

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On June 16, 2016, Airview Utilities, LLC (Airview) tendered a notice of surrender and abandonment of utility property (Notice), stating its intent to abandon all the property interests and rights in and to the property owned by Airview necessary to provide service to its customers. On July 8, 2016, the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) filed a motion for intervention and, on July 12, 2016, the Commission granted the motion. After Airview cured a deficiency in its Notice, it was accepted for filing as of July 11, 2016.

On July 29, 2016, the Commission entered an Order that, among other things, initiated an investigation into the request by Airview to abandon its utility services and facilities and ordered Airview to file responses to information requested in the Appendix of that Order.<sup>1</sup>

The Commission held a hearing in this matter on October 12, 2016, and issued its Interim Order on February 9, 2017 (Interim Order). Airview filed a petition to appeal

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<sup>1</sup> Order (Ky. PSC July 29, 2016) at 2 and 3.

the Interim Order with the Franklin Circuit Court on March 13, 2017.<sup>2</sup> During the pendency of that action, this matter was stayed. The Franklin Circuit Court, by Order entered April 4, 2018, denied Airview's appeal and remanded the matter to the Commission for a final hearing on abandonment.<sup>3</sup> The Franklin Circuit Court, on April 26, 2018, also denied Airview's subsequent Motion to Alter, Amend or Vacate.<sup>4</sup> The Commission, on its own motion, now enters this procedural schedule in accordance with which Airview shall respond to the requests for information contained in the Interim Order of February 9, 2017.

IT IS THEREFORE ORDERED that:

1. Airview shall file its responses to the Interim Order within 30 days of the date of this Order.
2. Supplemental requests for information to Airview shall be filed no later than August 30, 2018.
3. Airview shall file its responses to supplemental requests for information no later than September 13, 2018.

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<sup>2</sup> *Airview Utilities, LLC v. Kentucky Public Service Comm'n of Kentucky*, Case No. 17-CI-00264 (Ky. Cir. Ct.).

<sup>3</sup> A copy of the Order is attached as Appendix A.

<sup>4</sup> A copy of the Order is attached as Appendix B.

By the Commission



ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2016-00207 DATED **JUL 17 2018**

**RECEIVED**  
APR 04 2018  
GENERAL COUNSEL

17-CI-00264

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II

**ENTERED**  
APR 04 2018  
FRANKLIN CIRCUIT COURT  
AMY FELDMAN, CLERK

CIVIL ACTION No. 17-CI-00264

**AIRVIEW UTILITIES, LLC**

**PLAINTIFF**

vs.

**PUBLIC SERVICE COMMISSION OF KENTUCKY;  
ATTORNEY GENERAL OF THE COMMONWEALTH  
OF KENTUCKY; and  
CITY OF ELIZABETHTOWN, KENTUCKY**

**DEFENDANTS**

**ORDER AND OPINION**

This matter is before the Court upon Plaintiff's Petition for Appeal. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **DENIES** Plaintiff's Petition for Appeal and **REMANDS** the matter to the Public Service Commission for a final hearing on abandonment.

**STATEMENT OF FACTS**

Airview Utilities, LLC ("Airview") is a utility company that owns, operates, and manages a facility for the collection, transmission, or treatment of sewage as defined by KRS 278.010(3)(f), in Hardin County and the City of Elizabethtown. On June 16, 2016, Airview filed Notice of Surrender and Abandonment of Utility Property with the Public Service Commission ("PSC"), detailing Airview's plan to surrender and abandon its property interests and rights in and to the property it owned because Airview could no longer meet its financial obligations.

Airview now seeks review with this Court on whether House Bill 261, which made amendments to KRS 278.020 and KRS 278.021, violates Section 51 of the Kentucky Constitution. The title to House Bill 261 states "AN ACT relating to water utilities and declaring an emergency."

House Bill 261 is compromised of five (5) sections and makes amendments to KRS 278.020 and KRS 278.021. Airview argues that House Bill 261 is unconstitutional on its face because it violates the one subject rule and the title or notice requirement of Section 51 of the Kentucky Constitution as described in *Beshear v. Haydon Bridge Co., Inc.*, 304 S.W.3d 682 (Ky. 2010).

### ANALYSIS

#### I. **House Bill 261 does not violate the one subject rule of Section 51 of the Kentucky Constitution.**

Airview believes that House Bill 261 violates the one subject rule of Section 51 of the Kentucky Constitution. The title of House Bill 261 is "AN ACT relating to water utilities and declaring an emergency." Airview argues that a plain reading of House Bill 261 establishes that it has nothing to do with "water utilities" and instead specifically applies to utilities for the "collection, transmission or treatment of sewage." Airview reasons that because the subject of House Bill 261, utilities for the "collection, transmission or treatment of sewage," is not expressed in its title, the bill violates Section 51 of the Kentucky Constitution.

Section 51 of the Kentucky Constitution states:

No Law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title, and no law shall be revised, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised amended, extended or conferred, shall be reenacted and published at length.

KY. CONST. § 51. The Kentucky Supreme Court held that Section 51 sets out three requirements for bills to be passed by the General Assembly, which work to prevent fraud or duplicity upon the legislature. *Haydon Bridge Co., Inc.*, 304 S.W.3d at 694-95.

[F]irstly, that any act of the Legislative Branch shall relate to one subject (the one subject rule), which shall, secondly, be expressed in the title of the Act (the title or notice requirement), and thirdly, that no existing law shall be revised, amended or its provisions conferred or extended by referring to its

title only, but rather when such action is intended, the act must be reenacted and published at length (the publication requirement).

*Id.* at 690.

The Attorney General and the PSC contend that Airview constructs a narrow reading of House Bill 261 which ignores the general subject of the bill by focusing exclusively on the individual statutes affected by the amendments. The Attorney General and the PSC assert that the stated purpose of House Bill 261 is “to foster financial stability of sewage utilities and to ensure continuity of service for customers when a private sewage utility fails or is abandoned.” (House Bill 261 Local Mandate Fiscal Impact Estimate (Ky. LRC 2016 Reg. Sess.) (“Fiscal Impact Estimate”), Part I at 1. They further argue that despite the fact that House Bill 261 addresses abandonment of wastewater treatment plants, small telephone utilities and the dissolution of special purpose governmental entities, the general subject addressed by the legislation is the financial stability of utilities and the continuity of service for ratepayers when a utility is abandoned.

The Court agrees with the Attorney General and the PSC that House Bill 261 does not violate the one subject rule of Section 51 of the Kentucky Constitution. The statute addresses activities that are common to the utilities that are listed, including the grant of a certificate of public convenience and necessity (“CPCN”) to new facilities and the transfer of existing facilities to a new owner. The first two sections of the bill amend KRS 278.020 and KRS 278.021, which govern the PSC’s authority to regulate who controls a utility and the terms and conditions under which that may be changed. Sections 3 and 4 make “conforming amendments” to the statutes to provide the correct renumbered reference to KRS 278.020. Section 5 of the bill declares an emergency due to the hardship and uncertainty of replacing utility services when utilities are forced to file for abandonment. Further, the legislative intent is apparent from reading the bill. Persons interested in

House Bill 261 are able to “read the title of [an] act[] and gather therefrom in a general way at least the subject-matter of the act” and find that “the act contains no legislation that is not embraced in a general way by the subject expressed in the title.” *Ogden v. Cronan*, 188 S.W. 357, 359 (Ky. 1916) (quoting *Thompson v. Commonwealth*, 166 S.W. 623 (Ky. 1914)). There is no evidence that drafters of House Bill 261 intended to deceive the legislature as to the contents of the bill and the legislative intent is evident from a plain reading of the bill. Therefore, House Bill 261 does not violate the one subject rule of Section 51 of the Kentucky Constitution because the general subject of the bill is clear on its face and relevant to the contents of the act.

**II. House Bill 261 does not violate the title or notice requirement of Section 51 of the Kentucky Constitution.**

Airview states that House Bill 261 violates Section 51 of the Kentucky Constitution because the title is not related to the contents of its body. The title of House Bill 261 is “AN ACT relating to water utilities and declaring an emergency.” Airview contends that wastewater/ sewage services are not water utilities and are wholly unrelated to water utilities. The Attorney General and the PSC argue that Section 51 of the Kentucky Constitution does not require that bill have a perfect title, and that the title need only be general enough to service the purpose of ensuring that fraud is not committed upon the General Assembly. Further, the Attorney General and the PSC reason that water and wastewater are intimately connected services and it is not unusual for utilities to provide both services, thus the title and general term does not characterize fraud upon the legislature.

The Court finds that House Bill 261 does not violate the title or notice requirement of Section 51 of the Kentucky Constitution.

Under the title, or notice section of Section 51, “[w]here the title adequately expresses a general subject, any provision in the Act that is germane to or reasonably embraced within that general subject must be considered to be



within the scope of the notice of subject given by the title.” *Board of Trustees of Policemen’s and Firemen’s Retirement Fund of City of Paducah v. City of Paducah*, 333 S.W.2d 515, 520 (Ky. 1990). Thus, “[t]he title need only furnish general notification of the general subject in the act. If the title furnishes a ‘clue’ to the act’s contents it passes constitutional muster.” (internal citations omitted).

*Haydon Bridge*, 304 S.W.3d at 694. The Court agrees that water utilities and wastewater treatment services are interconnected, and water utilities as compared to wastewater treatment does not rise to a level of distinction as to defraud the legislature. A plain reading of the statute establishes that it clearly addresses water utilities and declaring an emergency, which is more than merely a “clue” as to its contents. *Id.*

As previously stated, the purpose of House Bill 261 is to “foster financial stability of sewage utilities and to ensure continuity of service for customers when a private sewage utility fails or is abandoned.” Each section of House Bill 261 supports the purpose of the bill. Sections 1 and 2 address abandonment of wastewater treatment plants. Failure to explicitly mention water utilities does not violate the title and notice requirement as the title need only give a “clue” as to the contents of a bill. *Id.* Section 3 distinguishes emergencies with small telephone utilities. Section 4 addresses dissolution of special purpose government entities. Section 5 defines when an emergency is declared due to abandonment of utility services and the need to supplant the loss of essential utility services to protect the ratepayer. The amendments clearly relate to water utilities. As Section 51 of the Kentucky Constitution does not require bills to have perfect titles, the Court finds that the title of House Bill 261 adequately informs the reader as to the contents of the bill. Therefore, House Bill 261 does not violate the title or notice requirement of Section 51 of the Kentucky Constitution.

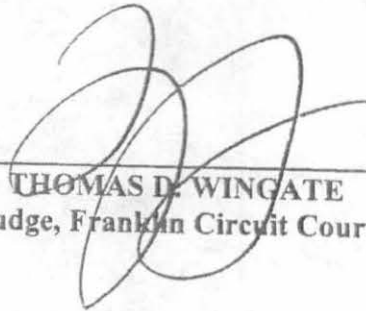
**CONCLUSION**

The Court finds that House Bill 261 does not violate Section 51 of the Kentucky Constitution. Further, the Court **REMANDS** this matter to the Public Service Commission for a final hearing on abandonment.

**WHEREFORE**, the Plaintiff's Petition of Appeal is **DENIED**, and the matter is **REMANDED** to the Public Service Commission.

This order is final and appealable and there is no just cause for delay.

**SO ORDERED**, this 29<sup>th</sup> day of March, 2018.

  
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**THOMAS D. WINGATE**  
Judge, Franklin Circuit Court

**CERTIFICATE OF SERVICE**

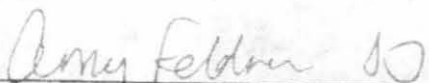
I hereby certify that a true and correct copy of the foregoing Order was mailed, this day of ~~March~~ <sup>2nd of April 2018</sup>, 2018, to the following:

**Hon. Robert C. Moore**  
Stites & Harbison PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, Kentucky 40602

**Hon. Richard G. Raff**  
**Hon. Quang Nguyen**  
**Hon. J.E.B. Pinney**  
**Hon. Brittany Koenig**  
**Hon. Jenny Sanders**  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, Kentucky 40602

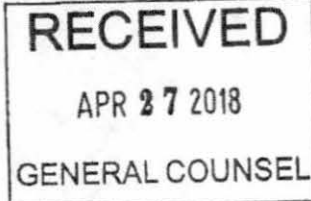
**Hon. Deborah Shaw**  
City Attorney  
City of Elizabethtown  
P.O. Box 550  
Elizabethtown, Kentucky 42702

**Hon. Andy Beshear**  
**Hon. Justin M. McNeil**  
**Hon. Kent A. Chandler**  
**Hon. Rebecca W. Goodman**  
Office of the Attorney General  
700 Capital Avenue, Suite 20  
Frankfort, Kentucky 40601

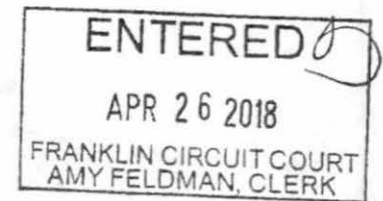
  
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Amy Feldman, Franklin County Circuit Court Clerk

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2016-00207 DATED **JUL 17 2018**



COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II



CIVIL ACTION No. 17-CI-00264

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AIRVIEW UTILITIES, LLC

PLAINTIFF

vs.

KENTUCKY PUBLIC SERVICE COMMISSION,  
ET AL.

DEFENDANTS

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**ORDER**

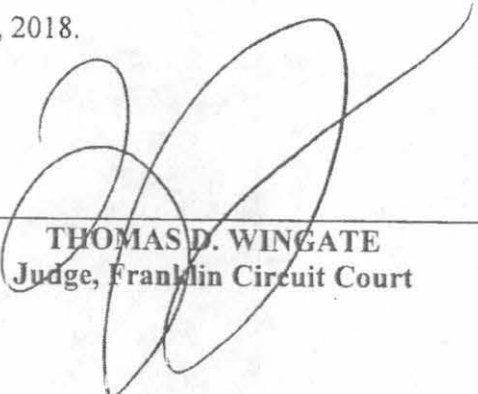
This matter is before the Court upon Plaintiff's *Motion to Alter, Amend, or Vacate* this Court's Opinion and Order entered on April 2, 2018. This case was called before the Court during its regular civil motion hour on Monday, April 23, 2018. Upon review of the parties' briefs and papers, and after being sufficiently advised, this Court hereby **DENIES** Plaintiff's *Motion to Alter, Amend, or Vacate*.

Relief under CR 59.05 may only be granted upon a movant showing one of the following: (1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based, (2) the movants have newly discovered or previously unavailable evidence, (3) the motion is necessary to prevent manifest injustice, or (4) the motion is justified by an intervening change in controlling law. *Gullion v. Gullion*, 163 S.W.3d 888, 893 (Ky. 2005). In its April 2, 2018 Opinion and Order, the Court found that House Bill 261 does not violate the one subject rule or the title and notice requirement of Section 51 of the Kentucky Constitution. The Court finds that Plaintiff's *Motion* does not meet the standard set in *Gullion* as all of Plaintiff's present arguments were addressed by the Court in its April 2, 2018 Opinion and Order.

**WHEREFORE**, Plaintiff's *Motion to Alter, Amend, or Vacate* is **DENIED**.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 24 day of April, 2018.



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**THOMAS D. WINGATE**  
Judge, Franklin Circuit Court

**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the foregoing Order was mailed, this 26 day of April, 2018, to the following:

**Hon. Robert C. Moore**  
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**Hon. Richard G. Raff**  
**Hon. Quang Nguyen**  
**Hon. J.E.B. Pinney**  
**Hon. Brittany Koenig**  
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**Hon. Justin M. McNeil**  
**Hon. Kent A. Chandler**  
**Hon. Rebecca W. Goodman**  
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\_\_\_\_\_  
Amy Feldman, Franklin County Circuit Court Clerk

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