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PUBLIC SERVICE
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AIRVIEW UTILITIES, LLC'S NOTICE) CASE NO. 2016-00207
OF SURRENDER AND ABANDONMENT)
OF UTILITY PROPERTY)

ATTORNEY GENERAL'S COMMENTS

Comes now the Intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and submits the following Comments. The Attorney General defers to the Public Service Commission ("Commission") to make an informed and well-reasoned decision regarding Airview Utilities, LLC's ("Airview" or "Company") request for surrender and abandonment of the utility property based upon the evidence of record. However, the Attorney General contends that it is imperative to address key issues that have arisen in the pending case and warrants further review by the Commission.

Airview is a utility company owned by Martin G. Cogan and Lawrence W. Smither that consists of a wastewater treatment plant and collection system in Hardin County, Kentucky.¹ The Company provides sanitary sewage treatment to approximately two hundred three (203) customers.² Airview filed a Notice of Surrender and Abandonment of Utility Property with the

¹ Airview's Response to AG 1-1(a) and Airview's Notice of Surrender and Abandonment of Utility Property, paragraph 1.

² Airview's Notice of Surrender and Abandonment of Utility Property, paragraph 3.

Commission on June 16, 2016, and stated that it intended to relinquish control and ownership of interests in all property necessary for providing utility service.³

First and foremost, the Commission should consider how Airview's leasehold of the real property, where the treatment plant is located, may affect the abandonment process in the event the Commission grants Airview's request and a receiver is appointed by Franklin Circuit Court. Despite some confusion throughout the discovery process, it is now apparent that Airview does not own the real property on which its facilities are located.⁴ Instead, Airview leases the property from the owners, Fred H. Schlatter and Ruby Schlatter, pursuant to a long-term lease.⁵ The lease was executed on October 4, 2005, and provides for yearly lease payments of \$1.00 for the entire term of the lease.⁶ In the event that Airview defaults on the payment of rent and remains in default for sixty (60) days, the lease provides the Schlatters the option to consider the default a forfeiture of the lease as well as authorization to enter and retake the property at their discretion.⁷ Despite the clear terms of the lease, Mr. Smither testified under cross-examination from the Attorney General at the Commission Hearing that he was unaware of the rent requirement and that, to his knowledge, Airview had never made a rent payment to the Schlatters.⁸

Additionally, under Section 9 of the lease agreement Airview may sublet or assign the benefits of the lease, but only with written consent of the Schlatters.⁹ The Attorney General questioned Mr. Smither at the hearing and asked whether the Schlatters had received any

³ Airview's Notice of Surrender and Abandonment of Utility Property. *See*: PSC 1-14.

⁴ In initial response to the Commission, Airview indicated that it was the owner of the real property. *See*, PSC 1-14. After further discovery, Airview reversed its position and stated that Airview occupied the real property subject to lease. *See*, AG 2-12.

⁵ Airview's Response to AG 2-12.

⁶ Airview's Response to PSC 2-4, Attachment C, at p. 1.

⁷ *Id.* at Section 13.

⁸ Video Transcript of Evidence ("VTE") at 10:00:08 – 10:00:22.

⁹ Airview's Response to PSC 2-4, Attachment C, at Section 9.

notification of Airview's pending request to surrender and abandon the utility.¹⁰ Mr. Smither unequivocally responded that no notification had been provided to the Schlatters.¹¹ The Attorney General is concerned with the fact that Airview did not provide the Schlatters notice of its intent to surrender and abandon the utility, and thus could not have obtained written consent for Airview to sublet or assign its rights to the leased property.

Based upon Airview's failure to make rent payments coupled with the lease terms regarding default and assignments, the disposition of the real property upon which the treatment plant sits could prove to be a serious issue for any receiver appointed by the Franklin Circuit Court.¹² If the Commission approves Airview's surrender and abandonment request, the Attorney General would encourage the Commission to thoroughly investigate the real property issue in order to ensure the valid legal transfer of all assets and property that are necessary to operate the utility.

Furthermore, the Commission should thoroughly review the undocumented loans that Airview received from other regulated sewer utilities in violation of KRS 278.300, as well as other potential conflicts of interest that appear to exist. In addition to Airview, Mr. Smither and Mr. Cogan also jointly own the following utilities: Brocklyn Utilities, LLC, Coolbrook Utilities, LLC, Fox Run Utilities, LLC, and Lake Columbia, LLC.¹³ The Attorney General requested in discovery for Airview to provide a list of its creditors, all outstanding debts, and a detailed explanation as to why the debts were incurred.¹⁴ In response to this discovery question, Airview filed a list into the record that itemized \$90,213.10 of unpaid debt.¹⁵

¹⁰ VTE at 9:59:33 – 9:59:42.

¹¹ VTE at 9:59:42 – 9:59:53.

¹² See PSC 2-4, Attachment C, at Section 13. This Section covers default in a number of situations, including but not limited to cases of non-payment of rent; continued violation of lease terms; lessee abandonment or vacating of the property; and in the event of bankruptcy where there is an assignment for the benefit of creditors or the appointment of a receiver, trustee, or liquidator who is not discharged within sixty (60) days.

¹³ Airview's Response to AG 1-1(b).

¹⁴ Airview's Response to AG 1-2(d).

¹⁵ *Id.*

Covered Bridge Utilities is Airview's largest unpaid creditor and is allegedly owed \$39,950.56 for repair and maintenance work.¹⁶ The co-owner of Airview, Mr. Smither, also solely owns Covered Bridge Utilities.¹⁷ Airview admits that it did not issue any request for proposals in order to obtain bids from other companies before exclusively awarding Covered Bridge Utilities the work.¹⁸ This potential conflict of interest and lack of arm's-length transactions are extremely problematic since under these circumstances there will be absolutely no incentive for Airview to negotiate a fair price or approach competitors for a lower price. This type of arrangement affords no protections or safeguards to the ratepayers. For these reasons, when the Commission regulates utilities that Mr. Smither has ownership interest in, the Attorney General recommends that the Commission scrutinize any and all costs associated with Covered Bridge Utilities.

Additionally, Airview listed both Brocklyn Utilities and Coolbrook Utilities as creditors that are currently owed \$4,950 and \$4,115 respectively.¹⁹ According to Airview, Brocklyn Utilities provided eight (8) separate undocumented loans to the Company spanning from March 29, 2010 to June 7, 2016, and Coolbrook Utilities provided seven (7) separate undocumented loans stemming from November 18, 2008 to March 20, 2015.²⁰ The Company asserts that the loans were to enable Airview to meet its immediate obligations in order to continue operations and maintenance of the wastewater treatment plant.²¹ The fact that the loans were not in written form makes it impossible to verify the specifics of the loans such as loan amounts, origination dates, maturity dates, interest rates - or whether the loans exist at all.

¹⁶ *Id.*

¹⁷ Airview's Response to AG 2-5(b).

¹⁸ *Id.*

¹⁹ Airview's Response to AG 1-2(d). However, it is important to note that in Airview's Response to Post-Hearing Data Request Number 2, Attachment B it asserts that Coolbrook Utilities is owed \$5,134.22 instead of the previously asserted \$4,115.

²⁰ Airview's Response to Post-Hearing Data Request Number 2, Attachment B; *See Also*: Airview's Supplemental Responses to AG 2-5(a) and (c).

²¹ Airview's Response to AG 1-2(d); Airview's Supplemental Responses to AG 2-5(a) and (c).

Further, it appears that in addition to the loans Airview took from Brocklyn Utilities and Coolbrook Utilities, the Company also made payments to Fox Run Utilities for a loan(s).²² The Attorney General can only assume that Airview had paid off the loan from Fox Run Utilities since it was not included in Airview's outstanding debt.

The Attorney General would argue that Airview violated KRS 278.300(1) by never requesting the Commission's approval to obtain the fifteen (15) loans included in the Company's outstanding debts, as well as any unauthorized loan(s) not listed.²³ According to KRS 278.300(1), no utility shall issue any securities or evidence of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized to do so by order of the Commission.²⁴ Airview attempts to argue that Commission approval was not necessary because they were short-term, no interest loans.²⁵ The Company's notion that the loans were short-term is contradicted by the simple fact that there are outstanding loans dating back to 2008.²⁶ Consequently, Airview violated KRS 278.300(1) when it accepted at minimum fifteen (15) loans from other regulated utilities without obtaining Commission authorization. The Attorney General recommends that the Commission further investigate the undocumented, unauthorized loans that were made from Brocklyn Utilities, Coolbrook Utilities, and Fox Run Utilities to Airview.

WHEREFORE, the Attorney General defers to the Commission, based upon the evidentiary record, to make a well-reasoned decision regarding Airview's request to surrender and

²² Airview's Supplemental Responses to AG 2-4(w).

²³ AG 2-5(a) and (e), KRS 278.300, Issuance or Assumption of Securities by Utilities.

²⁴ KRS 278.300, Issuance or Assumption of Securities by Utilities.

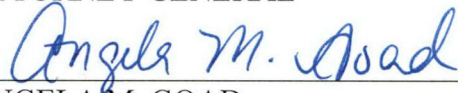
²⁵ Airview's Supplemental Response to AG 2-5; *See Also*: Airview's Supplemental Response to Post-Hearing Data Request Number 2.

²⁶ *Id.*

abandon utility property. The Attorney General respectfully requests the Commission to address the important issues raised in the prior Comments that merit further in-depth review.

Respectfully submitted,

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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Dr. Talina R. Mathews, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail to:

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this 9th day of November, 2016.



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