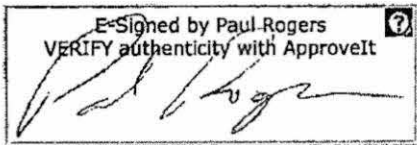
Compliance Status: No Violations observed

Comment: Effluent appeared clear and did not have an objectionable odor.

Documentation

- | | |
|--|--|
| <input checked="" type="checkbox"/> Photos taken | <input type="checkbox"/> Record of visual determination of opacity |
| <input type="checkbox"/> Documents obtained from facility | <input type="checkbox"/> Samples taken by DEP |
| <input type="checkbox"/> Samples taken by outside source | <input type="checkbox"/> Regional office instrument readings taken |
| <input type="checkbox"/> Request for Submission of Documents | <input type="checkbox"/> Other documentation |

Inspector:



Date: 7/24/2007

Received By: _____ **Title:** _____ **Date:** _____

Delivery Method: Certified Letter

Certified Mail Number: 7000 1670 0008 4231 0700



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF ENFORCEMENT
300 FAIR OAKS LANE
FRANKFORT KENTUCKY 40601
www.kentuckv.gov

February 25, 2013

CERTIFIED MAIL No. 7011 3500 0002 9112 6213
Return Receipt Requested

Bush Gardens Subdivision
Linda Bowling
PO Box 248
Hagerhill, KY 41222

Re: Notice of Violation
AI ID: 34976
AI Name: Bush Gardens Subd
Activity ID: ENV20120002
Facility No. KY0103853
Johnson County, KY

Dear Ms. Bowling:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at (502) 564-2150, extension 3230.

Sincerely,

Michelle M. Rice, Enforcement Specialist
Compliance and Operations Branch

MMR/ra

Enclosure

COMMONWEALTH OF KENTUCKY
ENERGY and ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Enforcement

NOTICE OF VIOLATION

To: Bush Gardens Subdivision
Linda Bowling
PO Box 248
Hagerhill, KY 41222

AI Name: Bush Gardens Subd **AI ID:** 34976 **Activity ID:** ENV20120002
County: Johnson
Facility Number: KY0103853
Date(s) Violation(s) Observed: 12/10/2012

This is to advise that you are in violation of the provisions cited below:

- 1 Violation Description for Subject Item AIOO0000034976():
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Failing to comply with 401 KAR 5:065, which cites 40 CFR 122.41(a), by failing to comply with the terms and conditions of KPDES Permit No. KY0103853, Outfall 001-1, for Total Ammonia Nitrogen (TAN) during the 1st Quarter (January - March) and the 3rd Quarter (July - September) 2012. The permitted limits for TAN Concentration during the months of November through April are a monthly average of 10 mg/l and a daily maximum of 15 mg/l. The reported result was a monthly average of 14.50 mg/l for the 1st Quarter 2012. The permitted limits for TAN Concentration during the months of May through October are a monthly average of 4 mg/l and a daily maximum of 6 mg/l. The reported results were a monthly average of 6.98 mg/l and a daily maximum of 6.98 mg/l for the 3rd Quarter 2012.

The remedial measure(s), and date(s) to be completed by are as follows:

Bush Gardens Subdivision shall develop and submit a Corrective Action Plan: **Due 4/1/2013**. This plan shall provide a detailed written explanation of reasons for the violation, what is being done to maintain compliance at the facility, and a proposed schedule specifying when the corrective actions are to be completed. The KDEP will continue to monitor your DMRs. [KRS 224.70-110]

- 2 Violation Description for Subject Item AIOO0000034976():
No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Failing to comply with 401 KAR 5:065, which cites 40 CFR 122.41(a), by failing to comply with the terms and conditions of KPDES Permit No. KY0103853, Outfall 001-1, for Total Suspended Solids (TSS) during the 2nd Quarter (April - June) 2012. The permitted limits for TSS Concentration are a 30-day average of 30 mg/l and a maximum weekly average of 45 mg/l. The reported result was a 30-day average of 37 mg/l.

The remedial measure(s), and date(s) to be completed by are as follows:

Bush Gardens Subdivision shall develop and submit a Corrective Action Plan: **Due 4/1/2013**. This plan shall provide a detailed written explanation of reasons for the violation, what is being done to maintain compliance at the facility, and a proposed schedule specifying when the corrective actions are to be completed. The KDEP will continue to monitor your DMRs. [KRS 224.70-110]

3 Violation Description for Subject Item AIOO0000034976():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Failing to comply with 401 KAR 5:065, which cites 40 CFR 122.41(a), by failing to comply with the terms and conditions of KPDES Permit No. KY0103853, Outfall 001-1, for E. Coli during the 2nd Quarter (April - June) 2012. The permitted limits for E. Coli Concentration are a 30-day geometric mean of 130 per 100ml and a 7-day geometric mean of 240 per 100ml. The reported results were a 30-day geometric mean of 2420 per 100ml and a 7-day geometric mean of 2420 per 100ml.

The remedial measure(s), and date(s) to be completed by are as follows:

Bush Gardens Subdivision shall develop and submit a Corrective Action Plan: **Due 4/1/2013**. This plan shall provide a detailed written explanation of reasons for the violation, what is being done to maintain compliance at the facility, and a proposed schedule specifying when the corrective actions are to be completed. The KDEP will continue to monitor your DMRs. [KRS 224.70-110]

4 Violation Description for Subject Item AIOO0000034976():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Failing to comply with 401 KAR 5:065, which cites 40 CFR 122.41(a), by failing to comply with the terms and conditions of KPDES Permit No. KY0103853, Outfall 001-1, for Biochemical Oxygen Demand (BOD) during the 2nd Quarter (April - June) 2012. The permitted limits for BOD Concentration are a 30-day average of 30 mg/l and a maximum weekly average of 45 mg/l. The reported result was a 30-day average of 42 mg/l.

AI: Bush Gardens Subd -- 34976

The remedial measure(s), and date(s) to be completed by are as follows:

Bush Gardens Subdivision shall develop and submit a Corrective Action Plan: **Due 4/1/2013**. This plan shall provide a detailed written explanation of reasons for the violation, what is being done to maintain compliance at the facility, and a proposed schedule specifying when the corrective actions are to be completed. The KDEP will continue to monitor your DMRs. [KRS 224.70-110]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection
Division of Enforcement
300 Fair Oaks Lane
Frankfort, KY 40601
502-564-2150 extension 3230 (8:15 AM – 4:15 PM)
Michelle Rice, Enforcement Specialist

Issued By:



Michelle M. Rice
Environmental Enforcement Specialist
Compliance and Operations Branch
Date: February 25, 2013

How Delivered: Certified Mail Certified/Registered # 7011 3500 0002 9112 6213



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
233 Birch St
Hazard, KY 417012115
www.kentucky.gov

October 16, 2014

Mr. David L Bowling
Bush Gardens Subd
P.O. Box 248
Hager Hill, Kentucky 41222

RE: Bush Gardens Subd -- 34976
Permit No.: KY0103853
Johnson County, Kentucky
Activity ID: CIN20140003

Dear Mr. David L Bowling :

Attached for your information and records is a copy of the WW CEI-Minor Mun performed at Bush Gardens Subd on October 15, 2014.

The plant was found to be in satisfactory condition at the time of inspection. The plant did have two permit violations during the period reviewed. During the second quarter the plant was out of compliance on TSS and ammonia. All laboratory analyses required to demonstrate compliance with the conditions of this permit shall be performed by a Division of Water (DOW) certified general wastewater laboratory and field-only laboratory. Compliance with this requirement shall commence on January 1, 2015 for analyses performed by a general wastewater laboratory and January 1, 2016 for a field-only wastewater laboratories. The deadline for submitting a completed application is October 1, 2014 for a general wastewater laboratory and October 1, 2015 for a field-only wastewater laboratory.

If you have any questions or comments concerning this inspection, please contact the Hazard Regional Office at: (606) 435-6022.

Sincerely,

Lee Pigman
Environmental Inspector
Hazard Regional Office
Division of Water

DLP

Energy and Environment Cabinet
Department for Environmental Protection
Division of Water
Wastewater Inspection Report

AI ID: 34976 **AI Type:** RESIDENCE- Subdivision (nec)
AI Name: Bush Gardens Subd
AI Address: 1559 Sitka Rd
City: Sitka, **State:** Kentucky **Zip:** 41255
County: Johnson **Regional Office:** Hazard Regional Office
Latitude: 37.888111 **Longitude:** -82.822194
Site Contact: Dave & Linda Bowling
Title: Owner **Phone #:**
Inspection Type: WW CEI-Minor Mun **Activity #:** CIN20140003
Incident IDs:
Inspection Start Date: October 15, 2014 **Time:** 01:00 PM **End Date:** October 15, 2014 **Time:** 01:45 PM
Site/Permit ID: KY0103853

Lead DEP Investigator: Lee Pigman
Other DEP Investigators: David Slone; Ronnie Shell
External Investigators:
Persons Interviewed:

General Comments: The plant receives very little flow. The clarifier and the effluent were murky and solids appeared to be passing through the chlorine contact unit. The color of the aeration unit was light but did not appear septic. The DMR review indicated the plant had two permit violations during last year. The facility was out of compliance on BOD and TSS during the second quarter of 2014.
Overall Compliance Status: Out of Comp- Viol documented

Investigation Results

SI: AIOO34976

SI Description:

Inspector Comment:

Requirement: Does the facility hold the proper KPDES permit?. [401 KAR 5:055 Section 2]

Compliance Status: C-No Violations observed

Comment: Permit is valid thru Dec 31 2017

Requirement: Have all required permits been obtained from the Division of Water prior to the construction or modification of the facility? [401 KAR 5:005 Section 1]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the facility being operated under the supervision of a properly certified operator? [401 KAR 5:010 Section 1]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the collection system under the primary responsibility of an individual who holds an active collection system certification at the level appropriate for the size of the treatment facility receiving the waste? [401 KAR 5:010 Section 2]

Compliance Status: N-Not Applicable

Comment: The collection system does not require a certified operator due to the size of the system.

Requirement: Does the permittee retain records of all monitoring information including: the date, exact place, and time of sampling or measurements; the name of the individual who performed the sampling or measurements; the dates and times analyses were performed; the name of the individual who performed the analyses; the analytical techniques

or methods used; the results of the analyses; all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by this permit; and records of all data used to complete the application for this permit, for the period required by the cabinet and at a minimum of at least three (3) years from the date of the sample, measurement, report, or application? [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the facility required to prepare and implement a groundwater protection plan (GPP) as specified in regulation 401 KAR 5:037? If yes, does the facility have a GPP? [401 KAR 5:037 Section 3]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the permittee reporting monitoring results to the cabinet at the intervals specified in the permit? [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Are the monitoring results reported to the cabinet on a Discharge Monitoring Report (DMR)? [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, are the results of this monitoring included in the calculation and reporting of the data submitted in the DMR? [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Are the calculations for all limitations which require averaging of measurements utilizing an arithmetic mean unless otherwise specified by the Cabinet in the permit? [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the permittee in compliance for the reporting of spills, bypasses, and non-compliance according 401 KAR 5:065 Section 2(1)

Compliance Status: C-No Violations observed

Comment:

Requirement: Did the facility notify the Division of Water by the most rapid means available whenever, by reason of emergency or accident, a spill or discharge occurs which results in pollution of the waters of the Commonwealth? [401 KAR 5:015 Section 2]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the facility being properly operated and maintained as specified in regulation 5:065? This includes:

(a) proper operation and maintenance of all facilities, systems of treatment and control, and related appurtenances which are installed or used by the permittee to achieve compliance with permit conditions;

(b) proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures;

(c) this provision also requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Are the disinfection unit(s) maintained and operated properly to allow for compliance with permit conditions? [401 KAR 5:005 Section 11]

Compliance Status: C-No Violations observed

Comment:

Requirement: Does the flow measuring device measure all flow received at the WWTP? For large wastewater facilities (average daily design capacity >50, 000 gpd), is flow measured by an indicating, recording, and totalizing flow measuring device? [401 KAR 5:005 Section 12]

Compliance Status: N-Not Applicable

Comment:

Requirement: Is a source of water provided for cleanup? If potable water is used, is a backflow preventor installed to

protect the water supply? [401 KAR 5:005 Section 10(6)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Has fencing with a lockable gate been installed around the wastewater treatment plant? [401 KAR 5:005 Section 10(7)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Has an all-weather access road been installed to allow access to the wastewater treatment plant? Is the road adequately maintained to allow access to the facility for operation and maintenance activity? [401 KAR 5:005 Section 10(8)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Sewage sludge. Did the facility meet the requirements governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 40 CFR Part 503? [401 KAR 5:065 Section 2(4)]

Compliance Status: N-Not Applicable

Comment:

Requirement: Is the effluent in compliance with KPDES permit limitations? Do the Discharge Monitoring Reports indicate KPDES permit violations? [401 KAR 5:065 Section 2(1)]. [401 KAR 5:065 Section 2(1)]

Compliance Status: D-Out of Compliance-Violations Documented

Comment: The facility has failed to comply with the effluent limitations contained in the permit. The facility was out of compliance on BOD and TSS during the second quarter of 2014.

Requirement: Are samples taken in compliance with the monitoring requirements and taken at the following location(s): nearest accessible point after final treatment, but prior to actual discharge or mixing with receiving waters? Are the samples representative of plant flow? Are flow proportioned samples obtained when required by the KPDES permit? Are grab samples collected according to the KPDES permit requirements? Are composite samples collected and analyzed according to the KPDES permit conditions? Are samples collected according to KPDES permit requirements? [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Are the facility sample collection procedures adequate? Are the samples collected in proper containers, preserved, and refrigerated properly? Are all samples analyzed within the allowed holding times? [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the facility sampling in accordance with sampling requirements specified for biomonitoring in the KPDES permit conditions? [401 KAR 5:065 Section 2(1)]

Compliance Status: C-No Violations observed

Comment:

Requirement: Have pollutants entered the waters of the Commonwealth? [KRS 224.70-110]

Compliance Status: C-No Violations observed

Comment:

Requirement: Have surface waters been aesthetically or otherwise degraded? [401 KAR 10:031 Section 2]

Compliance Status: C-No Violations observed

Comment:

Requirement: Is the permittee in compliance with all permit conditions? [401 KAR 5:065 Section 2]

Compliance Status: C-No Violations observed

Comment:

Documentation

- | | |
|--|--|
| <input type="checkbox"/> Photos taken | <input type="checkbox"/> Record of visual determination of opacity |
| <input type="checkbox"/> Documents obtained from facility | <input type="checkbox"/> Samples taken by DEP |
| <input type="checkbox"/> Samples taken by outside source | <input type="checkbox"/> Regional office instrument readings taken |
| <input type="checkbox"/> Request for Submission of Documents | <input type="checkbox"/> Other documentation |

Inspector:

Donna Lee Pignon

Date: 11/14/14

Received By: _____ Title: _____ Date: _____

Delivery Method:

Certified Mail Number:

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
233 Birch St
Hazard, KY 41701-2115
www.kentucky.gov

June 25, 2015

Certified No. 7009 2820 0003 6159 0189
Return Receipt Requested

Bush Gardens Subd
Attn: Linda Bowling
PO Box 248
Hagerhill, KY 41222

Re: Notice of Violation
AI ID: 34976
AI Name: Bush Gardens Subd
Activity ID: ENV20150001
Permit No. KY0103853
Johnson County, KY

Dear Bush Gardens Subd:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

This NOV is being issued as a result of an inspection conducted on 04/13/2015.

All laboratory analyses required to demonstrate compliance with the conditions of this permit shall be performed by a Division of Water (DOW) certified general wastewater laboratory and field-only laboratory. Compliance with this requirement shall commence on January 1, 2015 for analyses performed by a general wastewater laboratory and January 1, 2016 for a field-only wastewater laboratories. The deadline for submitting a completed application is October 1, 2014 for a general wastewater laboratory and October 1, 2015 for a field-only wastewater laboratory.

For information or questions regarding the certification process, contact Frank Hall at 502-564-3410 or email at DOWLabCertification@ky.gov. Required documents can be found at <http://water.ky.gov/permitting/Pages/WasteWaterCertification.aspx>.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 606-435-6022.

Sincerely,

A handwritten signature in black ink that reads "Joshua George".

Joshua George,

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Bush Gardens Subd
Attn: Linda Bowling
PO Box 248
Hagerhill, KY 41222

AI Name: Bush Gardens Subd **AI ID:** 34976 **Activity ID:** ENV20150001
Discovery ID: CIN20150001 **County:** Johnson
Enforcement Case ID:
Date(s) Violation(s) Observed: 04/13/2015

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item GINS0000000001 Wasterwater/Inspection/Field Staff/WWTP(KPDES Individual):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)] As in [40 C.F.R. 122.41(e)].

Description of Non Compliance:

The facility is not being properly operated and maintained as required. At the time of the inspection the facility was operating. The aeration basin was aerating. The basin appeared light in color and appeared to be underloaded. The clarifier was being aerated due to an air line leak leading to the skimmer. The clarifier was not able to function properly due to the mixing caused by the air leak. Solids were settling out in the chlorine contact chamber. The discharge pipe for the plant has been broken. The plant now discharges onto the ground near the plant. The effluent is ponding and causing the area to stand in water. Nearby residents spoke with us during the inspection and expressed concerns of odor and disease transmission through mosquitoes and insects. The KPDES permit indicates the facility should discharge directly into Tom's Creek. The effluent pipe should be repaired to alleviate these issues.

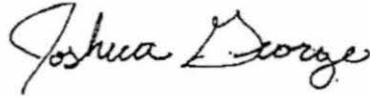
The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. The facility must be operated so that the effluent meets all KPDES permit limits. The effluent shall be discharged to the tributary named in the permit and should not be discharged onto the ground. With proper approval(s) from the Division of Water, upgrade/update the facility in order to meet the regulatory requirements and facility permit conditions. By July 31, 2015, the permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and/or your company to an immediate referral to the Division of Enforcement. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Hazard Regional Office
233 Birch St
Hazard, KY 41701-2115
606-435-6022 (8:00 AM – 4:30 PM)
Joshua George, Environmental Inspector



Issued By:

Joshua George, Environmental Inspector
Date: June 25, 2015



Issued By:

Damon White, Environmental Control Supervisor
Date: June 25, 2015

How Delivered: Certified Mail Certified/Registered # 7009 2820 0003 6159 0189

Energy and Environment Cabinet
Department for Environmental Protection
Division of Water
Wastewater Inspection Report

AI ID: 34976 **AI Type:** RESIDENCE- Subdivision (nec)
AI Name: Bush Gardens Subd
AI Address: 1559 Sitka Rd
City: Sitka, **State:** Kentucky **Zip:** 41255
County: Johnson **Regional Office:** Hazard Regional Office
Latitude: 37.888111 **Longitude:** -82.822194
Site Contact: Mike Conley
Title: Operator **Phone #:**
Inspection Type: WW Routine-Min Nmun **Activity #:** CIN20150001
Incident IDs:
Inspection Start Date: April 13, 2015 **Time:** 10:45 AM **End Date:** April 13, 2015 **Time:** 11:30 AM
Site/Permit ID: KY0103853

Lead DEP Investigator: Joshua George

Other DEP Investigators:

External Investigators:

Persons Interviewed: Mike Conley

General Comments: An inspection was conducted at the Bush Gardens WWTP. The facility is a 0.008 MGD extended aeration package treatment plant. Mike Conley, the certified operator, was not present at the time of the inspection. At the time of the inspection the facility was operating. The aeration basin was aerating. The basin appeared light in color and appeared to be underloaded. The clarifier was being aerated due to an air line leak leading to the skimmer. The clarifier was not able to function properly due to the mixing caused by the air leak. Solids were settling out in the chlorine contact chamber. Chlorine and de-chlorination tablets were present in the system. The discharge pipe for the plant has been broken. The plant now discharges onto the ground near the plant. The effluent is ponding and causing the area to stand in water. Nearby residents spoke with us during the inspection and expressed concerns of odor and disease transmission through mosquitoes and insects. The KPDES permit indicates the facility should discharge directly into Tom's Creek. The effluent pipe should be repaired to alleviate these issues. No DMR excursions were noted for the past two quarters. The KPDES permit was reviewed and is valid through December 31, 2017.

Overall Compliance Status: Out of Compliance- NOV

Investigation Results

SI: AIOO34976

SI Description:

Inspector Comment:

SI: GINS1 KPDES Individual

SI Description: Wasterwater/Inspection/Field Staff/WWTP

Inspector Comment:

Requirement: Does the facility hold the proper KPDES permit?. [401 KAR 5:055 Section 2]

Compliance Status: C-No Violations observed

Comment: The KPDES permit was reviewed and is valid through December 31, 2017.

Requirement: Is the facility being operated under the supervision of a properly certified operator? [401 KAR 5:010 Section 1]. [401 KAR 5:010 Section 1]

Compliance Status: C-No Violations observed

Comment: Mike Conley is the certified Class III operator, #12880.

Requirement: Is the collection system under the primary responsibility of an individual who holds an active collection system certification at the level appropriate for the size of the treatment facility receiving the waste? [401 KAR 5:010 Section 2]. [401 KAR 5:010 Section 2]

Compliance Status: N-Not Applicable

Comment:

Requirement: Is the facility being properly operated and maintained as specified in regulation 5:065? This includes:

(a) proper operation and maintenance of all facilities, systems of treatment and control, and related appurtenances which are installed or used by the permittee to achieve compliance with permit conditions;

(b) proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures;

(c) this provision also requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]. [401 KAR 5:065 Section 2(1)]

Compliance Status: V-Out of Compliance-NOV

Comment: The facility is not being properly operated and maintained as required. At the time of the inspection the facility was operating. The aeration basin was aerating. The basin appeared light in color and appeared to be underloaded. The clarifier was being aerated due to an air line leak leading to the skimmer. The clarifier was not able to function properly due to the mixing caused by the air leak. Solids were settling out in the chlorine contact chamber. The discharge pipe for the plant has been broken. The plant now discharges onto the ground near the plant. The effluent is ponding and causing the area to stand in water. Nearby residents spoke with us during the inspection and expressed concerns of odor and disease transmission through mosquitoes and insects. The KPDES permit indicates the facility should discharge directly into Tom's Creek. The effluent pipe should be repaired to alleviate these issues.

Requirement: Are the disinfection unit(s) maintained and operated properly to allow for compliance with permit conditions? [401 KAR 5:005 Section 11]. [401 KAR 5:005 Section 11]

Compliance Status: C-No Violations observed

Comment: Solids were settling out in the chlorine contact chamber. Chlorine and de-chlorination tablets were present in the system.

Requirement: Have pollutants entered the waters of the Commonwealth? [KRS 224.70-110]. [KRS 224.70-110]

Compliance Status: C-No Violations observed

Comment: There was no evidence that pollutants had entered the receiving stream.

Requirement: Have surface waters been aesthetically or otherwise degraded? [401 KAR 10:031 Section 2]. [401 KAR 10:031 Section 2]

Compliance Status: C-No Violations observed

Comment: No visible degradation was observed in the receiving stream. The plant effluent is ponding around the plant.

Documentation

- | | |
|--|--|
| <input checked="" type="checkbox"/> Photos taken | <input type="checkbox"/> Record of visual determination of opacity |
| <input type="checkbox"/> Documents obtained from facility | <input type="checkbox"/> Samples taken by DEP |
| <input type="checkbox"/> Samples taken by outside source | <input type="checkbox"/> Regional office instrument readings taken |
| <input type="checkbox"/> Request for Submission of Documents | <input type="checkbox"/> Other documentation |

Inspector:

Joshua George

Date:

06/24/2015

Received By: _____ **Title:** _____ **Date:** _____

Delivery Method: Certified Mail

Certified Mail Number: 7009 2820 0003 6159 0189

MATTHEW G. BEVIN
GOVERNOR



CHARLES G. SNAVELY
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
233 Birch St
Hazard, KY 41701-2115
www.kentucky.gov

January 7, 2016

Certified No. 7009 2820 00036151 7186
Return Receipt Requested

Bush Gardens Subd
Attn: Linda Bowling
PO Box 248
Hagerhill, KY 41222

Re: Notice of Violation
AI ID: 34976
AI Name: Bush Gardens Subd
Activity ID: ENV20150002
Permit No. KY0103853
Johnson County, KY

Dear Bush Gardens Subd:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

This NOV is being issued as a result of an inspection conducted on September 28, 2015.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 606-435-6022.

Sincerely,

E-Signed by Joshua George
VERIFY authenticity with ApproveIt
Joshua George

Joshua George,
Environmental Inspector
Division of Water

Enclosure

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Bush Gardens Subd
Attn: Linda Bowling
PO Box 248
Hagerhill, KY 41222

AI Name: Bush Gardens Subd **AI ID:** 34976 **Activity ID:** ENV20150002
Discovery ID: CIN20150002 **County:** Johnson
Enforcement Case ID:
Date(s) Violation(s) Observed: 09/28/2015

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item GINS000000001Wasterwater/Inspection/Field Staff/WWTP(KPDES Individual):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)] As in [40 C.F.R. 122.41(e)].

Description of Non Compliance:

The facility is not being properly operated and maintained as required. At the time of the inspection the facility was operating. The aeration basin was aerating. Previous flooding had damaged the facility requiring repairs to the plumbing. Some of the wiring used at the plant appears questionable. It appears that wiring intended for interior use may have been used. Some connections are exposed and could potentially pose a safety hazard. The aeration basin was aerating. The basin appeared grey in color and appeared to be underloaded. The clarifier was slightly murky with some solids present. Chlorine and de-chlorination tablets were present. The discharge pipe for the plant has been broken. The plant now discharges onto the ground near the plant. The effluent is ponding and causing the area to stand in water. Nearby residents spoke with us during the inspection and expressed concerns of odor and disease transmission through mosquitoes and insects. The KPDES permit indicates the facility should discharge directly into Tom's Creek. The effluent pipe should be repaired to alleviate these issues.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. With proper approval(s) from the Division of Water, upgrade/update the facility in order to meet the regulatory requirements and facility permit conditions. This matter is being referred to the Division of Enforcement due to numerous unresolved violations. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Hazard Regional Office
233 Birch St
Hazard, KY 41701-2115
606-435-6022 (8:00 AM – 4:30 PM)
Joshua George, Environmental Inspector

E-Signed by Joshua_George
VERIFY authenticity with ApproveIT
Joshua George

Issued By:

Joshua George, Environmental Inspector
Date: January 7, 2016

E-Signed by Damon White
VERIFY authenticity with ApproveIT
Damon D White

Issued By:

Damon White, Environmental Control Supervisor
Date: January 7, 2016

How Delivered: Certified Mail Certified/Registered # 7009 2820 0003 6151 7186

Energy and Environment Cabinet
Department for Environmental Protection
Division of Water
Wastewater Inspection Report

AI ID: 34976 **AI Type:** RESIDENCE- Subdivision (nec)
AI Name: Bush Gardens Subd
AI Address: 1559 Sitka Rd
City: Sitka, **State:** Kentucky **Zip:** 41255
County: Johnson **Regional Office:** Hazard Regional Office
Latitude: 37.888111 **Longitude:** -82.822194
Site Contact:
Title: **Phone #:**
Inspection Type: WW Routine-Min Nmun **Activity #:** CIN20160001
Incident IDs:
Inspection Start Date: February 23, 2016 **Time:** 09:45 AM **End Date:** February 23, 2016 **Time:** 10:15 AM
Site/Permit ID: KY0103853

Lead DEP Investigator: Jerry Back
Other DEP Investigators: Lee Pigman
External Investigators:
Persons Interviewed:

General Comments: An inspection was conducted at the Bush Gardens WWTP. Mike Conley, the certified operator, was not present at the time of the inspection. At the time of the inspection the facility was not operating. The aeration and classifier basin were covered with sludge. Chlorine tablets were present in the system. The discharge pipe for the plant has been broken. The plant now discharges onto the ground near the plant. The effluent is ponding and causing the area to stand in water. The KPDES permit indicates the facility should discharge directly into Tom's Creek. The effluent pipe should be repaired to alleviate these issues. Please note the current KPDES permit requires the DMR's to be submitted monthly no later than the 28th day of the following month. The KPDES permit was reviewed and is valid through December 31, 2017.

Overall Compliance Status: Out of Compliance- NOV

Investigation Results

SI: AIOO34976

SI Description:

Inspector Comment:

Requirement: Does the facility hold the proper KPDES permit?. [401 KAR 5:055 Section 2]

Compliance Status: C-No Violations observed

Comment: The current permit is valid thru December 31, 2017

Requirement: Is the facility being operated under the supervision of a properly certified operator? [401 KAR 5:010 Section 1]. [401 KAR 5:010 Section 1]

Compliance Status: C-No Violations observed

Comment: Mike Conely is the certified operator.

Requirement: Is the collection system under the primary responsibility of an individual who holds an active collection system certification at the level appropriate for the size of the treatment facility receiving the waste? [401 KAR 5:010 Section 2]. [401 KAR 5:010 Section 2]

Compliance Status: N-Not Applicable

Comment:

Requirement: Is the facility being properly operated and maintained as specified in regulation 5:065? This includes:
(a) proper operation and maintenance of all facilities, systems of treatment and control, and related appurtenances which are installed or used by the permittee to achieve compliance with permit conditions;
(b) proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures;
(c) this provision also requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]. [401 KAR 5:065 Section 2(1)]

Compliance Status: V-Out of Compliance-NOV

Comment: The facility is not being properly operated and maintained as required. An inspection was conducted at the Bush Gardens WWTP. Mike Conley, the certified operator, was not present at the time of the inspection. At the time of the inspection the facility was not operating. The aeration and classifier basin were covered with sludge. Chlorine tablets were present in the system. The discharge pipe for the plant has been broken. The plant now discharges onto the ground near the plant. The effluent is ponding and causing the area to stand in water. The KPDES permit indicates the facility should discharge directly into Tom's Creek. The effluent pipe should be repaired to alleviate these issues.

Requirement: Are the disinfection unit(s) maintained and operated properly to allow for compliance with permit conditions? [401 KAR 5:005 Section 11]. [401 KAR 5:005 Section 11]

Compliance Status: C-No Violations observed

Comment: Chlorine tablets were present in the system.

Requirement: Have pollutants entered the waters of the Commonwealth? [KRS 224.70-110]. [KRS 224.70-110]

Compliance Status: C-No Violations observed

Comment: There was no evidence that pollutants had entered the stream.

Requirement: Have surface waters been aesthetically or otherwise degraded? [401 KAR 10:031 Section 2]. [401 KAR 10:031 Section 2]

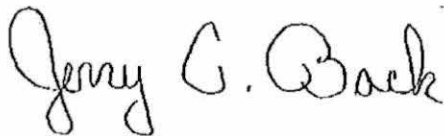
Compliance Status: C-No Violations observed

Comment: There was no evidence surface water had been degraded. The plant effluent is ponding around the plant.

Documentation

- | | |
|--|--|
| <input type="checkbox"/> Photos taken | <input type="checkbox"/> Record of visual determination of opacity |
| <input type="checkbox"/> Documents obtained from facility | <input type="checkbox"/> Samples taken by DEP |
| <input type="checkbox"/> Samples taken by outside source | <input type="checkbox"/> Regional office instrument readings taken |
| <input type="checkbox"/> Request for Submission of Documents | <input type="checkbox"/> Other documentation |

Inspector:



Date:

02/23/2016

Received By: _____ **Title:** _____ **Date:** _____

Delivery Method: Certified Mail

Certified Mail Number: 7009 2820 0003 6159 0387



AG – Exhibit 2









COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE CONDITION AND)
MANAGEMENT OF APPALACHIAN WASTE) CASE NO. 2006-00569
CONTROL, INC.)

ORDER

The Environmental and Public Protection Cabinet ("EPPC") has applied to the Commission for a determination that Appalachian Waste Control, Inc. ("Appalachian Waste Control") has abandoned certain sewage collection and treatment facilities in Johnson County, Kentucky. Finding that such abandonment has occurred, we direct the Commission's General Counsel to initiate proceedings for the appointment of a receiver to operate these facilities.

Appalachian Waste Control is a corporation that was organized pursuant to KRS Chapter 271A.¹ It owns sewage collection and treatment facilities ("the Sewage Treatment Facilities") that are located in the Richmond Hills Estate,² Paradise Valley,³ Preston Estates,⁴ Neil Price,⁵ and Burkeshire Development Subdivisions of Johnson

¹ See <http://apps.sos.ky.gov/business/obdb/showentity.aspx?id=0239201&ct=09&cs=99999> (last visited Dec. 13, 2007).

² Case No. 10141, The Application of Appalachian Waste Control, Inc. for Authority to Acquire and Operate the Sewage Treatment Plant Located at the Richmond Hills Estate Subdivision, Johnson County, Kentucky and For Approval of Rates Therefor (Ky. PSC July 9, 1991).

³ Case No. 1989-00064, The Application For Transfer of Paradise Valley Sewage Treatment Plant, Inc. to Appalachian Waste Control, Inc. (Ky. PSC Sep. 19, 1989). Paradise Valley Subdivision is also known as Paradise Village Subdivision. The plant has also been referred to as the Paradise Village Sewage Treatment Plant.

⁴ Case No. 1992-00551, The Application of Woodland-Preston Enterprises, Inc. for Approval to Transfer Appalachian Waste Control, Inc. (Ky. PSC Apr. 8, 1993).

⁵ Case No. 1993-00016, Application of Price Estates For Approval to Transfer to Appalachian Waste Control (Ky. PSC Mar. 15, 1989).

County, Kentucky and that serve a total of approximately 65 customers for compensation. It is a utility subject to Commission jurisdiction.⁶

According to the records of the Office of the Kentucky Secretary of State,⁷ Keith Fairchild and David Bowling incorporated Appalachian Waste Control on January 25, 1988. Mr. Fairchild and Mr. Bowling are listed as its only directors. Mr. Fairchild is listed as Appalachian Waste Control's registered agent for service of process. On or about November 3, 1998, the Kentucky Secretary of State administratively dissolved Appalachian Waste Control for failing to file its annual report.⁸

On or before September 26, 2002, Appalachian Waste Control attempted to transfer to Lance Bowling d/b/a East Kentucky Waste Control without prior Commission approval its ownership of the Sewage Treatment Facilities. The record does not disclose the specific date of this attempt. When Commission Staff inspected the Sewage Treatment Facilities on September 26, 2002, Mr. Bowling represented that he had acquired the Sewage Treatment Facilities.⁹ In February 2002, he acquired a National Pollutant Discharge Elimination System water discharge permit from the

⁶ KRS 278.010(3)(f).

⁷ See supra note 1.

⁸ Certificate of Dissolution Record No. 0239201 (found at <http://apps.sos.ky.gov/corpscans/01/0239201-09-99999-19981103-ADS-736790-PU.pdf> (last visited Dec. 13, 2007)). Administrative dissolution of a corporation does not terminate a corporation's existence, but limits the corporation's ability to continue to conduct business. See KRS 271B.210.

⁹ See Case No. 2002-00396, Gary K. Fairchild; Appalachian Waste Control, Inc.; and Lance Bowling d/b/a East Kentucky Waste Control: Alleged Failure to Comply With 807 KAR 5:071, Section 7(1); KRS 278.020(5) and (6); KRS 278.150(2); and KRS 278.160(2) (Ky.PSC Jan. 31, 2007) at 5.

Natural Resources and Environmental Protection Cabinet in the name of East Kentucky Waste Control for at least one of the Sewage Treatment Facilities.¹⁰

On January 13, 2003, finding prima facie evidence that an unauthorized transfer of control and ownership of the Sewage Treatment Facilities had occurred, the Commission initiated an investigation into, inter alia, the ownership of the Sewage Treatment Facilities.¹¹ On January 30, 2007, the Commission found that an unauthorized transfer of ownership of the Sewage Treatment Facilities had occurred and that this transfer was void as a matter of law.¹²

Lance Bowling's operation of the Sewage Treatment Facilities had been problematic.¹³ In December 2006, the Sewage Treatment Facilities were the subject of a joint investigation by the EPPC and the Kentucky Bureau of Investigation into the illegal dumping of raw untreated sewage into the Big Sandy River.¹⁴

As a result of this investigation, EPPC sought a temporary injunction and the appointment of a temporary receiver to operate the Sewage Treatment Facilities. On December 21, 2006, the Franklin Circuit Court entered an Order appointing Squire N. Williams III as a special master commissioner and temporary receiver "to collect rates for the five (5) above-captioned plants and to pay the operator that will be appointed by

¹⁰ See Letter from Keith Fairchild to KPDES Branch, Kentucky Division of Water (Feb. 13, 2002); Letter from R. Bruce Scott, Manager, KPDES Branch, Kentucky Division of Water, to Lance Bowling (Feb. 27, 2002).

¹¹ Case No. 2002-00396, Order of January 13, 2003.

¹² Case No. 2002-00396, Order of January 30, 2007 at 9.

¹³ See, e.g., Case No. 2002-00396, Order of January 30, 2007, at 9 - 11.

¹⁴ See Press Release, Office of Attorney General, Attorney General Greg Stumbo Announces Arrest Following Overnight Raid of Septic Company Caught Dumping Waste into Big Sandy River (Dec. 20, 2006) (found at <http://ag.ky.gov/news/bigandyriversewage.htm>) (last visited Dec. 13, 2007). See also State Files to Take Over Five Wastewater Plants, Lexington Herald-Leader, Dec. 21, 2006, 2006 WLNR 22277103.

the Cabinet.”¹⁵ It further directed EPPC to “petition the Public Service Commission to take the necessary steps to appoint a permanent receiver to take over” the Sewage Treatment Facilities.

On December 21, 2006, Commission Staff inspected the Sewage Treatment Facilities. In its report of this inspection Commission Staff reported that all biological activity essential to the proper operation of a sewage treatment plant had ceased in 4 of the 5 facilities, that all required “extensive maintenance,” and that none were being operated in accordance with accepted good engineering practice.¹⁶

On December 28, 2006, EPPC submitted a written request that the Commission initiate a proceeding pursuant KRS 278.021 to consider the appointment of a receiver on a permanent basis. Expressing a concern that the Sewage Treatment Facilities were not properly treating waste affluent, EPPC stated:

The Environmental and Public Protection Cabinet is very concerned with the health and welfare of the individuals residing in the following subdivisions in Johnson County which are served by the package plants at issue: (1) Neal Price, (2) Preston Estates, (3) Burkshire, (4) Richmond Hills, and (5) Paradise Village. The Cabinet is currently going through its database of licensed operators in and around Johnson County and speaking with the larger waste water treatment plants in order to locate an operator for the temporary receiver, Special Master Commissioner, Squire N. Williams, III. The Cabinet respectfully requests that you initiate proceedings pursuant to KRS 278.021 in

¹⁵ See Environmental and Public Protection Cabinet v. Jeffrey Lance Bowling d/b/a East Kentucky Waste Control, d/b/a Paradise Valley Sewage Plant (KPDES No. KY0076686), d/b/a Preston Estates Sewage Plant (KYDES No. KY0080047), d/b/a Richmond Hills Estates Sewage Plant (KYDES No. KY0093823), d/b/a Neal Price Sewage Plant (KYDES No. KY0097225), d/b/a Burkshire Development Sewage Plant (KYDES No. KY0102687), Civil Action No. 05-CI-1007 (Franklin Cir. Ct. Dec. 21, 2006).

¹⁶ See Case No. 2006-00569, Order of January 31, 2007, App. B.

order to facilitate having a receiver appointed on a permanent basis as soon as possible.¹⁷

On January 31, 2007, the Commission initiated this proceeding to investigate the current condition of ownership and management of the Sewage Treatment Facilities with a special focus on whether these facilities had been abandoned. We further directed that the following persons be made parties to this proceeding: Appalachian Waste Control; Lance Bowling; EPPC; Squire N. Williams III, in his capacity as Special Master Commissioner; and the Attorney General.¹⁸

On April 23, 2007, Keith Fairchild, submitted a sworn stipulation to the Commission on behalf of himself and Appalachian Waste Control in which he stipulated that on September 26, 2002, Appalachian Waste Control had transferred control of the Sewage Treatment Facilities without prior Commission consent and approval. He further stipulated that after September 26, 2002, neither he nor Appalachian Waste Control had maintained or operated the Sewage Treatment Facilities and that to the extent that he and Appalachian Waste Control had any interest in those facilities, they had abandoned such interest.

On May 15, 2007, the Commission held an evidentiary hearing in this proceeding. The Attorney General, EPPC and Mr. Williams appeared. Neither Lance Bowling, Mr. Fairchild, nor any representative for Appalachian Waste Control appeared.

¹⁷ Letter from David Morgan, Director, Division of Water, Department of Environmental Protection, Environmental and Public Protection Cabinet, to Beth O'Donnell, Executive Director, Public Service Commission (Dec. 22, 2006).

¹⁸ The Commission directed all named parties to provide a brief and concise statement setting forth all issues that the Commission should consider and all information related to the ownership and operation of the Sewage Treatment Facilities. Only EPPC responded to this directive.

KRS 278.021(1) provides:

If the commission determines, after notice and hearing, that any utility is abandoned, the commission may petition the Franklin Circuit Court for an order attaching the assets of the utility and placing it under the sole control and responsibility of a receiver.

Based upon the evidence of record, the Commission finds that Appalachian Waste Control has abandoned the Sewage Treatment Facilities. Appalachian Waste Control, through its only recognized official, has disclaimed all interest in the facilities and has not taken any affirmative actions to operate or maintain the facilities since September 2002. Mr. Bowling, the putative owner of the Sewage Treatment Facilities, has also disclaimed any ownership.¹⁹

The appointment of a receiver to operate Appalachian Waste Control and the Sewage Treatment Facilities is in the best interest of the public. The appointment of a receiver will allow for the continued operation of the Sewage Treatment Facilities and provide the legal framework to transfer the utility's assets to a party that is more financially and technically competent to provide utility service.

IT IS THEREFORE ORDERED that:

1. The sewage collection and treatment facilities that Appalachian Waste Control owns are declared abandoned.
2. The Commission's Executive Director shall take all actions necessary to locate persons who are qualified and willing to serve as receiver of these facilities.

¹⁹ Transcript of Hearing at 13. Bowling had previously sought to transfer any interest that he had in the plant to Larry Stambaugh. Case No. 2005-00123, The Joint Petition of Keith Fairchild, Appalachian Waste Control, Inc., Lance Bowling, East Kentucky Waste Control (DBA) and Larry Stambaugh and The Purchase of Certain Residential Sewer Lease Currently Operated by Appalachian Waste Control, Inc., Joint Petition, Exhibit A (filed Mar. 23, 2005). Mr. Stambaugh subsequently withdrew his petition. See Joint Petition of Keith Fairchild et al., Case No. 2005-00123 (Nov. 3, 2005).

3. The Commission's General Counsel shall take all actions necessary to obtain, pursuant to KRS 278.021(1), an order from Franklin Circuit Court attaching the assets of Appalachian Waste Control and placing them under the sole control and responsibility of a receiver.

4. The Executive Director shall serve by mail a copy of this Order on all parties of record and shall cause notice of the issuance of this Order to be published in a newspaper of general circulation in the area in which Appalachian Waste Control provides sewage collection and treatment services.

Done at Frankfort, Kentucky, this 18th day of December, 2007.

By the Commission

ATTEST:



Executive Director

MENU

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- [Employment](#)
- [Family & Health](#)
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- [Residents](#)
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Office of the Attorney General

Attorney General Greg Stumbo Announces Arrest Following Overnight Raid of Septic Company Caught Dumping Waste into Big Sandy River

Press Release Date: Tuesday, December 19, 2006

Revision Date: Wednesday, December 20, 2006

Contact Information: Vicki Glass, 502-696-5643 Office

WEDNESDAY UPDATE:

Dave Bowling was indicted this morning by a Franklin County Grand Jury. Commonwealth's Attorney Larry Cleveland presented the case. Bowling is charged with a Class D Felony for violation of KRS 224.70-110 – prohibition against water pollution (see below). Dave's son, Lance, age 29, of East Point Kentucky, was arrested last night by agents of the Kentucky Bureau of Investigation. Dave and Lance Bowling are being housed at the Franklin County Detention Center. [Surveillance video is available at Office of the Attorney General in Frankfort upon request.]

Attorney General Greg Stumbo today announces the arrest of Dave Bowling, age 59, in Hagerhill, Kentucky by agents of the

Kentucky Bureau of Investigation (KBI) for illegally dumping raw untreated sewage into the Big Sandy River, less than one mile from the Paintsville public water intake.

Bowling, owner of Dave's Concrete Products and Septic Service, was caught in the act of dumping the sludge and solid waste last night after a 6-month joint investigation by the Attorney General's Kentucky Bureau of Investigation (KBI), US Environmental Protection Agency - Criminal Investigation Division (US EPA CID), and the Environmental and Public Protection Cabinet (EPPC).

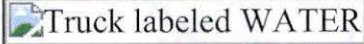
Bowling collected raw sewage from commercial and private septic systems in Johnson, Floyd and Martin Counties, including the sewage treatment plants serving Paintsville operated by East Kentucky Waste. East Kentucky Waste is owned and controlled by Dave Bowling's son, Lance Bowling, who is currently being sought by law enforcement under an outstanding bench warrant. On Monday night, under cover of darkness, KBI agents witnessed Dave Bowling discharge an 8,500 gallon tanker truck of sewage into a drain leading directly into the Big Sandy River. Bowling admitted to KBI agents that he dumped at least once a week over an eight month period.

The sewage was flushed into a storm drain at a facility leased by Dave Bowling located just off Route 1428 in Johnson County. Previous extensive surveillance conducted by the Civil and Environmental Division of the Office of the Attorney General, along with the EPPC, established a pattern of suspicious activity alerting authorities to the massive, illegal dumping operation.

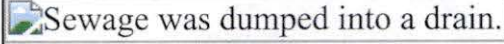
"Last night's raid was made possible by the months of diligent law enforcement work by my office in association with state and federal environmental agencies," said Attorney General Stumbo. "This is a great example of what we can accomplish by working together."

Under state law, Bowling has allegedly violated KRS 224.70-110. This general prohibition against water pollution reads: "No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth..." Violation of this law is a Class D felony, punishable by a fine not to exceed \$25,000 and by imprisonment for a term of 1-5 years for each separate violation. Each day a violation occurs constitutes a separate violation.

“Our investigation shows that at least one-quarter million gallons of human waste and sludge were dumped over an eight month period,” said Stumbo. “Protection of the public water supply is an essential duty of my office. On my watch, polluters will pay for putting Kentuckians at risk.”

Truck labeled WATER

The truck hauling sewage was labeled “WATER”.

Sewage was dumped into a drain.

The sewage was dumped into a drain flowing into the Big Sandy River.



Dave Bowling (left): Lance Bowling (right)

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QuickFacts

Johnson County, Kentucky

QuickFacts provides statistics for all states and counties, and for cities and towns with a population of 5,000 or more.

ALL TOPICS	<input type="checkbox"/>	JOHNSON COUNTY, KENTUCKY	UNITED STATES
<i>People</i>			
Population			
Population estimates, July 1, 2015, (V2015)		NA	321,418,820
Population estimates, July 1, 2014, (V2014)		23,262	318,857,056
Population estimates base, April 1, 2010, (V2015)		NA	308,758,105
Population estimates base, April 1, 2010, (V2014)		23,358	308,758,105
Population, percent change - April 1, 2010 (estimates base) to July 1, 2015, (V2015)		NA	4.1%
Population, percent change - April 1, 2010 (estimates base) to July 1, 2014, (V2014)		-0.4%	3.3%
Population, Census, April 1, 2010		23,356	308,745,538
Age and Sex			
Persons under 5 years, percent, July 1, 2014, (V2014)		6.5%	6.2%
Persons under 5 years, percent, April 1, 2010		5.8%	6.5%
Persons under 18 years, percent, July 1, 2014, (V2014)		22.6%	23.1%
Persons under 18 years, percent, April 1, 2010		22.5%	24.0%
Persons 65 years and over, percent, July 1, 2014, (V2014)		16.1%	14.5%
Persons 65 years and over, percent, April 1, 2010		14.1%	13.0%
Female persons, percent, July 1, 2014, (V2014)		50.8%	50.8%
Female persons, percent, April 1, 2010		50.8%	50.8%
Race and Hispanic Origin			
White alone, percent, July 1, 2014, (V2014) (a)		98.0%	77.4%
White alone, percent, April 1, 2010 (a)		98.4%	72.4%
Black or African American alone, percent, July 1, 2014, (V2014) (a)		0.5%	13.2%
Black or African American alone, percent, April 1, 2010 (a)		0.2%	12.6%
American Indian and Alaska Native alone, percent, July 1, 2014, (V2014) (a)		0.2%	1.2%
American Indian and Alaska Native alone, percent, April 1, 2010 (a)		0.1%	0.9%
Asian alone, percent, July 1, 2014, (V2014) (a)		0.4%	5.4%
Asian alone, percent, April 1, 2010 (a)		0.4%	4.8%
Native Hawaiian and Other Pacific Islander alone, percent, July 1, 2014, (V2014) (a)		0.0%	0.2%
Native Hawaiian and Other Pacific Islander alone, percent, April 1, 2010 (a)		Z	0.2%
Two or More Races, percent, July 1, 2014, (V2014)		0.9%	2.5%
Two or More Races, percent, April 1, 2010		0.8%	2.9%
Hispanic or Latino, percent, July 1, 2014, (V2014) (b)		0.7%	17.4%
Hispanic or Latino, percent, April 1, 2010 (b)		0.5%	16.3%
White alone, not Hispanic or Latino, percent, July 1, 2014, (V2014)		97.5%	62.1%
White alone, not Hispanic or Latino, percent, April 1, 2010		98.0%	63.7%
Population Characteristics			
Veterans, 2010-2014		1,548	20,700,711
Foreign born persons, percent, 2010-2014		0.5%	13.1%
Housing			
Housing units, July 1, 2014, (V2014)		10,531	133,957,180
Housing units, April 1, 2010		10,624	131,704,730
Owner-occupied housing unit rate, 2010-2014		75.7%	64.4%
Median value of owner-occupied housing units, 2010-2014		\$79,800	\$175,700
Median selected monthly owner costs -with a mortgage, 2010-2014		\$913	\$1,522

AG – Exhibit 5 (Not Admitted)

Median selected monthly owner costs -without a mortgage, 2010-2014	\$300	\$457
Median gross rent, 2010-2014	\$518	\$920
Building permits, 2014	7	1,046,363
Families and Living Arrangements		
Households, 2010-2014	9,134	116,211,092
Persons per household, 2010-2014	2.51	2.63
Living in same house 1 year ago, percent of persons age 1 year+, 2010-2014	90.1%	85.0%
Language other than English spoken at home, percent of persons age 5 years+, 2010-2014	1.2%	20.9%
Education		
High school graduate or higher, percent of persons age 25 years+, 2010-2014	75.5%	86.3%
Bachelor's degree or higher, percent of persons age 25 years+, 2010-2014	10.5%	29.3%
Health		
With a disability, under age 65 years, percent, 2010-2014	24.2%	8.5%
Persons without health insurance, under age 65 years, percent	17.8%	12.0%
Economy		
In civilian labor force, total, percent of population age 16 years+, 2010-2014	43.2%	63.5%
In civilian labor force, female, percent of population age 16 years+, 2010-2014	37.1%	58.7%
Total accommodation and food services sales, 2007 (\$1,000) (c)	27,186	613,795,732
Total health care and social assistance receipts/revenue, 2007 (\$1,000) (c)	86,453	1,668,276,808
Total manufacturers shipments, 2007 (\$1,000) (c)	FN ¹	5,319,456,312
Total merchant wholesaler sales, 2007 (\$1,000) (c)	106,086	4,174,286,516
Total retail sales, 2007 (\$1,000) (c)	350,076	3,917,663,456
Total retail sales per capita, 2007 (c)	\$14,646	\$12,990
Transportation		
Mean travel time to work (minutes), workers age 16 years+, 2010-2014	27.2	25.7
Income and Poverty		
Median household income (in 2014 dollars), 2010-2014	\$35,026	\$53,482
Per capita income in past 12 months (in 2014 dollars), 2010-2014	\$18,380	\$28,555
Persons in poverty, percent	25.6%	14.8%
Businesses		
Total employer establishments, 2013	411	7,488,353
Total employment, 2013	4,345	118,266,253
Total annual payroll, 2013	130,657	5,621,697,325
Total employment, percent change, 2012-2013	2.3%	2.0%
Total nonemployer establishments, 2013	1,379	23,005,620
All firms, 2007	2,074	27,092,908
Men-owned firms, 2007	1,262	13,900,554
Women-owned firms, 2007	S	7,792,115
Minority-owned firms, 2007	S	5,759,209
Nonminority-owned firms, 2007	1,900	20,100,926
Veteran-owned firms, 2007	161	2,447,608
Nonveteran-owned firms, 2007	1,676	22,627,611
Geography		
Population per square mile, 2010	89.2	87.4
Land area in square miles, 2010	261.95	3,531,905.43
Metropolitan or Micropolitan Statistical Area	None	
FIPS Code	21115	00

1. Data may be subject to publication minimums that vary by industry and geography.

This geographic level of poverty and health estimates are not comparable to other geographic levels of these estimates

Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Click the Quick Info icon to the left of each row in TABLE view to learn about sampling error.

The vintage year (e.g., V2015) refers to the final year of the series (2010 thru 2015). Different vintage years of estimates are not comparable.

(a) Includes persons reporting only one race

(b) Hispanics may be of any race, so also are included in applicable race categories



(c) Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data



D Suppressed to avoid disclosure of confidential information

F Fewer than 25 firms
 FN Footnote on this item in place of data
 NA Not available
 S Suppressed; does not meet publication standards
 X Not applicable
 Z Value greater than zero but less than half unit of measure shown

QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Small Area Income and Poverty Estimates, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.

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August 27, 2003

Mr. David Bowling
PO Box 230
Hager Hill, KY 41222

Re: Bush Gardens Subdivision.
Project ID: 03-0140
Activity ID: APE20030001
Bush Gardens Subdivision - 34976

Dear Mr. Bowling:

It has been brought to the attention of the Division of Water that your wastewater facility has been installed prior to the issuance of our construction permit. Construction of wastewater facilities without a permit is inconsistent with Kentucky Water Quality Regulation 401 KAR 5:005.

Since the wastewater facility has been constructed without approval, this office cannot issue a construction permit. Therefore, we are returning your plans and specifications. Additionally, your permit application is being referred to the Division's Enforcement Branch for appropriate action.

If you have any questions, please contact John V. Shupp, P.E. at (502) 564-2225, extension 435.

Sincerely,



William B. Gatewood, P.E., Manager
Facilities Construction Branch
Division of Water

WBG/JVS/dp

Enclosure

c: Johnson County Health Department
Hazard Regional Office
Permit Review Branch
Enforcement Branch
Division of Plumbing



Paintsville Utilities

137 Main Street
P.O. Box 630
Paintsville, Kentucky 41240
Phone (606) 789-2630
Fax # (606) 789-2631

February 29, 2016

Angela M. Goad
Assistant Attorney General
Office of Rate Intervention
Public Service Litigation Branch
1024 Capital Center Drive
Frankfort, KY 40601

Dear Ms. Goad,

Paintsville Utilities recently analyzed the water usage of the eight accounts in the Bush Gardens neighborhood. Over the last twenty four months the average monthly usage by this customer group was 34,241 gallons.

Bob Pack

A handwritten signature in cursive script that reads "Bob Pack".

General Manager

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)
COOPERATIVE, INC. FOR APPROVAL OF THE)
ACQUISITION OF EXISTING COMBUSTION)
TURBINE FACILITIES FROM BLUEGRASS)
GENERATION COMPANY, LLC AT THE) CASE NO.
BLUEGRASS GENERATING STATION IN) 2015-00267
LAGRANGE, OLDHAM COUNTY, KENTUCKY)
AND FOR APPROVAL OF THE ASSUMPTION)
OF CERTAIN EVIDENCES OF INDEBTEDNESS)

ORDER

On July 24, 2015, East Kentucky Power Cooperative, Inc. ("EKPC"), filed an application ("Application") pursuant to KRS 278.020, KRS 278.300, 807 KAR 5:001, Sections 12, 14, 15, and 18, seeking a Certificate of Public Convenience and Necessity ("CPCN") in connection with its proposal to acquire from Bluegrass Generation Company, LLC ("Bluegrass") and then operate three existing simple-cycle combustion turbine ("SCCT") generating units known collectively as the "Bluegrass Station" and located in La Grange, Kentucky. Each unit has winter and summer ratings of 198 and 165 megawatts ("MW"), respectively. The output of Bluegrass Station Unit 3 is currently committed to Louisville Gas and Electric Company and Kentucky Utilities Company (jointly "LG&E/KU") under a tolling agreement ("Tolling Agreement") which is scheduled to terminate on April 30, 2019.¹ Under the terms of the Tolling Agreement, LG&E/KU is entitled to 165 MW of firm generation and capacity from Bluegrass Station Unit 3, and

¹ Application at 17.

LG&E/KU would be responsible for the delivery of natural gas through firm transportation agreements to the site of Bluegrass Station Unit 3 and for securing electric transmission service in their balancing area.² EKPC also requests approval to assume certain evidences of indebtedness related to the proposed acquisition. The total price to be paid by EKPC for this acquisition is [REDACTED].³

The following parties were granted intervention in this matter: (1) the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"); (2) Nucor Steel Gallatin ("Nucor"); and (3) LG&E/KU. On July 31, 2015, the Commission issued an Order establishing a procedural schedule for the processing of this matter. The procedural schedule provided for two rounds of information requests on EKPC, an opportunity for intervenors to file testimony, discovery on intervenor testimony, and an opportunity for EKPC to file rebuttal testimony. EKPC responded to two rounds of information requests from Commission Staff and LG&E/KU and one information request from the AG. Nucor did not file any information requests, and none of the intervenors filed testimony. EKPC did not file rebuttal testimony.

The Commission conducted a formal evidentiary hearing on this matter on November 4, 2015. EKPC filed post-hearing responses on November 13, 2015. On November 17, 2015, the AG filed notice that he would not file a post-hearing brief.

² See Case No. 2014-00321, *Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Declaratory Order and Approval Pursuant to KRS 278.300 for a Capacity Purchase and Tolling Agreement* Final Order at 2-3. (Ky. PSC Nov. 24, 2014).

³ On November 24, 2015, the Commission issued an Order, which, among other things, denied EKPC's request to not publicly disclose the purchase price. Pursuant to 807 KAR 5:001, Section 13(5), when confidentiality is denied, "the material shall not be placed in the public record for the time period permitted pursuant to KRS 278.410 to bring an action for review." As of the date of this Order, the time period for EKPC to bring an action for review has not expired.

Neither Nucor nor LG&E/KU submitted post-hearing briefs. The matter is now before the Commission for a decision.

BACKGROUND

EKPC is a not-for-profit, member-owned electric generation and transmission cooperative that provides wholesale electricity to its 16 owner-member distribution cooperatives, which serve approximately 525,000 customers across 87 counties. EKPC is a member of PJM Interconnection, LLC ("PJM"), a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia, and operates energy and capacity markets. EKPC currently participates in the PJM capacity market as a Fixed Resource Requirement ("FRR") entity.⁴ As such, EKPC is required to submit a FRR capacity plan that identifies specific generating resources that provide EKPC with capacity to meet its reliability obligations and to satisfy its load and generation needs. The FRR plan is submitted annually for a period of three delivery years into the future. EKPC primarily uses its owned generating resources to satisfy its FRR plan.

⁴ EKPC will operate under the FRR construct until June 1, 2016. Testimony of Don Mosier, November 4, 2015 Hearing ("Mosier Hearing Testimony") beginning at 09:07:05. Thereafter, it will operate under the Reliability Pricing Model ("RPM") construct. EKPC participated in the most recent Base Residual Auction ("BRA") under the RPM construct. RPM entities are required to annually offer or "bid" power supply resources into the market that either increase energy supply or reduce demand. In August 2015, PJM's new capacity product, designated as Capacity Performance ("CP"), was part of a BRA for the 2018/19 delivery year. If EKPC acquires Bluegrass Station, Units 1 and 2 can be bid into the third Incremental Auction ("IA") held for non-CP capacity for the 2016/17 delivery year in March 2016 and a second IA for non-CP capacity for the 2017/18 delivery year in July 2016. See EKPC's Response to Commission Staff's Second Request for Information ("Staff's Second Request"), Item 3.a.(2). Unit 3 can be bid into the PJM markets for delivery following the expiration of the LG&E/KU Tolling Agreement.

EKPC currently owns or purchases a total of approximately 2,794 MW of net summer generating capability and 3,009 MW of net winter generating capability,⁵ consisting of 149 at MW Dale Station, 341 at MW Cooper Station and 1,346 MW at Spurlock Station all of which are base-load coal-fired generation. In addition, EKPC's generation includes natural-gas fired units at Smith Station, which has a summer rating capacity of 774 MW and a winter rating capacity of 989 MW, and five landfill gas-to-energy facilities totaling 14.4 MW.⁶ Finally, EKPC purchases 70 MW and 100 MW of hydropower from the Southeastern Power Administration at Laurel Dam and the Cumberland River system of dams in Kentucky and Tennessee, respectively.⁷

EKPC'S EFFORTS TO SECURE ADEQUATE CAPACITY

EKPC has endeavored to secure adequate capacity since 2012 because of the potential loss of over 300 MW of capacity from possible plant retirements, i.e., 199 MW from Dale Station and 116 MW from Cooper Unit 1, due to more stringent environmental regulations, and the estimated increase in its total energy requirement of 1.4 percent per year over a 20-year period from 2015 through 2034.⁸ EKPC stated its "all-time peak demand of 3,507 MW occurred on February 20, 2015."⁹ Without any additional load growth or increase in load factors, EKPC's winter capacity falls nearly 650 MW short of

⁵ Application at 3. The Dale Station consists of four units with a total of 199 MW. Unit 1 and Unit 2 had a combined capacity of 50 MW and were permanently taken out of service on April 15, 2015. Unit 3 and Unit 4 have a combined capacity of 149 MW and are scheduled to be placed in inactive status on April 15, 2016.

⁶ *Id.*

⁷ *Id.*

⁸ See Case No. 2015-00134, *The 2015 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Integrated Resource Plan ("IRP") at 2 (filed Apr. 21, 2015).

⁹ Application at 4.

its historic peak winter demand when the Dale Station is closed in 2016.¹⁰ This capacity shortfall subjects EKPC to volatile power prices in the wholesale market, as demonstrated during the 2013-2014 winter Polar Vortex event.¹¹ In addition to the past two winters which were occasioned with periods of extremely cold temperatures, the ongoing nationwide shift in electric generation fuel sources from coal to natural gas and the expansion of stricter federal environmental regulation have combined to make the ownership of electric generation peaking resources a strategic imperative, EKPC states.¹² The need for capacity was recognized several years ago and has been the source of a Request for Proposal ("RFP") issued in 2012 and one prior Commission proceeding.¹³

To address this shortfall of capacity, EKPC retained The Brattle Group ("Brattle") in May 2012 to assist with an RFP solicitation and to provide independent analysis of the power supply offers submitted in response to the RFP.¹⁴ EKPC stated that "[t]he 2012 RFP was structured to compare the costs required to bring the Dale Station and Cooper Station Unit 1 into compliance with the Mercury and Air Toxic Standard [("MATS")], with the costs of alternative power supply options available in the market."¹⁵

¹⁰ *Id.*

¹¹ *Id.*

¹² Application at 1 and 7.

¹³ Case No. 2013-00259, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Alteration of Certain Equipment at the Cooper Station and Approval of a Compliance Plan Amendment for Environmental Surcharge Recovery* (Ky. PSC Feb. 20, 2014).

¹⁴ Application at 6.

¹⁵ *Id.*

Brattle concluded that the reconfiguration of Cooper Station Unit 1 to flow its air emissions through the existing air quality control system servicing Cooper Station Unit 2 was the highest value-added option available to EKPC.¹⁶ In an Order entered on February 20, 2014, the Commission approved EKPC's application, in part, based upon the fact that "EKPC was short approximately 800-900 MW of capacity during its most recent winter peak and that EKPC was dependent on the market to address that capacity shortage."¹⁷

By retrofitting Cooper Station Unit 1, EKPC was able to retain 116 MW of its existing generation that otherwise would have been lost as a result of MATS.¹⁸ However, EKPC still needed to replace the loss of approximately 199 MW of capacity from the retirement of the Dale Station, as well as plan for future load growth and increases in load factor.¹⁹ The extreme temperatures experienced during the 2014 Polar Vortex, combined with new demand peaks in the 2014-2015 winter and increased market volatility, confirmed that additional capacity was necessary to mitigate market risk arising from EKPC's capacity shortfall. In addition, EKPC contends that the Commission's decision in a 2014 Fuel Adjustment Clause review case underscored the importance of having physical generation capacity on hand.²⁰

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* See Case No. 2014-00226, *An Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2013 through April 30, 2014* (Ky. PSC Jan. 30, 2015).

EKPC sought a fresh set of the competitive bids from the 2012 RFP during the summer of 2014 (“RFP Refresh”) to address its continued need for capacity, particularly in light of the imminent closure of the Dale Station. Brattle was again engaged to provide independent analysis of the bids received.²¹ EKPC asked Brattle to invite firms that had proposed conventional power supply resources in response to the 2012 RFP to submit updated or new proposals.²² The RFP Refresh stated that EKPC sought proposals with the following characteristics:

- Power purchase (e.g., gas tolling) agreements (“PPA”) or purchase and sale agreements (“P&SA”) for new or existing power plants or shares thereof;
- Dispatchable generation, with natural gas as the primary generation feedstock;
- A minimum size of 100 MW and maximum of 300 MW;
- A preferred start date of November 1, 2014;
- A minimum term of three years; and
- Energy and capacity delivered to PJM, with a preference for energy and capacity delivered to the EKPC load zone and locational deliverability area.²³

The RFP Refresh stated that EKPC’s Smith site would be available for the construction of a gas-fired generating unit to be transferred to EKPC.²⁴ It also emphasized that EKPC viewed transmission and fuel supply reliability as high priorities.²⁵

²¹ A copy of the Brattle Screening Analysis is contained in the Application as Exhibit JR-2 to the Testimony of James Read.

²² Two firms that did not participate in the 2012 RFP approached EKPC to express their interest in selling power to EKPC and were invited to submit proposals in the RFP Refresh.

²³ Brattle Screening Analysis at 2.

²⁴ *Id.*

²⁵ *Id.*

The RFP Refresh was sent to the invitees on May 12, 2014, with proposals due on June 13, 2014.²⁶ Twelve firms submitted proposals in response to the RFP Refresh, with some submitting more than one proposal.²⁷ Unlike the 2012 RFP, EKPC did not submit any self-build proposals in the RFP Refresh. The proposals included PPAs, construction of new gas-fired generating units, and the purchase of existing gas-fired generation.

ECONOMIC ANALYSIS OF THE PROPOSED ACQUISITION

Brattle performed an economic evaluation to identify the most economic proposals for further consideration and possible negotiation. The principal economic criterion utilized in screening the proposals was the net present value ("NPV") of the incremental energy and capacity of each proposal.²⁸ With the PPAs, NPV was calculated as the present value of energy margins plus the present value of capacity revenues less the present value of fixed contract charges.²⁹ Brattle utilized the delivery period for each PPA based on its contractual term. With the P&SAs, NPV was calculated as the present value of energy margins, plus the present value of capacity revenues, less the present value of fixed operating and maintenance costs and the purchase price.³⁰ For the P&SAs, an economic life of 25 years was used for new power plants and 20 years for existing power plants.³¹

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 3.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

The energy margins associated with the proposals were calculated using the RTSim production simulation and optimization model.³² Brattle utilized future market prices of electric energy and natural gas developed by ACES.³³ Electric energy prices were based on the price for delivery to the AEP Dayton Hub, and natural gas prices were based on delivery to the Henry Hub, both as of June 12, 2014.³⁴

Brattle divided the proposals EKPC received into the following three categories: (1) intermediate-term PPAs (up to six-year delivery period); (2) longer-term PPAs (greater than six years); and (3) P&SA units.³⁵ Because they varied in terms of size and duration, Brattle compared the proposals within each category based on a normalized NPV, or the NPV per kilowatt ("kW") of capacity per month. Brattle then determined the most attractive proposals in each category. With respect to the P&SA category, Brattle identified two proposals that merited further evaluation: (1) a proposal to build a new generating unit and (2) a proposal by LS Power, the parent company of Bluegrass,³⁶ to sell the Bluegrass Station.

In its conclusion of the results of the RFP Refresh, Brattle stated that because EKPC is now fully integrated into PJM, it has the flexibility to acquire additional resources if they are more economic in relation to purchasing energy and capacity in the PJM markets.³⁷ It further stated that while several of the options were economically

³² *Id.*

³³ *Id.* at 3-4.

³⁴ *Id.* at 4.

³⁵ *Id.*

³⁶ See Mosier Hearing Testimony beginning at 09:10:39.

³⁷ See Brattle Screening Analysis at 5.

competitive, its analysis indicated that the proposed purchase of Bluegrass Station was the best available power supply alternative, due to both its NPV and the fact that its NPV per kW-month was greater or comparable to the other proposals.³⁸

In addition to the screening analysis by Brattle, EKPC subsequently retained ACES to perform a Discounted Cash Flow analysis on the proposed purchase of the Bluegrass Station.³⁹ The ACES analysis concluded that the acquisition of the Bluegrass Station by EKPC was economically advantageous based upon its evaluation of the PJM Capacity Market, natural gas pricing, and comparable sales.⁴⁰ ACES summarized its report by stating, Bluegrass Station “fits perfectly into the EKPC portfolio, significantly reducing their winter peak short position. Bluegrass will also provide excess Reliability Pricing Model (RPM) credits to monetize and allow EKPC to take advantage of their peak load diversity in PJM.”⁴¹

EKPC also retained Navigant Consulting, Inc. (“Navigant”) to conduct an independent analysis of the economic value of the Bluegrass Station within PJM.⁴² That analysis, which was based upon consideration of PJM Capacity and Energy Market forecasts, fuel access and pricing, environmental regulations, and transmission issues, resulted in a significant NPV of the Bluegrass Station operating margins (excluding

³⁸ *Id.* at 6.

³⁹ Application at 8.

⁴⁰ *Id.*

⁴¹ See ACES’ *East Kentucky Power Cooperative Bluegrass Valuation* at 3 (Jan. 30, 2015). A copy of the report is contained in the Application as Exhibit DC-1 to the Direct Testimony of David Crews, (“Crew’s Testimony”).

⁴² A copy of Navigant’s *PJM RTO Market Summary and Forecast for the Bluegrass Power Plant* (June 2015) is contained in the Application as Exhibit RL-2 to the Testimony of Ralph Luciani.

capital costs,⁴³ transaction costs⁴⁴ and transmission expenditures for Unit 1 and Unit 2) over a 20-year period beginning in 2016.⁴⁵

EKPC also performed an internal analysis and concluded that the acquisition of the Bluegrass Station would result in a positive NPV under each of the two scenarios it modeled. EKPC looked only at the capacity benefits of the transaction and did not take into account any energy sales benefits.⁴⁶ EKPC's analysis produced a considerably lower NPV than the Navigant analysis because EKPC utilized a more conservative set of assumptions than did Navigant in conducting its analysis of the capacity benefit.

The independent analyses of Brattle, ACES, and Navigant and EKPC's internal analysis all reflect that the acquisition of the Bluegrass Station will add value to EKPC's system, benefit EKPC's owner-members and provide long-term economic value by generating capacity revenue and mitigating seasonal market volatility risk. EKPC maintains the acquisition should more than pay for itself and benefit its owner-members by reducing their exposure to long-term capacity and energy market volatility.⁴⁷

DESCRIPTION OF THE BLUEGRASS STATION

Bluegrass leases and operates three natural gas-fired SCCT generating units at the Bluegrass Station pursuant to a lease Agreement ("Lease Agreement"), dated

⁴³ The Commission notes that if the net present value calculated by Navigant is reduced by the acquisition cost of Bluegrass Station, the transaction continues to result in a significant positive net present value for EKPC.

⁴⁴ In EKPC's Response to Commission Staff's Post-Hearing Data Request ("Staff's-Post Hearing Request"), Item 10, EKPC stated that the estimated transaction costs for the Bluegrass Station acquisition are \$0.6 million.

⁴⁵ Application at 9.

⁴⁶ *Id.*

⁴⁷ *Id.* at 9-10.

November 1, 2000, with Oldham County, Kentucky.⁴⁸ Each of the units has a rated capacity of 198 MW for a total winter rating of 594 MW and net summer capacity of 165 MW per unit for a total of 495 MW. Unit 3 is currently subject to a Tolling Agreement, as previously mentioned, entered into between Bluegrass and LG&E/KU in 2014.⁴⁹ The Tolling Agreement will expire on April 30, 2019 at which time the generation from Unit 3 will become available to EKPC. Bluegrass makes an annual payment of \$565,000 to Oldham County in lieu of paying property taxes, pursuant to an agreement, dated November 1, 2000 (“PILOT Agreement”).

The Bluegrass Station units were constructed by Dynegy and went into commercial operation in 2002⁵⁰ when LG&E/KU were members of the Midcontinent (formerly “Midwest”) Independent System Operator, Inc. (“MISO”) market. At that time, Dynegy could sell the output of the plant directly into MISO and had a liquid market for the asset. After LG&E/KU left MISO, Dynegy had to purchase transmission rights into MISO and/or PJM, in addition to transmission across the LG&E/KU system. The cost of this transmission service was enough to generally keep the peaking units out of the market on an economic basis. The inability to sell energy and make profit from those sales severely limited the value of the plant to Dynegy and later to LS Power which purchased the units from Dynegy. The units have operated at low capacity due

⁴⁸ A copy of the Lease is contained in the Application as Exhibit 2.

⁴⁹ See Case No. 2014-00321, *Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Declaratory Order and Approval Pursuant to KRS 278.300 for a Capacity Purchase and Tolling Agreement* (Ky. PSC Nov. 24, 2014).

⁵⁰ See EKPC’s Responses to Staff’s Second Request, Item 10, and AG’s Initial Data Request, Item 13.a.

to these transmission costs and Dynergy's not being able to compete in the markets on an economic basis.⁵¹

The units are 14 years old and are assumed to have a depreciable life of 35 years; thus, the units have a remaining depreciable life of 21 years.⁵² In conjunction with the negotiations between EKPC and Bluegrass for the proposed acquisition, EKPC undertook extensive efforts to investigate the condition of the Bluegrass Station units,⁵³ transmission availability, fuel deliverability and pricing,⁵⁴ environmental aspects of the transaction, and other related issues.

EKPC'S DUE DILIGENCE RESULTS

As part of its evaluation of the responses to its 2012 RFP, EKPC retained Burns & McDonnell to perform an inspection of the Bluegrass Station. Although the Burns & McDonnell inspection did not uncover any fatal flaws, it did note a concern regarding a cracked row-four diaphragm on the Unit 3 compressor, which was originally identified in a 2009 borescope inspection by Siemens. In response to Staff's Post-Hearing Request, EKPC stated that Bluegrass informed EKPC on Thursday, November 5, 2015, that during a routine combustion inspection, damage was found in the Unit 3 compressor

⁵¹ See EKPC's Response to Commission Staff's First Request ("Staff's First Request"), Item 14.c.(1)(2), and Staff's Second Request, Item 10

⁵² See EKPC's Response to Staff's Second Request, Item 11.

⁵³ In addition to an independent Due Diligence Evaluation Report prepared by Burns & McDonnell Engineering Company, Inc. ("Burns & McDonnell"), EKPC also engaged Siemens (the original equipment manufacturer) to perform detailed borescope inspections on each of the Bluegrass Station units. EKPC witnessed the units in operation, and conducted extensive research into the specifications and quality of the assets it seeks to acquire. With respect to the Bluegrass Station's transmission facilities, EKPC retained a third-party firm, CE Power, to perform complete testing on the three generator step-up and four auxiliary transformers at the Bluegrass Station.

⁵⁴ EKPC engaged Bentek Energy and ACES to perform a study on the availability and affordability of natural gas at the Bluegrass Station. EKPC has determined that it will have access to fuel in a reliable and economic basis.

station.⁵⁵ Bluegrass is repairing the compressor damage and will also repair the cracked row-four diaphragm. EKPC stated that the estimated cost to repair the diaphragm is not available, but that it is EKPC's understanding that the repair cost will not affect the purchase price of the facility.⁵⁶ Siemens also recommended inspection of the rotor winding pole crossovers on the generator rotors, noting that it has found cracking in the generator pole crossovers on the other units with a higher number of start/stop cycles.⁵⁷ The maintenance is currently scheduled in the 2018/19 timeframe. The estimated cost of these repairs is \$275,000 per unit. EKPC states that the costs have been included in its financial forecasts for Bluegrass Station.⁵⁸ EKPC testified that the condition of the units and any issues identified in the Burns & McDonnell Due Diligence Report were consistent with normal operations of SCCTs.⁵⁹

EKPC undertook several transmission studies along with others in association with the contemplated transaction. In March 2015, TranServ International, Inc. ("TranServ"), the Independent System Operator for LG&E/KU, released a System Impact Study ("SIS") as a result of a transmission request made by EKPC to designate Bluegrass Station Units 1 and 2 as Network Resources for the EKPC load.⁶⁰ This study identified likely loading constraints, with one being only a near-term year constraint. The constraints identified in the SIS led to the preparation of a Facilities Study by

⁵⁵ See EKPC's Response to Staff's Post-Hearing Request, Item 11.

⁵⁶ *Id.*

⁵⁷ See EKPC's Response to Staff's First Request, Item 14.c.b.

⁵⁸ See Testimony of Craig Johnson, November 4, 2015 Hearing beginning at 15:28:53.

⁵⁹ Mosier Hearing Testimony beginning at 09:18:08.

⁶⁰ Application at 14.

TranServ and LG&E/KU, which identified the system upgrades and operating procedures that would be necessary to alleviate the identified constraints.⁶¹ Because of the near-term year constraint, an operating procedure was specified to mitigate the constraint during real-time operating conditions. Bluegrass Station will operate subject to an updated operating guideline under the direction of the three North American Energy Reliability Corporation Reliability Coordinators involved (MISO, PJM, and Tennessee Valley Authority) if an actual constraint develops in the course of operations.⁶²

The remaining constraints identified on the LG&E/KU transmission system will be addressed through system upgrades, which will provide sufficient capacity to transmit the output of the Bluegrass Station so that EKPC will be able to serve its load that resides on the LG&E/KU system as it currently does. Following the completion of the aforementioned transmission studies, TranServ accepted EKPC's transmission service request, and EKPC confirmed the request on June 26, 2015, finalizing the service.⁶³ The Network Integrated Transmission Service ("NITS") Agreement that exists between EKPC and LG&E/KU is being revised to incorporate this transmission service. Pursuant to the revised NITS Agreement, Bluegrass Station Unit 1 and Unit 2 will become Designated Network Resources when the transaction is consummated. LG&E/KU will then file the updated NITS Agreement with the Federal Energy Regulatory Commission

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 15.

("FERC") for approval.⁶⁴ EKPC will provide a copy of the amended NITS agreement to the Commission once it is fully executed.⁶⁵

In July 2015, TransServ released an SIS report for a transmission service request made by EKPC to designate Bluegrass Station Unit 3 as a Network Resource for EKPC load. Under the KU/LG&E Tolling Agreement in effect for this unit through April 2019, the requested service would commence on May 1, 2019. The aforementioned constraint was again identified in the July 2015 SIS as a potential short-term constraint, but not as a long-term constraint. TransServ has indicated that it will address this constraint through an operating procedure similar to the one that will be used to manage the constraint for Units 1 and 2. Other constraints were also identified in the SIS report. All constraints other than the potential short-term constraint identified in the SIS report will be addressed through system upgrades that will provide sufficient capacity to transmit the entire Bluegrass Station output to EKPC's load.⁶⁶

With respect to transmission service needed on the LG&E/KU transmission system to deliver the excess output from the Bluegrass Station to EKPC's transmission system, on October 28, 2015, EKPC submitted a filing to revise certain responses to data requests of the AG, LG&E/KU, and Staff. Initially, EKPC stated that it had discussed developing transmission requirements and procedures with LG&E/KU and TransServ to accommodate delivery of energy to EKPC's system during periods when Bluegrass Station's output was in excess of EKPC's load directly connected to the

⁶⁴ *Id.*

⁶⁵ See EKPC's Response to Staff's Post-Hearing Request, Item 7.

⁶⁶ Application at 15.

LG&E/KU system. EKPC had also indicated that it expected the incremental cost for that additional transmission service to be relatively small, based on the way in which the NITS is administered and billed under LG&E/KU's Open Access Transmission Tariff. In the revised responses, EKPC stated that, after much discussion with LG&E/KU, the transmission service issue has not been resolved. LG&E/KU's position is that EKPC must reserve point-to-point transmission⁶⁷ or designate additional delivery points on the EKPC system as network loads under its NITS reservation to provide adequate coverage for potential output from the Bluegrass Station in excess of EKPC load connected to the LG&E/KU transmission. EKPC does not agree with LG&E/KU on this matter; however, under protest, EKPC intends to move forward with transmission agreements specified by LG&E/KU to ensure that it can deliver any excess output from Bluegrass Station to the EKPC transmission system when needed.⁶⁸

EKPC stated that it could also build a transmission line to deliver the output from Bluegrass Station to its existing transmission facilities in order to avoid the point-to-point transmission costs that LG&E states would be required.⁶⁹ Whether EKPC pays the point-to-point transmission costs to LG&E/KU or builds a new transmission line, the proposed acquisition of Bluegrass Station is still the lowest-cost option for procuring the needed capacity.⁷⁰

⁶⁷ EKPC has estimated the cost in excess of \$10 million annually ("Crews Hearing Testimony") beginning at 10:23:46.

⁶⁸ A copy of the Notice of Complaint filed with FERC on October 30, 2015 is attached to EKPC's Response to Staff's Post-Hearing Request, Item 6.

⁶⁹ See Testimony of David Crews, November 4, 2015 Hearing ("Crews Hearing Testimony") beginning at 10:23:46.

⁷⁰ *Id.*, beginning at 12:15:15.

EKPC states that with completion of the proposed transaction, Bluegrass Station Unit 1 and Unit 2 will be available for use by EKPC in the PJM energy market. This is a material aspect of the transaction, as it gives EKPC a physical hedge on energy pricing during the coldest portion of the upcoming winter as well as the opportunity to offer the units into the PJM day-ahead and real-time energy markets.⁷¹

With regard to the PJM Capacity Market, EKPC expects that the transaction will result in a net benefit to EKPC so long as capacity prices are at or above a certain level. This break-even amount is significantly lower than the approximately \$120/MW-day rate that was established in the most recent PJM incremental capacity auction for planning year 2016/2017.⁷² Moreover, EKPC and Navigant both believe that capacity prices will increase in the future, thereby providing a greater net capacity benefit to EKPC.⁷³ In PJM's 2018/19 BRA, CP capacity cleared at \$164.77/MW-day and non-CP capacity cleared at \$149.98/MW-day, indicating significant positive value in the proposed purchase of Bluegrass Station. Due to the higher values in PJM's CP Capacity market, EKPC is considering options including dual fuel capability or firm gas transportation service at Bluegrass Station if the proposed transaction is consummated.⁷⁴

To facilitate the Bluegrass units' participation in the PJM Capacity Market, Bluegrass has executed transmission service agreements with PJM (allowing the output energy from the Bluegrass units to be delivered) commencing on June 1, 2018, the

⁷¹ Application at 16.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See EKPC's Response to Staff's Second Request, Item 4, and Crews Hearing Testimony beginning at 11:00:25.

beginning of PJM's 2018/19 Delivery Year.⁷⁵ Accordingly, Unit 1 and Unit 2 of the Bluegrass Station could be bid into any incremental auctions that apply to the 2018/19 Delivery Year, as well as any subsequent BRA and incremental auctions. After expiration of the KU/LG&E Tolling Agreement, Unit 3 can also be bid into the BRA.

ENVIRONMENTAL ISSUES

With respect to environmental issues, EKPC performed a comprehensive due-diligence review of all legal and technical aspects of Bluegrass Station based upon extensive materials and environmental compliance supplied by the current operator. In addition, EKPC also witnessed emission tests of the Bluegrass Station units, held several on-site reviews and meetings, and hired Lineback Funkhouser, Inc. to conduct a Phase I Environmental Site Assessment of the property. The Assessment Report revealed no evidence of recognized environmental conditions in connection with the subject property.⁷⁶ EKPC's due diligence confirmed that Bluegrass Station's current operator is complying with Clean Air Act Title V operating permit requirements and Kentucky Pollutant Discharge Elimination System permits, applicable requirements for Aboveground Storage Tanks, and noise limits established by existing real property agreements, among other environmental obligations.⁷⁷

The Bluegrass Station has a Kentucky Air Permit limitation of 95 tons of NOx emissions over a rolling 12-month period. As such, each of the three units can operate at a 7 percent capacity factor and not exceed the annual NOx limit.⁷⁸ Units 1 and 2

⁷⁵ Crews Testimony at 16.

⁷⁶ Direct Testimony of Jerry Purvis ("Purvis Testimony") at 29-30.

⁷⁷ *Id.* at 30.

⁷⁸ See EKPC's Response to Staff's First Request, Item 35.

were originally equipped with Selective Catalytic Reduction (“SCR”)/ammonia reduction system, but they have not been used to date.⁷⁹ EKPC stated that the catalyst in each of the SCRs has not been operated or used to date and has deteriorated in condition.⁸⁰ EKPC further stated that, currently under the air permit, the SCRs are not needed.⁸¹ However, since Oldham County is not in attainment with the new ozone NOx standard, EKPC is working with the Kentucky Division of Air Quality (“KDAQ”) as the EPA works with the KDAQ in making those designations.⁸² EKPC stated that it recognized in its financial forecast of the proposed transaction that it would need to replace the catalysts in the Units 1 and 2 SCRs and equip Unit 3 with an SCR at a later date.⁸³

EKPC believes the Bluegrass Station is well positioned to comply with upcoming environmental requirements and faces fewer environmental challenges and a more favorable regulatory outlook than coal-fired generation.⁸⁴ EKPC stated that the Coal Combustion Residual Rule (“CCR Rule”) and MATS do not concern natural-gas fired generation resources.⁸⁵ EKPC also stated that Bluegrass Station was not affected by the recently enacted National Effluent Limitation Guidelines (“ELG”).⁸⁶ However, since

⁷⁹ Mosier Hearing Testimony Hearing beginning at 09:21:25.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Testimony of Jerry Purvis, November 4, 2015 Hearing (“Purvis Hearing Testimony”) beginning at 12:41:25. In the Hearing, Mr. Purvis testified that under the new rule, NOx was limited to 70 parts per million (“ppm”) and currently Oldham County is at 74 ppm.

⁸³ *Id.*

⁸⁴ Purvis Direct Testimony at 31.

⁸⁵ *Id.*

⁸⁶ See Mosier Hearing Testimony beginning at 09:20:31; See also, Purvis Hearing Testimony beginning at 12:43:16.

the CCR Rule and the ELG water rules are interdependent, EKPC elected not to move ahead separately for each rule. With the ELG rule now finalized, EKPC will file an amended environmental compliance plan with the Commission in the near future.⁸⁷

EKPC believes Bluegrass Station is an environmentally sound investment that will help it achieve its strategic goals in both the near and long term.⁸⁸ Furthermore, with Bluegrass Station being located in Kentucky, EKPC's future compliance with the Clean Power Plan ("CPP") will be less complicated than if it had acquired an out-of-state generating facility.⁸⁹

THE ASSET PURCHASE AGREEMENT AND OTHER APPROVALS

The Asset Purchase Agreement ("Agreement") whereby Bluegrass agreed to sell and assign, and EKPC agreed to purchase and assume, substantially all of the assets and certain specified liabilities of Bluegrass, subject to certain terms and conditions set forth in the Agreement, was entered into by EKPC and Bluegrass on June 26, 2015.⁹⁰ Because the Bluegrass Station is currently leased by Bluegrass from Oldham County as part of a complex financing plan put in place as part of the development of the plant, EKPC will take an assignment of the Lease Agreement between Bluegrass and Oldham County and certain bonds held by Bluegrass and payable by Oldham County, the Tolling Agreement, and the PILOT agreement.

⁸⁷ See EKPC's Response to Staff's First Request, Item 40; See also Purvis Hearing Testimony beginning at 12:43:45.

⁸⁸ Purvis Direct Testimony at 31.

⁸⁹ The carbon obmissions from SCCTs are not counted toward a state's carbon limits in the CPP. See Purvis Hearing Testimony beginning at 12:54:45.

⁹⁰ A copy of the Agreement is contained in the Application as Exhibit 3.

The evidences of indebtedness associated with the proposed transaction are the assumption of the Lease Agreement between Oldham County and Bluegrass and the PILOT provision between those parties. EKPC requests approval of these evidences of indebtedness, pursuant to KRS 278.300, related to the proposed acquisition.

EKPC intends to finance the proposed acquisition through funds currently available from its \$500 million unsecured credit facility established with the National Rural Utilities Cooperative Finance Corporation and other banks, and then replace that short-term financing with long-term financing pursuant to the terms of its trust indenture with the U.S. Bank National Association. EKPC plans to secure that long-term financing through a Rural Utilities Service ("RUS") loan; however, in the event that RUS financing is not timely available, EKPC will pursue long-term financing of the acquisition through a private placement debt offering.⁹¹

Along with this Commission's approval, Bluegrass or EKPC must receive consents under the law, or by virtue of the terms of various material contracts, from the following agencies and entities: Federal Trade Commission (Hart-Scott-Rodino approval); Kentucky Department of Water (permit transfer); KU/LG&E (Tolling Agreement and Interconnection and Operating Agreement assignment); PJM (NITS Agreement assignment); and Oldham County Sanitation District (service agreement). Bluegrass determined that no approval was required under Section 203 of the Federal Power Act from the FERC for the transfer of the transmission assets and the Tolling Agreement covered by the transaction, since those assets are valued at less than the

⁹¹ Application at 20-21.

\$10 million threshold required for approval.⁹² In responses to information requests and hearing testimony, EKPC states that it has or will receive all necessary approvals to consummate the proposed transaction.⁹³

Concurrent with the acquisition of Bluegrass Station, there are a number of agreements affected by the transfer that will either be assigned to or terminated by EKPC as part of the transaction in addition to those mentioned above. These agreements are detailed in the Due Diligence Evaluation Report and the Agreement itself. Several of these were addressed at the hearing, with the two following agreements addressed in some detail.

Operation and Maintenance Agreement (“O&M Agreement”)

Bluegrass Station is currently operated by North American Energy Services (“NAES”) under an O&M Agreement with Port River LLC, an affiliate of Bluegrass. EKPC testified that the O&M Agreement would be assigned to it and it would retain the contract with NAES.⁹⁴ EKPC also plans to create five new, skilled, well-compensated full-time equivalent positions (“FTE”) in addition to the current five FTE positions due to the increased usage of Bluegrass Station.⁹⁵

⁹² See Application at 19, Crews Direct Testimony at 15, and EKPC’s Response to Staff’s Second Request, Item 1.

⁹³ See EKPC’s Response to Staff’s Second Request, Item 1; See also, Mosier Hearing Testimony Hearing beginning at 09:02:35.

⁹⁴ Mosier Hearing Testimony Hearing beginning at 09:19:04.

⁹⁵ See EKPC’s Response to Staff’s First Request, Item 17. Four of the positions will be at the Bluegrass Station and one will be within EKPC’s environmental group.

Energy Management Agreement (“EMA”)

Currently, energy generated at Bluegrass Station is marketed and sold by EDF Trading North America, LLC under the EMA.⁹⁶ EKPC testified that the EMA would be terminated in conjunction with the proposed transaction and that it will internally administer this function subsequent to the consummation of the transaction.

LEGAL STANDARD

No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission.⁹⁷ To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁹⁸

“Need” requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁹⁹

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary

⁹⁶ Burns & McDonnell Due Diligence Evaluation Report at ES-3.

⁹⁷ KRS 278.020(1).

⁹⁸ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885 (Ky. 1952).

⁹⁹ *Id.* at 890.

multiplicity of physical properties.”¹⁰⁰ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.¹⁰¹ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.¹⁰² All relevant factors must be balanced.¹⁰³ The Commission has long recognized that the principle of least-cost is one of the fundamental foundations utilized when setting rates that are fair, just, and reasonable and that this principle is embedded in KRS 278.020(1).¹⁰⁴

DISCUSSION

EKPC identified numerous reasons why the acquisition of the Bluegrass Station is the most reasonable, least-cost option for addressing its long-term capacity needs. These reasons include: acquiring generation capacity at a substantially lower cost than the estimated cost for new construction, avoiding construction-cost risk; replacing the loss of the Dale Station's capacity; mitigating winter peak exposure and increasing market price volatility during those periods; providing a physical hedge against future energy and market price volatility; diversifying its generation portfolio by becoming less

¹⁰⁰ *Id.*

¹⁰¹ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

¹⁰² See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

¹⁰³ Case No. 2005-00089, Aug. 19, 2005 Order at 6.

¹⁰⁴ Case No. 2009-00545, *Application of Kentucky Power Company for Approval of Renewable Energy Purchase Agreement for Wind Energy Resources Between Kentucky Power Company and FPL Illinois Wind, LLC* (Ky. PSC June. 28, 2010).

reliant on coal-fired generation and taking advantage of increases in, and lower cost of, natural gas supplies in the region; providing greater geographical diversity to its generation fleet; eliminating the need to rely upon more costly market-based power purchase agreements to satisfy its load; gaining significant additional generation capacity without sacrificing financial stability or threatening its improved equity position and credit ratings; being well positioned to comply with existing and forthcoming environmental regulations and mandates while mitigating compliance and market locational risks of investing in out-of-state resources; minimizing technology and performance risk by acquiring reliable SCCT technology with proven field experience and a large fleet base; maximizing EKPC's core strengths by acquiring facilities and technology similar to the facilities at its Smith Station; complying with the Commission's stated policy that utilities should seek to have adequate capacity to serve native load; and assuring that a generation asset located in Kentucky remains operational, thereby contributing to the local economy through the payment of skilled-labor wages and property taxes.¹⁰⁵ In addition, at the hearing, EKPC testified that SCCTs support renewables due to their ability to ramp up or down in a very rapid manner, aiding states for future compliance with the CPP.¹⁰⁶

EKPC is not proposing to increase rates in conjunction with the proposed transaction. Recovery through base rates of the capital or fixed and variable operating and maintenance expenses would not commence until its base rates are re-established in a future rate case. However, fuel costs incurred to operate the Bluegrass Station will be passed through EKPC's fuel adjustment clause.

¹⁰⁵ Application at 23-24.

¹⁰⁶ Crews Hearing Testimony beginning at 11:19:45.

EKPC's ability to maximize the energy and capacity value of the Bluegrass Station through its involvement in PJM means that retail customers on its system will benefit from both excess energy sales to non-native load and revenues realized from participation in the capacity market. These benefits will result in increasing margins and capital patronage for EKPC's owner-members.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that EKPC's shortage of capacity over the past two winters, the extreme volatility of market prices during those periods, and its projected load growth over the next 20 years clearly demonstrate a need for additional generating capacity. We also note that EKPC will need to replace the capacity and energy that will be lost due to retirement of the Dale Station. Accordingly, we find that EKPC has sufficiently demonstrated a need for the capacity and energy which will be provided by purchasing the Bluegrass Station.

The Commission also finds that the record, including EKPC's economic analysis as well as the economic evaluations of independent firms retained by EKPC, is sufficient to demonstrate that the Bluegrass Station acquisition represents the most reasonable least-cost resource to meet EKPC's capacity and energy needs upon the retirement of the Dale Station. The Commission further finds that the proposed purchase is reasonable, will not result in wasteful duplication of utility facilities, and is feasible in terms of its impacts on rates, and should be approved as a reasonable addition to EKPC's generating fleet.

Notwithstanding our approval of EKPC's request to acquire the Bluegrass Station, the Commission has some concerns over the condition of the Bluegrass Station

units and existing and potential environmental issues. Therefore, we will require EKPC to file annual operating reports ("Operating Report") providing the Commission with detailed updates on the performance of the Bluegrass Station units and EKPC's assessment of any potential changes in existing or potential environmental regulations that would impact the Bluegrass Station. The annual Operating Report shall cover a 12-month period ending December 31 and shall include, for that year, at a minimum, a discussion and evaluation of the performance of each of the three Bluegrass Station units, unplanned system outages, heat rate, budgeted and actual capital expenditures for the prior year and budgeted capital expenditures for the reporting year, budgeted and actual operation and maintenance ("O&M") expenditures for the reporting year and budgeted O&M expenses for the next year, and a discussion of existing and potential environmental regulations that may impact the Bluegrass Station.

We also note that PJM is currently implementing a complete redesign of its capacity market. PJM is transitioning from the RPM construct to the Capacity Performance market in response to the extreme forced outage rate experienced by power generators across PJM during the 2014 Polar Vortex. For the next two BRAs, the transition period will allow generating resources to offer in as a CP product or as a non-CP, or base, product. Beginning in the 2020/21 Delivery Year, PJM will require all generating resources to be a CP product. To qualify as a CP product, a generating resource would have to be capable of sustained, predictable operation and be available to provide energy and reserves whenever PJM determines an emergency condition exists. Payments for a CP resource are expected to rise; however, generating resources will also be exposed to significant penalties if the generating resource is not

available when called upon by PJM during an emergency condition. In response to information requests and testimony at the hearing, EKPC generally addressed its options for participating in PJM's new CP market. With respect to the CP capacity market, EKPC discussed its consideration of its fuel supply and the possibility of converting the units for dual fuel supply or contracting firm gas transportation in order to maximize the value of the Bluegrass Station capacity. EKPC also indicated that it would consider the option of being exposed to the penalty, noting that the amount of penalties could be less than the costs of upgrading the facilities to dual-fuel capability or entering into firm gas transportation contracts. Accordingly, the Commission will direct EKPC to include in the Operating Report its evaluation of how the Bluegrass Station units would qualify as a CP product and how EKPC will address the related risk exposure.

IT IS THEREFORE ORDERED that:

1. EKPC's requests to acquire Bluegrass Station and to assume the evidences of indebtedness associated with the Bluegrass Station acquisition are approved.
2. Within seven days after the closing of the Bluegrass Station transaction, EKPC shall file written notification to the Commission detailing the status of the transaction.
3. EKPC shall file an annual Operating Report setting forth details of the performance of the Bluegrass Station as discussed in the findings above no later than March 31, 2017, and annually thereafter until the Commission orders otherwise.

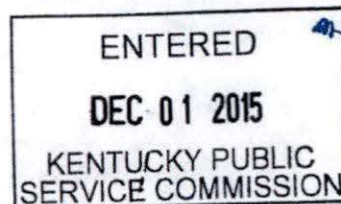
4. EKPC shall include in its Operating Report an annual evaluation of how the Bluegrass Station units would qualify for the CP market in the PJM capacity markets product and how EKPC is addressing the related risk exposure.

5. Within 30 days of the closing of the transaction, EKPC shall file the journal entries reflecting how the transaction was recorded.

6. Any documents filed pursuant to ordering paragraph 2, 3, 4, and 5 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

By the Commission



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