

**CASE**

**NUMBER:**

99.079

IN THE MATTER OF COVERED BRIDGE UTILITIES, INC. ALLEGED  
FAILURE TO COMPLY WITH THE COMMISSION'S OCTOBER 9, 1998  
ORDER IN CASE NO. 97-455

SEQ NBR	ENTRY DATE	REMARKS
M0001	02/16/99	FRANK SIMPSON/COVERED HOMEOWNERS-MOTION FOR CONTEMPT AND TO REFUND SEWER CHARGES
0001	03/10/99	Order scheduling 4/13 hearing; info due 3/30
M0002	03/23/99	ROBERT MOORE COVERED BRIDGE UTILITIE-MEMO IN RESPONSE TO MARCH 10,99 ORDER OF PSC AND IN OP
M0003	03/23/99	ROBERT MOORE COVERED BRIDGE-REQUEST FOR INFORMAL CONFERENCE
M0004	03/25/99	COUNTRYSIDE HOMEOWNERS ASSOC-MOTION TO CONSOLIDATE, INTERVENE, ENJOIN COLLECTION OF FEES
0002	03/26/99	Order scheduling an informal conference on 4/1/99 at 10:00 in Hearing Room 2.
M0005	04/06/99	COVERED BRIDGE UTILITES ROBERT MOOR-MEMO IN OPPOSITION TO MOTION TO CONSOLIDATE MOTION TO
M0006	04/06/99	HAYFIELD UTILITIES ROBERT MCLURE-REPLY TO MOTION TO CONSOLIDATE AND MOTION TO INTERVENE
0003	04/07/99	Informal Conference Memorandum
0004	04/08/99	Order cancelling 4/13 hearing
M0007	04/09/99	CHARLES MERZ / COVERED BRIDGE-LETTER ASKING FOR EXTENSION TO 4/15/99
M0008	04/23/99	ROBERT MOORE COVERED BRIDGE UTILITY-NOTICE OF FILING
0005	05/05/99	Order denying Homeowner's intervention & to consolidate with 97-455 & 97-457
0006	05/10/99	Stipulation of Facts and Agreement filed
M0009	05/14/99	FRANK SIMPSON COVERED BRIDGE FARMS-MOTION TO REMAND MOTION FOR CONTEMPT
0007	07/30/99	FINAL ORDER; STIPULATION IS ADOPTED & APPROVED IN ITS ENTIRETY
M0010	09/02/99	HAZELRIGG AND COX-PENALTY PAYMENT OF \$1000.00
0008	09/16/99	Receipt for penalty payment of \$1000.00

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC.            )  
ALLEGED FAILURE TO COMPLY WITH        ) CASE NO.  
THE COMMISSION'S OCTOBER 9, 1998     ) 99-079  
ORDER IN CASE NO. 97-455                )

RECEIPT OF PAYMENT

This is to acknowledge receipt of one check in the amount of \$1000.00, payable to Kentucky State Treasurer on September 1, 1999 from Hazelrigg and Cox, Attorneys at Law. This represents full payment of the penalty assessed against Covered Bridge Utilities, Inc. in the above-styled action.



Stephanie Bell  
Secretary of the Commission  
Dated 9-16-99

**HAZELRIGG AND COX**  
ATTORNEYS AT LAW  
415 WEST MAIN STREET  
P.O. Box 676  
FRANKFORT, KENTUCKY 40602-0676

WILLIAM P. CURLIN, JR.  
JOHN B. BAUGEMAN  
ROBERT C. MOORE  
HOLLAND B. SPADE

DYKE L. HAZELRIGG (1881-1970)  
LOUIS COX (1907-1971)

FAX: (502) 875-7158  
TELEPHONE: (502) 227-2271

September 1, 1999

Office of General Counsel  
Honorable Bill Willis  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, Kentucky 40602

RECEIVED

SFP 2 1999

GENERAL COUNSEL

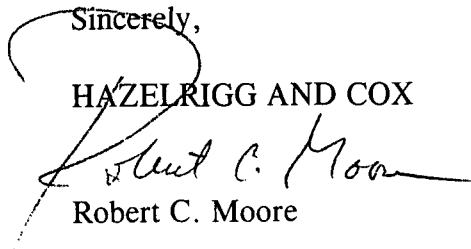
Re: In the Matter of: Covered Bridge Utilities, Inc.; Case No. 99-079

Dear Bill:

Pursuant to the Order entered by the Public Service Commission on July 30, 1999, please find enclosed a check in the amount of \$1,000.00 made payable to the Kentucky State Treasurer. Please call me if you have any questions concerning this matter.

Sincerely,

HAZELRIGG AND COX

  
Robert C. Moore

cc: Marty Cogan



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 99-079  
COVERED BRIDGE UTILITIES, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on July 30, 1999.

Parties of Record:

Lawrence W. Smither  
President  
Covered Bridge Utilities, Inc.  
136 St. Matthews Avenue  
Suite 275  
Louisville, KY. 40207 3191

Hon. Frank G. Simpson  
Simpson Law Offices  
Suite 102  
11414 Main Street  
Middletown, KY. 40243

Honorable Robert C. Moore  
Attorney for Covered Bridge  
Hazelrigg and Cox  
P.O. Box 676  
415 West Main Street  
Frankfort, KY. 40602 0676

*Stephanie D. Bell*

Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC. )  
\_\_\_\_\_ ) CASE NO. 99-079  
 )  
ALLEGED FAILURE TO COMPLY WITH THE )  
COMMISSION'S OCTOBER 9, 1998 ORDER )  
IN CASE NO. 97-455 )

O R D E R

By Order dated March 10, 1999, the Commission initiated this case to allow Covered Bridge Utilities, Inc. ("Covered Bridge") to show cause why it should not be subject to the penalties prescribed in KRS 278.990 for two probable violations of the Commission's October 9, 1998 Order in Case No. 97-455.<sup>1</sup> Case No. 97-455 was a rate case in which Covered Bridge sought to increase its charges for sewer treatment service to the Covered Bridge Farms subdivision. In approving a rate increase, the October 9, 1998 Order required Covered Bridge to: 1) file within 30 days a revised tariff setting forth the new rate; and 2) file within 60 days a rate application to establish an initial rate for service to a new customer, Hayfield Utilities, Inc. ("Hayfield"), and to adjust as appropriate the existing residential rate. The two probable violations arise from the failure by Covered Bridge to file its revised tariff within 30 days of October 9, 1998, and to file a rate application within 60 days.

---

<sup>1</sup> Case No. 97-455, The Application of Covered Bridge Utilities, Inc. For a Rate Adjustment Pursuant to 807 KAR 5:076 For Small Utilities.

The Covered Bridge Farms Homeowners' Association ("Homeowners' Association") had filed with the Commission on February 16, 1999 a motion requesting that Covered Bridge be held in contempt for failing to comply with the October 9, 1998 Order and requesting a refund of sewer charges. In initiating this show cause proceeding, the Commission determined that this motion by the Homeowners' Association should be addressed as a part of this show cause case.

A hearing was scheduled to be held on April 13, 1999, but it was canceled at the request of Covered Bridge and an informal conference was held on April 1, 1999. As a result of the discussions at that conference, Covered Bridge and the Commission Staff entered into a Stipulation of Facts and Agreement ("Stipulation"), which has been filed in the record and is attached hereto as Appendix A. The Stipulation is intended to operate as a complete resolution of all issues pending in this case.

As provided for in the Stipulation, Covered Bridge has filed the tariffs required by the October 9, 1998 Order in Case No. 97-455. A new rate application will be filed by July 1, 1999 to establish a rate for treating the sewage collected and transported by Hayfield Utilities, Inc. and to adjust as appropriate the existing residential rate of Covered Bridge. In addition, the Stipulation provides for the payment by Covered Bridge of a \$1,000 civil penalty.

The Homeowner's Association participated in the informal conference and have been served with a copy of the Stipulation. By motion filed on May 14, 1999, the Homeowners' Association stated that if the Stipulation is accepted by the Commission, the earlier motion by the Homeowners' Association for contempt and a refund of sewer charges should be dismissed as moot.

In determining whether the results of the Stipulation are in the public interest and are reasonable, the Commission has taken into consideration its comprehensive nature and the willingness of Covered Bridge to cooperate to achieve a resolution of this case. Based on the evidence of record and being sufficiently advised, the Commission hereby finds that the Stipulation is in accordance with the law and does not violate any regulatory principal. The Stipulation is a product of arms-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

IT IS THEREFORE ORDERED that:

1. The Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.
2. Covered Bridge shall pay \$1,000 as a civil penalty within 30 days of the date of this Order by certified check or money order payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky.
3. The motion for contempt and refund of sewer charges filed by the Homeowners' Association is dismissed as moot.

Done at Frankfort, Kentucky, this 30th day of July, 1999.

By the Commission

ATTEST:

  
Executive Director



AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 99-079 DATED JULY 30, 1999

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC.	)	
_____	)	CASE NO. 99-079
	)	
ALLEGED FAILURE TO COMPLY WITH THE	)	
COMMISSION'S OCTOBER 9, 1998 ORDER	)	
IN CASE NO. 97-455	)	

STIPULATION OF FACTS AND AGREEMENT

By Order dated March 10, 1999, the Commission initiated this proceeding to determine whether Covered Bridge Utilities, Inc. ("Covered Bridge") should be subject to the penalty's prescribed in KRS 278.990 for two probable violations of the Commission's October 9, 1998 Order in Case No. 97-455.<sup>1</sup> In that Order, the Commission approved new sewer rates for Covered Bridge and directed it to file the following:

1. Revised tariffs setting forth the new rates within 30 days of October 9, 1998; and
2. A new rate application to establish an initial rate for an adjoining sewer utility, Hayfield Utilities, Inc. ("Hayfield") and to adjust as appropriate the residential rate within 60 days of October 9, 1998.

Covered Bridge had not made either of the required filings when due or prior to the initiation of this proceeding on March 10, 1999. Pursuant to Covered Bridge's request, an informal conference was held at the Commission's offices on April 1, 1999.

---

<sup>1</sup> Case No. 97-455, The Application of Covered Bridge Utilities For a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure For Small Utilities.

Covered Bridge and the Commission Staff submit the following agreement for the Commission's consideration in rendering its decision in this proceeding:

1. Covered Bridge agrees that the Commission's March 10, 1999 Order accurately presents the facts relevant to this proceeding.
2. Covered Bridge has now filed its revised tariff as required by the Commission's October 9, 1998 Order in Case No. 97-455.
3. Covered Bridge will file no later than July 1, 1999 an application to establish an initial rate for Hayfield and to adjust as appropriate the existing residential rate. Although Covered Bridge now consists of two separate treatment plants, a number of the operating services are on a shared basis. Since Covered Bridge does not allocate cost between the two plants and the development of such an accounting system would be unduly complicated and expensive, Covered Bridge will file its July 1, 1999 rate case based on one unified system serving all customers.
4. Covered Bridge agrees to waive its right to a hearing in this proceeding and further agrees to pay to the Commission a civil penalty in the amount of \$1,000 in full settlement of this proceeding. This payment and this Stipulation shall not constitute an admission by Covered Bridge that it has violated the Commission's October 9, 1998 Order in Case No. 97-455.
5. In the event that the new residential rate proposed by Covered Bridge on July 1, 1999 is lower than the existing rate of \$40.06, the new rate shall become effective immediately and be subject to prospective change at the conclusion of the Commission's rate investigation.

6. Except as set forth in paragraphs 3 and 5 herein, this Stipulation shall not affect in any way the rights of Covered Bridge with respect to the application to establish an initial rate for Hayfield and to adjust as appropriate the existing residential rate, or any proceedings concerning the application.

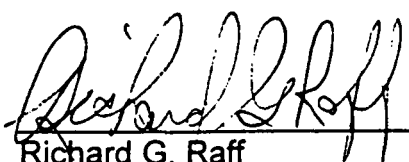
7. Covered Bridge and the Staff agree that if this Stipulation of Facts and Agreement is not adopted in its entirety by the Commission, Covered Bridge and the Staff reserve their rights to withdraw therefrom and require that a hearing be held on any and all matters involved herein. In such event, Covered Bridge and the Staff agree that the contents of this Stipulation of Facts and Agreement shall not be deemed binding upon the parties hereto, and cannot be used as an admission by either party.

8. Covered Bridge and the Staff agree that the foregoing Stipulation of Facts and Agreement is reasonable, is in the public interest, should be adopted in its entirety by the Commission, and if so adopted, no petition for rehearing or judicial appeal will be filed.

AGREED TO BY:

  
\_\_\_\_\_  
Robert C. Moore  
Hazelrigg & Cox  
Counsel for Covered Bridge Utilities, Inc.

4/29/99  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Richard G. Raff  
Counsel for the Commission

May 7, 1999  
\_\_\_\_\_  
Date

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

RECEIVED

In the Matter of:

MAY 14 1999

APPLICATION OF COVERED BRIDGE UTILITIES, )  
INC. FOR AN ADJUSTMENT OF RATES )  
PURSUANT TO THE ALTERNATIVE RATE ) NO. 99-079  
FILING PROCEDURE FOR SMALL UTILITIES )

PUBLIC SERVICE  
COMMISSION

**MOTION TO PROVISIONALLY REMAND MOTION FOR CONTEMPT AND  
TO REFUND SEWER CHARGES**

Comes the Intervenor, Covered Bridge Farms Homeowner's Association, by counsel, and moves the Commission to enter an order remanding the Intervenor's Motion for Contempt and To Refund Sewer Charges, contingent upon the Commission's entry of an Order adopting the Stipulation of Facts and Agreement entered in this action on May 19, 1999. Upon said entry, the Contempt Motion may be dismissed as moot.



FRANK G. SIMPSON III  
Simpson Law Offices  
Suite 202  
207 Old Harrods Creek Road  
Louisville, Kentucky 40223  
(502) 329-0265  
Fax (502) 244-1811  
Attorney for Covered Bridge Farms  
Homeowner's Association

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of this Motion to Compel Production of Documents has been mailed, First Class, postage prepaid, to the following this 13th day of May, 1999 to Richard G. Raff, Counsel, Public Service Commission, 730 Schenkel Lane, Frankfort, KY 40602, and to Robert C. Moore, Hazelrigg & Cox, 415 W. Main St., Frankfort, KY 40602.

  
Frank G. Simpson III



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KENTUCKY 40602  
www.psc.state.ky.us  
(502) 564-3940  
Fax (502) 564-3460

**Ronald B. McCloud, Secretary**  
**Public Protection and**  
**Regulation Cabinet**

**Helen Helton**  
**Executive Director**  
**Public Service Commission**

**Paul E. Patton**  
**Governor**

May 10, 1999

Ms. Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, Kentucky 40602

Re: Case No. 99-079

Dear Ms. Helton:

Attached hereto please find a Stipulation of Facts and Agreement for filing in the case file of the above-referenced case.

Sincerely,

A handwritten signature in cursive script that reads "Richard G. Raff".

Richard G. Raff  
Staff Attorney

Attachment

cc: Parties of Record w/attachment



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC.                     )  
\_\_\_\_\_   ) CASE NO. 99-079  
   )  
ALLEGED FAILURE TO COMPLY WITH THE            )  
COMMISSION'S OCTOBER 9, 1998 ORDER            )  
IN CASE NO. 97-455                                     )

STIPULATION OF FACTS AND AGREEMENT

By Order dated March 10, 1999, the Commission initiated this proceeding to determine whether Covered Bridge Utilities, Inc. (Covered Bridge") should be subject to the penalty's prescribed in KRS 278.990 for two probable violations of the Commission's October 9, 1998 Order in Case No. 97-455.<sup>1</sup> In that Order, the Commission approved new sewer rates for Covered Bridge and directed it to file the following:

1. Revised tariffs setting forth the new rates within 30 days of October 9, 1998; and
2. A new rate application to establish an initial rate for an adjoining sewer utility, Hayfield Utilities, Inc. ("Hayfield") and to adjust as appropriate the residential rate within 60 days of October 9, 1998.

Covered Bridge had not made either of the required filings when due or prior to the initiation of this proceeding on March 10, 1999. Pursuant to Covered Bridge's request, an informal conference was held at the Commission's offices on April 1, 1999.

---

<sup>1</sup> Case No. 97-455, The Application of Covered Bridge Utilities For a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure For Small Utilities.

Covered Bridge and the Commission Staff submit the following agreement for the Commission's consideration in rendering its decision in this proceeding:

1. Covered Bridge agrees that the Commission's March 10, 1999 Order accurately presents the facts relevant to this proceeding.

2. Covered Bridge has now filed its revised tariff as required by the Commission's October 9, 1998 Order in Case No. 97-455.

3. Covered Bridge will file no later than July 1, 1999 an application to establish an initial rate for Hayfield and to adjust as appropriate the existing residential rate. Although Covered Bridge now consists of two separate treatment plants, a number of the operating services are on a shared basis. Since Covered Bridge does not allocate cost between the two plants and the development of such an accounting system would be unduly complicated and expensive, Covered Bridge will file its July 1, 1999 rate case based on one unified system serving all customers.

4. Covered Bridge agrees to waive its right to a hearing in this proceeding and further agrees to pay to the Commission a civil penalty in the amount of \$1,000 in full settlement of this proceeding. This payment and this Stipulation shall not constitute an admission by Covered Bridge that it has violated the Commission's October 9, 1998 Order in Case No. 97-455.

5. In the event that the new residential rate proposed by Covered Bridge on July 1, 1999 is lower than the existing rate of \$40.06, the new rate shall become effective immediately and be subject to prospective change at the conclusion of the Commission's rate investigation.

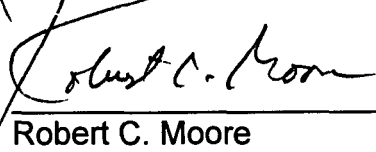


6. Except as set forth in paragraphs 3 and 5 herein, this Stipulation shall not affect in any way the rights of Covered Bridge with respect to the application to establish an initial rate for Hayfield and to adjust as appropriate the existing residential rate, or any proceedings concerning the application.

7. Covered Bridge and the Staff agree that if this Stipulation of Facts and Agreement is not adopted in its entirety by the Commission, Covered Bridge and the Staff reserve their rights to withdraw therefrom and require that a hearing be held on any and all matters involved herein. In such event, Covered Bridge and the Staff agree that the contents of this Stipulation of Facts and Agreement shall not be deemed binding upon the parties hereto, and cannot be used as an admission by either party.

8. Covered Bridge and the Staff agree that the foregoing Stipulation of Facts and Agreement is reasonable, is in the public interest, should be adopted in its entirety by the Commission, and if so adopted, no petition for rehearing or judicial appeal will be filed.

AGREED TO BY:

  
\_\_\_\_\_  
Robert C. Moore  
Hazelrigg & Cox  
Counsel for Covered Bridge Utilities, Inc.

4/29/99  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Richard G. Raff  
Counsel for the Commission

May 7, 1999  
\_\_\_\_\_  
Date



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

May 5, 1999

Lawrence W. Smither  
President  
Covered Bridge Utilities, Inc.  
136 St. Matthews Avenue  
Suite 275  
Louisville, KY. 40207 3191

Hon. Frank G. Simpson  
Simpson Law Offices  
Suite 102  
11414 Main Street  
Middletown, KY. 40243

Honorable Robert C. Moore  
Attorney for Covered Bridge  
Hazelrigg and Cox  
P.O. Box 676  
415 West Main Street  
Frankfort, KY. 40602 0676

RE: Case No. 99-079

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

*Stephanie D. Bell*  
Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC. )  
\_\_\_\_\_) CASE NO. 99-079  
)  
ALLEGED FAILURE TO COMPLY WITH THE )  
COMMISSION'S OCTOBER 9, 1998 ORDER )  
IN CASE NO. 97-455 )

O R D E R

On March 10, 1999, the Commission initiated this case to allow Covered Bridge Utilities, Inc. ("Covered Bridge") to show cause why it should not be subject to the penalties prescribed in KRS 278.990 for two probable violations of the Commission's October 9, 1998 Order in Case No. 97-455.<sup>1</sup> Case No. 97-455 was a rate case in which Covered Bridge sought to increase its charges for sewer treatment service to the Covered Bridge Farms subdivision. In approving a rate increase, the October 9, 1998 Order required Covered Bridge to: 1) file within 30 days a revised tariff setting forth the new rate; and 2) file within 60 days a rate application to establish an initial rate for service to an adjoining sewer utility, Hayfield Utilities, Inc. ("Hayfield"), and to adjust as appropriate the residential rate.

On March 25, 1999, the Countryside Homeowner's Association ("Countryside Homeowner's") filed a motion stating that its members are customers of Hayfield and requesting: 1) intervention in this show cause case; 2) consolidation of Case Nos. 97-

---

<sup>1</sup> Case No. 97-455, The Application of Covered Bridge Utilities, Inc. For a Rate Adjustment Pursuant to 807 KAR 5:076 For Small Utilities.

455 and 97-457<sup>2</sup> with this show cause case; and 3) an Order prohibiting Hayfield from charging any fees other than those approved in Case No. 97-457.

On April 6, 1999, Covered Bridge filed a response in opposition to the Countryside Homeowner's motion. Covered Bridge states that members of Countryside Homeowner's are customers of Hayfield, not customers of Covered Bridge, and that Hayfield is no longer a jurisdictional utility since it now has no treatment facilities and charges only for the collection and transmission of sewage. For these reasons, Covered Bridge also claims that Countryside Homeowner's has failed to demonstrate sufficient facts to justify disregarding Hayfield's separate corporate existence and treating it and Covered Bridge as a single entity. Covered Bridge supports its claim of separate corporate entities by an affidavit of one of its owners and an affidavit of the owner of Hayfield.

Further, Covered Bridge opposes consolidation on the basis that final orders were issued in Case No. 97-455 and 97-457 over six months ago and no rehearing or appeal was filed in either case. Finally, Covered Bridge notes that the Commission Staff Report in Hayfield's rate case, Case No. 97-457, explicitly recognized that Commission regulation will end once the Hayfield plant is taken out of service and sewage is transmitted to Covered Bridge for treatment. Thus, Covered Bridge asserts that the Commission now has no jurisdiction to enjoin Hayfield from collecting any fees in excess of the rate established in Case No. 97-457.

---

<sup>2</sup> Case No. 97-457, The Application of Hayfield Utilities, Inc. For a Rate Adjustment Pursuant To 807 KAR 5:076 For Small Utilities.

Hayfield Utilities also filed a response in opposition to the Countryside Homeowner's motion. Hayfield echoes Covered Bridge's claim of separate corporate identities and also argues that Countryside Homeowner's, having intervened in Case No. 97-457, is barred by principles of *res judicata* from now attempting to challenge the determination in that case that closing Hayfield's treatment plant renders its sewage collection and transmission system non-jurisdictional.

Based on the motion, the responses, and being sufficiently advised, the Commission finds that the relief requested by Countryside Homeowner's is beyond the scope of this case. The only issue before us now is whether Covered Bridge violated the October 9, 1998 Order in Case No. 97-455 by failing to file certain items by the specified dates and, if so, the appropriate remedies for the violations.

The Countryside Homeowner's motion attempts to expand this case into an investigation of unrelated issues: the corporate relationship of Covered Bridge and Hayfield; the fees now charged by Hayfield for sewer collection and transmission service; whether Hayfield is a jurisdictional utility; and if so, whether Hayfield is in violation of the October 9, 1998 Order in Case No. 97-457. The motion fails to show good cause to justify such an expansion of this case. The motion is essentially a complaint against Hayfield, but as such it falls short of establishing a *prima facie* case. It includes only vague and general allegations, rather than specific facts to show that Covered Bridge and Hayfield are so interrelated that they may legally be considered as one entity.

The Staff Report in Hayfield's rate case, Case No. 97-457, noted that upon connecting Hayfield to Covered Bridge, the Hayfield plant would be taken out of service.

Hayfield would then only be providing collection service, which is not subject to Commission regulation under the recent decision in Boone County Water and Sewer District v. Public Service Commission, Ky., 949 S.W.2d 588 (1997). That Staff Report was adopted by the Commission's October 9, 1998 Order in that case and Countryside Homeowner's raised no objection to the nonjurisdictional nature of Hayfield as a collection system.

While the Commission shares the concerns raised by Countryside Homeowner's that a sewer utility could spin off its collection system to avoid regulation, the Kentucky Supreme Court definitively ruled in Boone County that:

It is logical to conclude that the legislature did not mention collection and transmission of sewage because the legislature intended that these operations not be regulated by KRS Chapter 278. If the legislature had wanted activities pertaining to sewage collection and transportation to be regulated by the Public Service Commission, it would have specifically so stated in Chapter 278 of the Kentucky Revised Statutes. The legislature did not do so.

However, even assuming the Commission has the authority to disregard the spin-off of sewer collection facilities for the sole purpose of avoiding regulation, there is no allegation here that Hayfield closed its treatment plant for that reason. To the contrary, the Commission's records show that as early as 1990 an expansion was proposed at Covered Bridge which would eliminate the Hayfield treatment plant.<sup>3</sup> In addition, the

---

<sup>3</sup> Commission Case No. 93-275, Covered Bridge Utilities, Inc.'s Application for a Certificate of Public Convenience and Necessity, Exhibit A thereto. Attached hereto as Appendix A.

Natural Resources and Environmental Protection Cabinet encouraged Hayfield to close its treatment plant and connect to Covered Bridge long before the decision in Boone County.<sup>4</sup>

In summary, the Commission finds that Countryside Homeowner's has shown neither a special interest in the limited issues in this case nor that its intervention is likely to present issues or develop facts that will assist in our consideration of this case. Rather, the issues sought to be raised by Countryside Homeowner's will unduly complicate this show cause case. Therefore, intervention will be denied, as will the requests to consolidate and to enjoin Hayfield from collecting any fees other than those approved in Case No. 97-457 for what is now only a sewer collection system.

IT IS THEREFORE ORDERED that Countryside Homeowner's motion to intervene, to consolidate this show cause case with Case Nos. 97-455 and 97-457, and to enjoin Hayfield from collecting fees not approved in Case No. 97-457 is denied.

Done at Frankfort, Kentucky, this 5th day of May, 1999.

By the Commission

ATTEST:

  
Executive Director

---

<sup>4</sup> Case No. 93-275, Transcript of April 25, 1994 Hearing, Exhibit A thereto. Attached hereto as Appendix B.

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 99-079 DATED MAY 5, 1999



RL H. BRADLEY  
SECRETARY



WALLACE G. WILKINSON  
GOVERNOR

COMMONWEALTH OF KENTUCKY  
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
FRANKFORT OFFICE PARK  
18 REILLY ROAD  
FRANKFORT, KENTUCKY 40601

March 6, 1990

Langan, Martin and Keith Development Corporation  
c/o Middleton and Reutlinger  
2500 Brown and Williamson Tower  
Louisville, Kentucky 40202-3410

Re: Meadows at Covered Bridge  
Oldham County, Kentucky

Gentlemen:

We have considered your proposal to eliminate the Countryside Estates Wastewater Treatment Plant, pipe the effluent of the Covered Bridge Farm plant below the lake and serve the Meadows at the Covered Bridge development (formerly Lyndon Hills) with an expanded facility at the Covered Bridge Farm location. The plant will have a design capacity of 144,000 gpd and will discharge to an unnamed tributary whose confluence with Harrods Creek occurs at milepoint 1.57, segment number 08050 (mile point 3.0).

We concur in this proposal with the following provisions:

The wastewater treatment facilities must be designed to produce the following effluent concentrations:

	<u>May 1 - October 31</u>	<u>November 1 - April 30</u>
Five Day BOD	10 mg/l	10 mg/l
Suspended Solids	30 mg/l	30 mg/l
Ammonia Nitrogen	2 mg/l	5 mg/l
Dissolved Oxygen	7 mg/l	7 mg/l

Our field office personnel have indicated your intention to continue to utilize the existing lagoon in the expanded treatment plant. As part of your design submittal, indicate the lagoon volume and surface area at the operating depth, details of the aeration system and provide details of the lagoon liner system.

Post-It™ brand fax transmittal memo 7871 # of pages 2

To	WAGBY SMITH	From	Paul Fitch
Co.	JAMES WINSTAD	Co.	KY DOW

Langan, Martin and Kelth Development Corporation  
March 6, 1990  
Page Two

In addition to the above, the monthly average and weekly maximum values of fecal coliform shall be at or below 200 and 400, respectively, the year around. Additional effluent limitations and water quality standards are contained in the Division of Water Regulations.

These preliminary design effluent limits are subject to change as a result of additional information which may be presented during the public notice phase of the Kentucky Pollutant Discharge Elimination System (KPDES) permitting procedure and do not guarantee issuance of a permit. These preliminary effluent limits are contingent upon the validity, accuracy and completeness of the data and information which you have submitted.

This letter does not approve the design details of the treatment system and does not authorize construction of these facilities. Floodplain approval must be obtained from this Division. Some suitable form of effluent post aeration will also be necessary in order to produce the required dissolved oxygen concentration. This design should be included in the plans and specifications for the treatment system.

Approval of this project will be subject to the rules and regulations set forth by the Cabinet for the submission of plans and specifications as well as the necessary legal documents.

If you have questions concerning this correspondence, do not hesitate to call Paul Fitch at 502/564-3410.

Sincerely,

*William B. Gatewood*

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

4801PLF:pam

cc: James Winstead and Associates  
Oldham County Health Department  
Frankfort Field Office

APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 99-079 DATED MAY 5, 1999

PHILLIP J. SHEPHERD  
SECRETARY



BRERETON C. JONES  
GOVERNOR

COMMONWEALTH OF KENTUCKY  
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

FRANKFORT OFFICE PARK  
14 REILLY ROAD  
FRANKFORT, KENTUCKY 40601

EXHIBIT NO. A  
V. LEWIS

April 25, 1994

Mr. Carroll Cogan  
Louisville, Kentucky

Re: Hayfield Utilities, Inc. (Countryside Subdivision) and Covered  
Bridge Farms Wastewater Treatment Plants

Dear Mr. Cogan:

In response to your request regarding the above-cited facilities, I would have consulted others in the Division of Water to provide a more comprehensive response, but there was not sufficient notice to allow me to do so. I can, however, impart the following information:

- The Division of Water has many historical concerns regarding compliance at the Countryside plant. Enforcement actions and a series of complaints from downstream neighbors have punctuated the Division's problems with this facility.
- Division of Water staff have frequently suggested inclusion of the connections served by the Countryside plant in the proposed expansion of the Covered Bridge Farms Plant. While some of the Covered Bridge plant's neighbors oppose this expansion, an adequately-sized, adequately-operated and maintained Covered Bridge Farms plant would provide an opportunity for elimination of substandard discharges and frequent bypasses at Countryside which have long plagued the receiving stream. The adequacy of the Covered Bridge Farms plant to handle the Countryside flow is a matter best left to our technical personnel. Our ultimate goal is extension of sewer lines from Jefferson County to serve this area of Oldham County, thus eliminating Covered Bridge and other facilities. We expect this to occur in the next five or six years.



I hope this information is of some benefit to you and the Public Service Commission. I suggest you contact Kyland Smither of the Louisville Regional Office of the Division of Water for any specific information regarding the operation of these plants. Dave Leist can address regionalization issues in Oldham County.

Sincerely,

*For John D. Lyons*  
Gary F. Levy, Manager  
Enforcement Branch  
Division of Water

GFL/jlb

cc: Dave Leist  
Kyland Smither

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC. ) 99-079

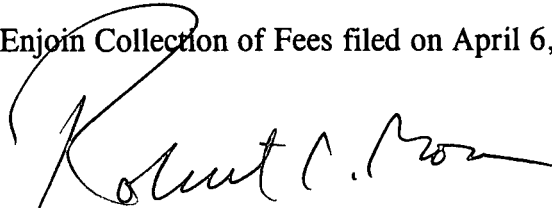
RECEIVED

APR 23 1999

PUBLIC SERVICE  
COMMISSION

NOTICE OF FILING

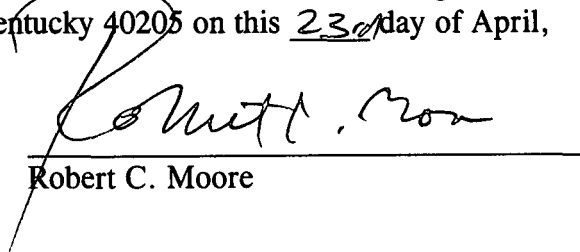
Comes Covered Bridge Utilities, Inc. ("Covered Bridge"), by counsel, and hereby files the originals of the affidavits of Carroll Cogan and Marty Cogan. Copies of these affidavits were filed as Attachment 1 to Covered Bridge's Memorandum in Opposition to Motion to Consolidate, Motion to Intervene, and Motion to Enjoin Collection of Fees filed on April 6, 1999.



Robert C. Moore  
Hazelrigg and Cox  
P.O. Box 676  
415 West Main Street  
Frankfort, Kentucky 40602-0676  
Attorney for Covered Bridge Utilities, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Richard Raff, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Frank G. Simpson, III, Simpson Law Offices, Suite 102, 11414 Main Street, Middletown, Kentucky 40243, Jeffrey W. Kibbey, 121 South Seventh Street, Suite 100, Louisville, Kentucky, 40202 and Robert D. McClure, Two Paragon Center, Suite 220, 6040 Dutchman's Lane, Louisville, Kentucky 40205 on this 23<sup>rd</sup> day of April, 1999.



Robert C. Moore

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

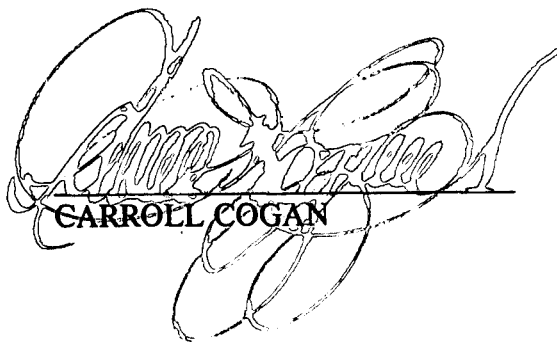
In the Matter of:

COVERED BRIDGE UTILITIES, INC.     )     99-079

AFFIDAVIT OF CARROLL COGAN

Comes the affiant, Carroll Cogan, and after being duly sworn, states as follows:

1. That I reside at 3001 Hayfield Drive, Louisville, Kentucky, 40205.
2. That I am the sole shareholder in Hayfield Utilities, Inc.
3. That I have no ownership interest in Covered Bridge Utilities, Inc., and
4. That I do not share in any of the profits of Covered Bridge Utilities, Inc.
5. That Hayfield Utilities is not operated under a single billing system with Covered Bridge Utilities, Inc.
6. Further affiant sayeth not.



CARROLL COGAN

STATE OF KENTUCKY     )  
                                       )SS  
COUNTY OF FRANKLIN    )

SUBSCRIBED AND SWORN to before me by Carroll Cogan, this 19<sup>th</sup> day of  
April, 1999.

My commission expires: June 19, 2002.

Lisa Lee Raley  
NOTARY PUBLIC

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

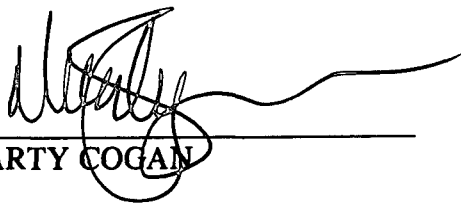
In the Matter of:

COVERED BRIDGE UTILITIES, INC.    )       99-079

**AFFIDAVIT OF MARTY COGAN**

Comes the affiant, Marty Cogan, and after being duly sworn, states as follows:

- 1.    That I reside at 2223 Millvale Road, Louisville, Kentucky, 40205.
- 2.    That Larry Smither and I are the sole shareholders in Covered Bridge Utilities, Inc.
- 3.    That neither Larry Smither or I have any ownership interest in Hayfield Utilities, Inc.
- 4.    That I do not share in any of the profits of Hayfield Utilities, Inc.
- 5.    That Covered Bridge Utilities, Inc. does not operate under a single billing system with Hayfield Utilities, Inc.
- 6.    Further affiant sayeth not.



\_\_\_\_\_  
MARTY COGAN

STATE OF KENTUCKY    )  
                                      )SS  
COUNTY OF FRANKLIN    )

SUBSCRIBED AND SWORN to before me by Marty Cogan, this 19<sup>th</sup> day of April, 1999.

My commission expires: June 19, 2002.



\_\_\_\_\_  
NOTARY PUBLIC



**CHARLES F. MERZ & ASSOCIATES**  
ATTORNEYS AT LAW  
Suite 102  
11414 Old Shelbyville Road  
Louisville, Kentucky 40243

RECEIVED

APR 09 1999  
PUBLIC SERVICE  
COMMISSION

Of counsel:  
FRANK G. SIMPSON III

---

April 8, 1999

Helen C. Helton  
Executive Director  
Public Service Commission  
PO Box 615  
Frankfort, Kentucky 40602

Re: Case No. 99-079  
Covered Bridge Utilities, Inc.

Dear Ms. Helton:

On behalf of attorney Frank G. Simpson III we acknowledge receipt of your letter of April 7, 1999 transmitting a memorandum of informal conference held on April 1, 1999.

Mr. Simpson will be out of the country until Monday, April 12, 1999 and may be interested in providing comments pursuant to your invitation. On behalf of Mr. Simpson please extend the time for filing comments from Mr. Simpson until April 15, 1999.

Sincerely,



Charles F. Merz

cc: Frank G. Simpson III

Telephone: 502-244-2034 • Telefax: 502-244-1811  
E-mail: cmerz1@iglou.com



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KENTUCKY 40602  
www.psc.state.ky.us  
(502) 564-3940  
Fax (502) 564-3460

**Ronald B. McCloud, Secretary**  
**Public Protection and**  
**Regulation Cabinet**

**Helen Helton**  
**Executive Director**  
**Public Service Commission**

**Paul E. Patton**  
Governor

April 7, 1999

Mr. Lawrence W. Smither, President  
Covered Bridge Utilities, Inc.  
136 St. Matthews Avenue, Suite 275  
Louisville, Kentucky 40207-3191

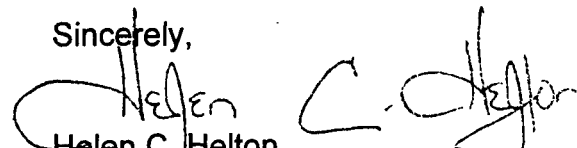
Hon. Frank G. Simpson III  
Simpson Law Offices  
Suite 102  
11414 Main Street  
Middletown, Kentucky 40243

Re: Case No. 99-079  
Covered Bridge Utilities, Inc.

Gentlemen:

Attached is a copy of the memorandum which is being filed into the record of the above-referenced case. If you have any comments that you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. Should you have any questions regarding same, please contact Richard Raff at (502) 564-3940, Extension 260.

Sincerely,

  
Helen C. Helton  
Executive Director

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case No. 99-079

FROM: Richard G. Raff *RGR*  
Attorney

DATE: April 7, 1999

RE: Covered Bridge Utilities  
Case No. 99-079

Pursuant to the request of Covered Bridge Utilities, Inc., the Commission entered an Order scheduling an informal conference on April 1, 1999 at the Commission's offices in Frankfort, Kentucky. A list of those in attendance is attached hereto.

As a result of discussions during the informal conference, an agreement in principal was reached. Covered Bridge and Commission Staff will enter into a Stipulation, to be submitted to the Commission for its approval, setting forth the pertinent facts, and the waiver of any need for a hearing, and an agreement to pay a civil penalty of \$1,000.

Discussions were also held on the motion filed by the Covered Bridge Farms Homeowner's Association, requesting that Covered Bridge be held in contempt and required to refund sewer charges already paid by customers. Based on Staff's representations that the contempt authority was limited to proceeding under KRS 278.990, and that any change in rate can be applied prospectively only under KRS 278.270, the Homeowner's Association tentatively agreed to withdraw its motion. Although the Homeowner's Association will not be a signatory to the Stipulation, it will have an opportunity to review the drafts and comment thereon.

Attachment

cc: Parties of Record

Covered Bridge Utilities Show Busl 99-079

4/1/99

<u>NAME</u>	<u>REPRESENTING</u>
Richard Hoff	PSC-Legal
Gerald Wutcher	PSC Staff
Caryn Lee	PSC staff
JAMES RICE	" "
Scott Lawless	PSC
Frank G. Simpson III	Covered Bridge Homeowners Assc.
ROBERT MOORE	COVERED BRIDGE
Marty Cogan	Covered Bridge Utilities



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

April 8, 1999

Lawrence W. Smither  
President  
Covered Bridge Utilities, Inc.  
136 St. Matthews Avenue  
Suite 275  
Louisville, KY. 40207 3191

Hon. Frank G. Simpson  
Simpson Law Offices  
Suite 102  
11414 Main Street  
Middletown, KY. 40243

RE: Case No. 99-079

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

*Stephanie J. Bell*  
Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC. )  
\_\_\_\_\_ ) CASE NO. 99-079  
)  
ALLEGED FAILURE TO COMPLY WITH THE )  
COMMISSION'S OCTOBER 9, 1998 ORDER )  
IN CASE NO. 97-455 )

O R D E R

The Commission, having considered the April 7, 1999 memo to the case file regarding an agreement in principal to resolve the pending issues without a hearing, HEREBY ORDERS that the hearing scheduled on April 13, 1999 is canceled.

Done at Frankfort, Kentucky, this 8th day of April, 1999.

By the Commission

ATTEST:

  
Executive Director

**BEFORE THE PUBLIC SERVICE COMMISSION**

RECEIVED

IN RE: COVERED BRIDGE UTILITIES, INC. )  
ALLEGED FAILURE TO COMPLY )  
WITH THE COMMISSION'S OCTOBER ) NO. 99-079  
9, 1998 ORDER IN CASE NO. 97-455 )

APR 06 1999

PUBLIC SERVICE  
COMMISSION

**REPLY TO MOTION TO CONSOLIDATE, MOTION TO  
INTERVENE AND MOTION TO ENJOIN COLLECTION OF FEES**

\*\*\* \*\*

Comes Hayfield Utilities, Inc. ("Hayfield"), by counsel, and for its response to Countryside Homeowner's Association ("Association"), in the above-styled motion, states as follows:

The main thrust of the Association's Motion is that "Hayfield and Covered Bridge are, in essence, the same entity, and that Hayfield is therefore a treatment facility." (Motion at ¶ 17). To support this allegation, the Association states as follows:

Said corporations are so intimately related as to be indistinguishable . . . as the utilities are owned and operated by inter-related persons. [B]oth services are conducted by the same individuals, for the same purpose, under a single billing system, and for common profit . . . (*Id.* at ¶ 19).

The Association's motion is flawed both procedurally and substantively. Procedurally, the motion overlooks the Commission's previous orders. On October 9, 1998, the Commission entered an Order adopting and incorporating by reference the Commission Staff Report generated during the dependency of the rate case. By way of addressing Hayfield's ability to recoup its costs in maintaining the collection system, the Report stated:

It is Staff's opinion that Hayfield will no longer be under the Commission's jurisdiction once the connection is complete and Hayfield no longer treats wastewater. At that time Hayfield would be entitled to recover these charges through monthly collection fees.

(Staff Report at 4.) The Association was a party to the rate case and made no objection to the specific finding that Hayfield, as a separate entity, would no longer be under the jurisdiction of the

APR 05 1999

PSC once connected to Covered Bridge. The Association had every opportunity to raise its current argument that the corporate veils of the corporations should be pierced and the Association failed to do so. Under KRS 278.410 the Association is now barred from raising the issue. Further, Kentucky case law surrounding the doctrine of *res judicata*, and the related doctrine of merger and bar, supports a finding that the Association is precluded from making its current argument due to its failure to raise it in the prior proceeding. See *Egbert v. Curtis*, Ky. App., 695 S.W.2d 123 (1985); and *Williamson v. Public Service Commission*, Ky., 174 S.W.2d 526 (1943) (Doctrine of *res judicata* applies to quasi judicial decisions of public agencies).

Moreover, the Association's attempt to pierce the corporate veils have absolutely no support under Kentucky substantive law. The first and foremost fact which *must* be present before a court will even consider ignoring the corporate form is that there must be unity of ownership. See *Dare to Be Great, Inc. v. Commonwealth*, Ky., 511 S.W.2d 224, 227 (1974); *Big Four Mills Ltd. v. Commercial Credit Company*, Ky., 211 S.W.2d 831, 834 (1948); and *American Collectors Exchange, Inc. v. Kentucky State Democratic Central Executive Committee*, Ky.App. 566 S.W.2d 759, 762 (1978). In the instant matter, it is indisputable that there is no common ownership of the outstanding shares of stock of Hayfield and Covered Bridge. All of the outstanding shares of stock of Hayfield are owned by Carroll Cogan. (See affidavits attached). The stock of Covered Bridge is owned equally by Marty Cogan and Larry Smithers (*Id.*). Moreover, contrary to the representations of the Association in its brief, neither the Corporations nor their principals share in the other's profits. (*Id.*)

Unable to show any commonality of ownership or any sharing of profits, the Association's bald assertion that the "corporations are so intimately related as to be indistinguishable," must be rejected by the Commission. Having rejected this argument, the Association's Motion to

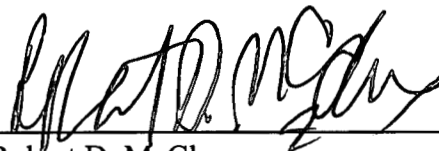


Consolidate and Motion to Enjoin Collection of Fees must be denied because it is otherwise clear that the Commission has no jurisdiction over Hayfield.

The case of *Boone County Water and Sewer District v. Public Service Commission*, Ky., 949 S.W.2d 588 (1997) makes this proposition abundantly clear. In this case, the Supreme Court construed KRS 278.260(1)(f) as meaning that activities relating to the collection and transportation of sewage do not fall under the regulatory jurisdiction of the Public Service Commission. It is beyond dispute in this case that Hayfield no longer treats sewage, its treatment plant having gone off-line before the Public Service Commission entered its Order of October 9. This being the case, the Association's motion to consolidate should be denied because the Commission no longer has jurisdiction over Hayfield. For the same reason, the Association's motion to adjoin collection of fees and to enforce the rate set by the Commission should also be denied. Not only does the Commission no longer have jurisdiction to rule on the motion but, in addition, the Commission has already ruled that Hayfield is entitled to do exactly what it is currently doing, which is recovering the expenses it incurred for maintenance of its sewer system. (*See* Order and Staff Report at 4, *supra*).

Accordingly, for the reasons stated herein, Hayfield Utilities, Inc. respectfully requests that the Commission overrule the Association's motions.

Respectfully submitted,



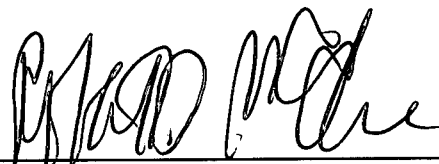
---

Robert D. McClure  
KRUGER, SCHWARTZ & MORREAU  
Two Paragon Centre, Suite 220  
6040 Dutchmans Lane  
Louisville, Kentucky 40202  
(502) 485-9200

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent, via U.S. Mail, postage prepaid, on this 6<sup>th</sup> day of April, 1999, to the following:

Mr. Jeffrey W. Kibbey  
121 S. 7<sup>th</sup> Street, Suite 100  
Louisville, Kentucky 40202



---

Robert D. McClure

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC. ) 99-079

AFFIDAVIT OF CARROLL COGAN

Comes the affiant, Carroll Cogan, and after being duly sworn, states as follows:

1. That I reside at 3001 Hayfield Drive, Louisville, Kentucky, 40205.
2. That I am the sole shareholder in Hayfield Utilities, Inc.
3. That I have no ownership interest in Covered Bridge Utilities, Inc., and
4. That I do not share in any of the profits of Covered Bridge Utilities, Inc.
5. That Hayfield Utilities is not operated under a single billing system with Covered Bridge Utilities, Inc.
6. Further affiant sayeth not.

  
CARROLL COGAN

STATE OF KENTUCKY )  
  )SS  
COUNTY OF FRANKLIN )

SUBSCRIBED AND SWORN to before me by Carroll Cogan, this 6th day of April, 1999.

My commission expires: June 19, 2002.

  
NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC.     )     99-079

AFFIDAVIT OF MARTY COGAN

Comes the affiant, Marty Cogan, and after being duly sworn, states as follows:

1. That I reside at 2223 Millvale Road, Louisville, Kentucky, 40205.
2. That Larry Smither and I are the sole shareholders in Covered Bridge Utilities, Inc.
3. That neither Larry Smither or I have any ownership interest in Hayfield Utilities, Inc.
4. That I do not share in any of the profits of Hayfield Utilities, Inc.
5. That Covered Bridge Utilities, Inc. does not operate under a single billing system with Hayfield Utilities, Inc.
6. Further affiant sayeth not.

  
MARTY COGAN

STATE OF KENTUCKY     )  
                                      )SS  
COUNTY OF FRANKLIN   )

SUBSCRIBED AND SWORN to before me by Marty Cogan, this 6th day of April, 1999.

My commission expires: June 19, 2002.

  
NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC. ) 99-079

RECEIVED

APR 06 1999

PUBLIC SERVICE  
COMMISSION

MEMORANDUM IN OPPOSITION TO MOTION TO CONSOLIDATE, MOTION TO  
INTERVENE, AND MOTION TO ENJOIN COLLECTION OF FEES

Comes Covered Bridge Utilities, Inc. ("Covered Bridge"), by counsel, and for its Memorandum in Opposition to Motion to Consolidate, Motion to Intervene, and Motion to Enjoin Collection of Fees ("Motions") filed by Countryside Homeowner's Association ("CHA"), states as follows:

**I. CHA IS NOT A CUSTOMER OF COVERED BRIDGE AND SHOULD NOT BE ALLOWED TO INTERVENE IN CASE NO. 99-079.**

CHA requests that it be allowed to intervene in Case No. 99-079, which is now pending before the Commission. Case No. 99-079 is to determine whether Covered Bridge violated the Commission's Order of October 9, 1998 by failing to 1) file a revised tariff setting forth the new rates to be paid by the residential customers of Covered Bridge and 2) file a new rate application to establish an initial non-residential rate to be paid by Hayfield Utilities, Inc. ("Hayfield") and to adjust as appropriate the residential rate to be paid by the residential customers of Covered Bridge. Contrary to CHA's assertion, the Commission's October 9, 1999 Order did not require Covered Bridge to notify CHA of the date of the connection between Covered Bridge and Hayfield. The members of CHA are not residential customers of Covered Bridge. Nor is CHA a customer of Covered Bridge.

The members of CHA are customers of Hayfield. The reason CHA seeks to intervene

in this proceeding is to complain of the rate its members are being charged by Hayfield. CHA alleges that "Hayfield customers are being charged for the collection and treatment of their wastewater through means outside of the Commission's purview and in violation of the spirit of the Order" (See Motions, Paragraph 24(c)). However, CHA is being charged by Hayfield for the collection and transportation of sewage, since Hayfield no longer owns or operates a wastewater treatment plant. The Kentucky Supreme Court in Boone County Water and Sewer District v. Public Service Commission, 949 S.W.2d 588, 591 (Ky. 1997), held that the Commission does not have jurisdiction over the "collection and transportation of sewage." Therefore, as admitted by CHA, the Commission has no jurisdiction over the rate Hayfield charges the members of CHA for the collection and transportation of sewage.

Since 1) the rate the members of CHA should pay to Hayfield is beyond the jurisdiction of the Commission, and 2) the members of CHA are not customers of Covered Bridge, the Commission should deny the motion to intervene.

**II. CHA CITES NO FACTS TO JUSTIFY PIERCING THE CORPORATE VEIL OF COVERED BRIDGE.**

CHA apparently recognizes that it should not be allowed to intervene in this matter since it is not a customer of Covered Bridge. In order to avoid denial of its motions it alleges that Covered Bridge and Hayfield are "so intimately related as to be indistinguishable" and that the rate it is charged by Hayfield is subject to the Commission's jurisdiction because Covered Bridge is subject to regulation by the Commission. However, CHA fails to allege the existence of any facts in its complaint or by separate affidavit which would support piercing the corporate veil under Kentucky law and a finding that Hayfield and Covered Bridge are one

entity.

It has long been the law in Kentucky that "Courts are reluctant to disregard the corporate entity". Holsclaw v. Kenilworth Insurance Co., 644 S.W.2d 353, 355 (Ky. App. 1982). See also White v. Winchester Land Development Corporation, 584 S.W.2d 56 (Ky. App. 1979). "The approach of the Kentucky Courts to piercing the corporate veil has been described as evincing 'a general aversion for any disregard of the corporate entity.'" Poyner vs. Lear Siegler, Inc., 542 F2d 955, 958 (5<sup>th</sup> Cir. 1976) (citation omitted). CHA alleges that Hayfield and Covered Bridge are the alter egos of each other. In White, the Court stated:

"As regards the alter ego formulation, the elements thereof have been defined as follows: (1) that the ownership is not only influenced by the owners, but also that there is such unity of ownership and interest that their separateness has ceased; and (2) that the facts are such that an adherence to the normal attributes, viz, treatment as a separate entity, of separate corporate existence would sanction a fraud or promote injustice." Id. at pp. 61 and 62.

Here, CHA has not alleged any facts satisfying the first element necessary to pierce the corporate veil on an alter ego basis. That is because such facts do not exist. Simply put, the owner of Hayfield does not have an ownership interest in Covered Bridge. Similarly, the owners of Covered Bridge do not have an ownership interest in Hayfield. Nor do they operate under a single billing system (See Affidavit of Carroll Cogan and Affidavit of Marty Cogan, Attachments 1 and 2). Any attempt to intervene in this case concerning Covered Bridge based on the argument that Hayfield is the alter ego of Covered Bridge fails, and CHA's motion should be denied.

**III. THE MOTION TO CONSOLIDATE CASES IN WHICH FINAL, APPEALABLE DECISIONS HAVE BEEN ISSUED SHOULD BE DENIED.**

CHA requests the Commission to consolidate Case No. 97-455 with Case No. 97-457. A final decision was issued by the Commission in Case No. 97-455 on October 9, 1999, and no motion to reconsider or appeal the final order was filed. Likewise, a final decision was issued by the Commission in Case No. 97-457 on October 9, 1999 and no motion to reconsider or appeal this final order was filed. Because final orders were issued in these cases, and no appeal was filed, the decisions in the cases are final. It makes no sense to consolidate cases in which final decisions have been issued. Furthermore, CHA cites no authority for its request to consolidate these final cases. CHA's Motion to Consolidate should be denied.

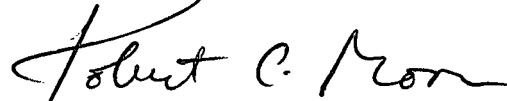
**IV. THE COMMISSION HAS NO JURISDICTION TO ENJOIN THE COLLECTION OF FEES TO HAYFIELD AND TO ENFORCE THE RATE SET BY THE COMMISSION.**

CHA requests the Commission to enjoin the collection of fees due Hayfield. As stated above, the Court in Boone very clearly held that the Commission does not have jurisdiction over the collection and transportation of sewage. Consistent with this decision, Attachment B to the Staff Report for Case No. 97-457 stated that once the connection between Hayfield and Covered Bridge was complete "Hayfield will no longer operate as a sewage treatment enterprise. It will function only as a collection system. . . . Hayfield will no longer be under the Commission's jurisdiction once the connection is complete and Hayfield no longer treats wastewater." (See Attachment 3, Paragraph e). Accordingly, without the required jurisdiction, the Commission cannot enjoin the collection of the fees due Hayfield for collecting and transporting sewage, or require Hayfield to charge the rate set in the Commission's Order for the treatment of sewage.



**CONCLUSION**

For the above stated reasons, the Commission ~~should~~ deny the motions of CHA.

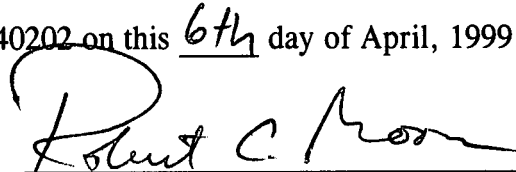


---

Robert C. Moore  
Hazelrigg and Cox  
P.O. Box 676  
415 West Main Street  
Frankfort, Kentucky 40602-0676  
Attorney for Covered Bridge Utilities, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Richard Raff, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Frank G. Simpson, III, Simpson Law Offices, Suite 102, 11414 Main Street, Middletown, Kentucky 40243, and Jeffrey W. Kibbey, 121 South Seventh Street, Suite 100, Louisville, Kentucky, 40202 on this 6th day of April, 1999.



---

Robert C. Moore

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

COVERED BRIDGE UTILITIES, INC. ) 99-079

**AFFIDAVIT OF CARROLL COGAN**

Comes the affiant, Carroll Cogan, and after being duly sworn, states as follows:

- 1. That I reside at 3001 Hayfield Drive, Louisville, Kentucky, 40205.
- 2. That I am the sole shareholder in Hayfield Utilities, Inc.
- 3. That I have no ownership interest in Covered Bridge Utilities, Inc., and
- 4. That I do not share in any of the profits of Covered Bridge Utilities, Inc.
- 5. That Hayfield Utilities is not operated under a single billing system with Covered Bridge Utilities, Inc.
- 6. Further affiant sayeth not.



CARROLL COGAN

STATE OF KENTUCKY )  
 )SS  
 COUNTY OF FRANKLIN )

SUBSCRIBED AND SWORN to before me by Carroll Cogan, this 6th day of April, 1999.

My commission expires: June 19, 2002.

*Lisa Lee Raley*  
 NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION


In the Matter of:

COVERED BRIDGE UTILITIES, INC. ) 99-079

AFFIDAVIT OF MARTY COGAN

Comes the affiant, Marty Cogan, and after being duly sworn, states as follows:

1. That I reside at 2223 Millvale Road, Louisville, Kentucky, 40205.
2. That Larry Smither and I are the sole shareholders in Covered Bridge Utilities, Inc.
3. That neither Larry Smither or I have any ownership interest in Hayfield Utilities, Inc.
4. That I do not share in any of the profits of Hayfield Utilities, Inc.
5. That Covered Bridge Utilities, Inc. does not operate under a single billing system with Hayfield Utilities, Inc.
6. Further affiant sayeth not.

  
 \_\_\_\_\_  
 MARTY COGAN

STATE OF KENTUCKY )  
 )SS  
 COUNTY OF FRANKLIN )

SUBSCRIBED AND SWORN to before me by Marty Cogan, this 6th day of April, 1999.

My commission expires: June 19, 2002.

  
 \_\_\_\_\_  
 NOTARY PUBLIC

**ATTACHMENT B  
STAFF REPORT CASE NO. 97-457  
STAFF'S RECOMMENDED OPERATIONS**

	Test Year	Adjustments	Ref	Pro Forma Operations
<b>Operating Revenues</b>	<b>\$42,475.00</b>	<b>\$799.00</b>	<b>a</b>	<b>\$43,274.00</b>
<b>Operation and Maintenance Expenses</b>				
Management Fee	4,800.00	(1,200.00)	b	3,600.00
Sludge Hauling	4,486.00			4,486.00
Utility Service - Water Cost	102.00			102.00
Other - Labor	3,665.00	4,655.00	c	8,320.00
Fuel and Power	11,168.00			11,168.00
Chemicals	1,559.00			1,559.00
Routine Maintenance Fee	7,500.00		d	7,500.00
Maintenance of Collection System	35,861.00	(35,861.00)	e	0.00
Maintenance of Treatment Plant	4,095.00			4,095.00
Maintenance of Other Facilities	1,703.00			1,703.00
Agency Collection Fee	1,125.00			1,125.00
Office Supplies	96.00			96.00
Outside Services Employed	7,842.00	(1,167.00)	f	
		(200.00)	g	
		(3,497.00)	h	2,978.00
Insurance Expense	894.00	(158.00)	i	736.00
Regulatory Commission Expense	500.00	(500.00)	j	0.00
Transportation Expenses	829.00	(829.00)	k	0.00
Miscellaneous Expenses	642.00			642.00
Rents	600.00			600.00
<b>Total Operation and Maintenance</b>	<b>87,467.00</b>	<b>(38,757.00)</b>		<b>48,710.00</b>
Depreciation	416.00			416.00
Amortization		417.00	l	417.00
Taxes Other Than Income Taxes	716.00			716.00
<b>Total Operating Expenses</b>	<b>88,599.00</b>	<b>(38,340.00)</b>		<b>50,259.00</b>
<b>Net Operating Income</b>	<b>(46,124.00)</b>	<b>39,139.00</b>		<b>(6,985.00)</b>
Less: Interest Expense	(1,232.00)	1,232.00	m	0.00
<b>Net Income</b>	<b>(\$47,356.00)</b>	<b>\$40,371.00</b>		<b>(\$6,985.00)</b>
Operating Revenues	\$42,475.00			

Operation and Maintenance Expenses  
 Management Fee  
 Sludge Hauling  
 Utility Service - Water Cost  
 Other - Labor

ATTACHMENT B  
STAFF REPORT CASE NO. 97-457  
STAFF'S RECOMMENDED OPERATIONS

(a) Operating Revenues. Hayfield's 1996 annual report indicated that Hayfield had 144 customers with annual revenues from rates of \$42,475.00. Hayfield's 1997 annual report showed Hayfield had 146 customers. With 146 customers, Hayfield's annual revenue from rates should be \$43,274.00 (146 customers x \$24.70 per month x 12 months). For the purposes of this report, Hayfield's 1996 normalized operating revenue will be \$43,274.00

(b) Owner/Manager Fee. Hayfield reported \$4,800.00 for owner/manager fees during 1996. The Commission limits this fee to \$3,600.00 for small investor owned utilities such as Hayfield. Therefore, Staff decreased test year operations by \$1,200.00.

(c) Other - Labor. During the test year Hayfield expensed payments to Beckmar Lab that totaled \$3,665.00. \$585.00 was for a sludge analysis while the remainder of \$3,080.00 was for monthly testing fees. Hayfield proposed to increase the test year expense by \$5,695.00 to recover the cost of weekly testing that is now required by its Kentucky Pollutant Discharge Elimination System ("KPDES") permit. Hayfield calculated its adjustment based on a weekly testing fee of \$180.00.

Staff determined that weekly testing was required after review of Hayfield's KPDES permit. A review of current Beckmar Lab invoices revealed that the cost of a weekly test is \$160.00. Staff calculated the weekly testing adjustment to be \$5,240.00 (( $\$160.00 \times 52$ ) - \$3,080.00).

Staff eliminated the \$585.00 sludge analysis fee from this account and included a provision for its recovery over a five year period in the amortization expense account. The net adjustment to the other labor account is \$4,655.00.

report showed Hayfield had 146 customer  
revenue from rates should be \$43,274.00  
months). For the purposes of this report, Ha  
will be \$43,274.00

ATTACHMENT B  
STAFF REPORT CASE NO. 97-457  
STAFF'S RECOMMENDED OPERATIONS

(d) Routine Maintenance Fee. Hayfield proposed to increase test year expense of \$7,500.00 by \$1,200.00 to recover an increase in the maintenance fee. Four sewer utilities owned by Carroll Cogan filed applications for rate increases on the same date. Three of these companies, including Hayfield, have routine maintenance performed by Andriot-Davidson Company ("A-D"). Martin Cogan, Carroll Cogan's son, and Larry Smither own A-D. During the test year, two companies had monthly fees of \$625.00 and one was \$650.00. The monthly fees proposed in the applications are \$725.00, \$863.00, and \$1,015.00. Despite repeated requests for documentation justifying the wide variance in proposed fees, no information to explain how fees were established was provided. The Commission's Division of Engineering advised that a monthly maintenance fee of \$625.00 appears reasonable. Due to the lack of information justifying the reasonableness of the proposed fees, Staff recommends that the monthly maintenance fees be limited to \$625.00.

(e) Maintenance of Collection System. During the test year Hayfield expensed \$35,861.00 paid to Culver Construction Company for a sewer main replacement project. The total cost of the project was \$60,000.00. Hayfield proposed to reduce the test year amount by \$15,861.00 to reflect a three year amortization of the project's total cost.

Staff obtained a letter dated November 3, 1997, from Carroll Cogan to the Division of Water, which indicated the sewer main replacement project was required for Hayfield to qualify for future connection to Covered Bridge's treatment plant. Through conversations with Carroll and Martin Cogan, Staff discovered that, upon completion of this connection, Covered Bridge will treat all of Hayfield's waste water as Hayfield's utilities owned by Carroll Cogan filed applica-

Three of these companies, including Hayfield  
Andriot-Davidson Company ("A-D") Martin

Smither own A-D. During the test year, two companies

ATTACHMENT B  
STAFF REPORT CASE NO. 97-457  
STAFF'S RECOMMENDED OPERATIONS

treatment plant will be taken out of service. Martin Cogan indicated that this would happen sometime during the next 12 month period.

Upon completion of the connection, Hayfield will no longer operate as a sewage treatment enterprise. It will function only as a collection system. The rates recommended herein have been based on expenses incurred for the treatment of waste water. Therefore, Staff has eliminated the amounts paid to Culver Construction Company and all other items included in test year expenses associated with this connection.

It is Staff's opinion that Hayfield will no longer be under the Commission's jurisdiction once the connection is complete and Hayfield no longer treats waste water. At that time Hayfield would be entitled to recover these charges through monthly collection fees.

(f) Outside Services Employed - Bookkeeping. During the test year Hayfield reported outside services employed for bookkeeping of \$2,770.00. That amount consisted of \$970.00 paid to Linda Wood and \$1,800.00 accrued payable to Carroll Cogan, owner of Hayfield.

During the review Staff determined that Ms. Wood provides bookkeeping services for all six of Mr. Cogan's sewer utilities for \$185.00 per week or \$9,620.00 annually. Staff has allocated 1/6 or \$1,603.00 of Ms. Wood's annual fee to Hayfield for determining revenue requirements in this case.

Staff has eliminated the \$1,800.00 accrued payable to Mr. Cogan. Staff determined that the only functions Mr. Cogan performed relative to bookkeeping duties for Hayfield was to sign some checks and approve payment of invoices for items that treatment enterprise. It will function as  
recommended herein have been based on  
water. Therefore Staff has eliminated the

ATTACHMENT B  
STAFF REPORT CASE NO. 97-457  
STAFF'S RECOMMENDED OPERATIONS

were either over a predetermined amount or considered out of the ordinary course of business. Staff is of the opinion that the owner/manager fee of \$3,600.00 provides for reasonable compensation for the performance of these duties.

The net decrease recommended by Staff for bookkeeping is \$1,167.00 (\$1,603.00 - \$2,770.00).

(g) Outside Services Employed - Accounting. Logsdon and Co. provides accounting services to Hayfield that includes the preparation of the Commission's annual report and state and federal tax returns. The fee for 1998 is \$1,200.00. Staff has decreased the reported test year expense of \$1,400.00 by \$200.00.

(h) Outside Services Employed - Other Consulting Fees. Hayfield paid Larry Smither \$1,080.00 during the test year to perform weekly inspections and prepare a report summarizing those inspections. Mr. Smither is 50 percent owner of A-D that currently contracts with Hayfield to perform inspections. Staff eliminated the inspection fees of \$1,080.00 as Mr. Smither is already responsible and compensated for inspecting Hayfield's treatment facility as an owner of A-D.

Hayfield paid Mr. Smither \$1,517.00 for consulting work performed with Culver Construction Company on the sewer main replacement project. Staff has eliminated this and all other expenditures associated with this project. For a detailed explanation refer to item (e) of this attachment.

The test year also included \$900.00 for a monthly fee of \$75.00 payable to Martin and Assoc. for serving as a liaison between the utility and the Division of Water ("DOW") and for submission of the monthly discharge monitoring reports. Martin Cogan, son of Carroll Cogan, owns Martin and Assoc. It was reported to Staff that Martin and Assoc.

The net decrease recommended  
(\$1,603.00 - \$2,770.00)

(i) Outside Services Employed - Health.



ATTACHMENT B  
STAFF REPORT CASE NO. 97-457  
STAFF'S RECOMMENDED OPERATIONS

does not provide this service to any sewer companies not owned by Carroll Cogan.

Dealing with DOW and signing the discharge monitoring reports are part of the management function and are compensated by the management fee. Staff does not consider this a prudent, necessary expense and removed it from test year operations.

(i) Insurance Expense. Test year expenses included \$894.00 for insurance expense. According to invoices and policies provided by the utility, the cost of a commercial package for all companies owned by Mr. Cogan was \$5,885.00. The policy covered 8 entities. Staff allocated the cost of the insurance equally to all entities. This results in an insurance expense of \$736.00 and a decrease to test year operations of \$158.00.

(j) Regulatory Commission Expense. Hayfield reported regulatory commission expense of \$500.00. This amount represented partial payment of a DOW settlement for case no. 18475 94 CI 01468. Staff has eliminated this amount as no penalty or fine should be recovered by a utility through rates.

(k) Transportation. Hayfield accrued \$828.75 payable to Mr. Cogan in the transportation expense account. This amount represented a portion of Mr. Cogan's personal automobile lease. No evidence was presented as to the reasonableness of this accrual or its calculation. Staff could not determine what amount should be allowed for Mr. Cogan's transportation expense as a mileage log was not maintained. Staff eliminated \$828.75 from test year operations.

(l) Amortization. Hayfield proposed to amortize rate case expense of \$1,500.00 over 3 years. Staff is of the opinion that rate case expenses should be amortized over the reasonable anticipated life of the rates which generally will not exceed five years. In light

(i) Insurance Expense. Test year expense. According to invoices and policies

ATTACHMENT B  
STAFF REPORT CASE NO. 97-457  
STAFF'S RECOMMENDED OPERATIONS

of the fact that Hayfield's current rates were approved over eighteen years ago, Staff recommends that rate case expenses in this case be amortized over five years.

Staff has amortized the previously mentioned sludge analysis fee of \$585.00 over a five year period. This fee is not an annual expense and its frequency of recurrence is unknown. Therefore, Staff amortized it over the life of the rates to be established in this case.

The net increase for the amortization adjustments is \$417.00  
(((\$1,500.00+\$585.00)/5).

(m) Interest Expense. Hayfield proposed to increase test year interest expense of \$1,232.00 by \$1,664.00. The pro forma interest was calculated on a \$60,000.00 loan used to fund the Culver Construction Company project. Staff has eliminated this and all other expenditures associated with this project. For a detailed explanation refer to item (e) of this attachment B.

eliminated \$628 of interest expense

amortized

staff

03/29/1999 09:58 894-5181

PAGE 27

ATTACHM  
STAFF REPORT C.  
STAFF'S RECOMMEN

of the fact that Hayfield's current rates were recommends that rate case expenses in this c

Staff has amortized the previously n.  
over a five year period. This fee is not a  
recurrence is unknown. Therefore, Staff are  
established in this case.



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

March 26, 1999

Lawrence W. Smither  
President  
Covered Bridge Utilities, Inc.  
136 St. Matthews Avenue  
Suite 275  
Louisville, KY. 40207 3191

Hon. Frank G. Simpson  
Simpson Law Offices  
Suite 102  
11414 Main Street  
Middletown, KY. 40243

RE: Case No. 99-079

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/hv  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC. )  
 )  
 \_\_\_\_\_ )  
 ) CASE NO.  
 ALLEGED FAILURE TO COMPLY ) 99-079  
 WITH THE COMMISSION'S )  
 OCTOBER 9, 1998 ORDER IN )  
 CASE NO. 97-455 )

O R D E R

The Commission, having considered the request by Covered Bridge Utilities, Inc. for an informal conference with Commission Staff and good cause having been shown, HEREBY ORDERS that an informal conference shall be held on April 1, 1999 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 2 of the Commission's offices at 677 Comanche Trail, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 26th day of March, 1999.

By the Commission

ATTEST:

  
Executive Director

RECEIVED

MAR 25 1999

PUBLIC SERVICE  
COMMISSION

**BEFORE THE PUBLIC SERVICE COMMISSION**

IN RE: COVERED BRIDGE UTILITIES, INC.	)	
ALLEGED FAILURE TO COMPLY WITH	)	
THE COMMISSION'S OCTOBER 9, 1998	)	NO. 99-079
ORDER IN CASE NO. 97-455	)	
	)	

**MOTION TO CONSOLIDATE**  
**MOTION TO INTERVENE**  
**MOTION TO ENJOIN COLLECTION OF FEES**

Come the Movants, Countryside Homeowner's Association, by counsel, and respectfully show as follows:

1. The Movant, Countryside Homeowner's Association ("Countryside"), is an association recognized by and affecting the homeowner's in Countryside Subdivision, Prospect Kentucky.
2. Covered Bridge Utilities, Inc. ("Covered Bridge") is a private corporation serving as sewer provider for Covered Bridge Subdivision, and is subject to the jurisdiction of this body.
3. Hayfield Utilities, Inc. ("Hayfield") is a private corporation, and is subject to the jurisdiction of this body for reasons shown herein.
4. Covered Bridge Utilities, Inc. and Hayfield Utilities, Inc. are entities owned by the same individuals and/or individuals who are closely related and/or individuals who are insiders of both companies and, as such, are so indistinguishable as to be considered by the Commission to be the same entity for all purposes.

**THE COVERED BRIDGE ACTION**

5. In 1997, Covered Bridge petitioned the Public Service Commission to approve a rate increase pursuant to KRS Chapter 278.

6. Said petition requested approval of an increase in then-current monthly charge to customers of Covered Bridge.

7. By Order of the Commission dated October 9, 1998, Covered Bridge was required to file with the Commission and the Movant a notice setting forth the date that connection of Hayfield to Covered Bridge was to be made.

8. Countryside has received no such filing. Nevertheless, the connection is believed to have already occurred.

9. By Order of the Commission dated October 9, 1998, Covered Bridge was required to file a new rate application to establish an initial rate for Hayfield to adjust as appropriate the residential rate set forth in Appendix A to the Order.

10. No such filing occurred. Nevertheless, on information and belief, Covered Bridge/Hayfield (believed by the Movant to be a single entity despite the fact of separate incorporation) is attempting to charge its customers a rate for transportation and treatment of wastewater in an amount substantially similar to the amount disallowed by the Commission in the Hayfield Action, described below.

#### **THE HAYFIELD ACTION**

11. The Commission continues to have jurisdiction over Covered Bridge Utilities, Inc. by virtue of its status as a sewer and wastewater treatment facility.

12. In October or November, 1997, Hayfield petitioned the Public Service Commission to approve a rate increase pursuant to KRS Chapter 278 in Case No. 97-457 before the Public Service Commission.

13. The Movant, Countryside, was granted Full Intervention in that case by this body for the purpose of challenging the application for rate adjustment.

14. By Order, the Commission denied in part and granted in part the Hayfield's request for rate increase, and in so doing, set a rate adjudged by the Commission to be reasonable and proper for the collection and treatment of Hayfield wastewater.

15. Prior to said Order and without informing Countryside, Hayfield Utilities, Inc. filed a "No Discharge Certification" with the Division of Water, KPDES Branch, stating that the Utility was not longer treating wastewater emanating from Hayfield.

16. Hayfield did not inform the Movant or its resident/owners of the filing.

17. On information and belief, Hayfield believes that it is a transporter of wastewater rather than a treatment facility. However, the Movant alleges that the facts will show that Hayfield and Covered Bridge are, in essence, the same entity, and that Hayfield is therefore a treatment facility.

#### **JURISDICTION**

18. Covered Bridge Utilities, Inc. and Hayfield Utilities, Inc. are entities owned by the same individuals and/or individuals who are closely related and/or individuals who are insiders of both companies.

19. Said corporations are so intimately related as to be indistinguishable, and the Commission should assert jurisdiction on the basis that the substance of the transactions between the companies dictates no differentiation between transport by Hayfield and treatment at Covered Bridge, as the utilities are owned and operated by inter-related persons. Otherwise, all utilities could remove themselves from jurisdiction of the Commission by dividing its transportation activities from its treatment activities when, in fact, both services are conducted by the same individuals, for the same purpose, under a single billing system, and for common profit, as in this case.

20. Because said corporations are so intimately related as to be indistinguishable, the Commission has jurisdiction over Hayfield Utilities, Inc. despite the filing of the "No Discharge

Certification" because there is no reason to distinguish between treatment of Countryside wastewater through Covered Bridge Utilities, Inc. or Hayfield Utilities, Inc.

### **MOTION TO CONSOLIDATE**

21. The Movant seeks consolidate of Case No. 97-455 with Case. No. 97-457 for the purpose of allowing the Commission to consider all the actions of Covered Bridge (Case No. 97-455, Case No. 99-079) and Hayfield (Case No. 97-457).

22. Because the Covered Bridge Action requires that Covered Bridge take action with the Commission upon connection of Hayfield to Covered Bridge, the two cases and entities are sufficiently inter-related to require consolidation. Additionally, the current action, No. 99-079, grows entirely out of the facts and occurrences of action No. 97-455.

23. Because the Covered Bridge Action requires that Covered Bridge submit an application to establish a rate to charge Hayfield Customers, and because it is Hayfield, rather than Covered Bridge, that is charging Hayfield customers for the transportation and treatment of wastewater, consolidation is proper to determine the rights of the utilities and their customers. Currently, the rights of all parties are unclear and require clarification.

### **MOTION TO INTERVENE**

24. Because the Order of the Commission requires that Covered Bridge take action in relation to the actions of Hayfield, the Movant is entitled to Full Intervention for the following reasons:

a. The Movant and its resident landowners have a legitimate and protectible interest in any and all orders of this Commission which affect collection and/or treatment of its wastewater. Because such wastewater is being treated by Covered Bridge, the Movant has a right to intervene in this action.



b. The purpose of the Motion for Intervention is to ensure that the Order of October 9, 1998 is adhered to by Covered Bridge, and to ensure notice of any and all matters affecting Countryside owners, regardless of whether their wastewater is treated by Covered Bridge/Hayfield or elsewhere, and to become a party of record for any rate increase applications filed, per Order of the Commission, by the utilities.

c. On information and belief, said Order is not being adhered to because no new rate application has been made; instead, Hayfield customers are being charged for the collection and treatment of their wastewater through means outside of the Commission's purview and in violation of the spirit of the Order.

d. On information and belief, said Order is not being adhered to because no notice has been given to Hayfield customers of the status of the Hayfield-Covered Bridge connection, and the Movant has a right to obtain such notice.

**MOTION TO ENJOIN COLLECTION OF FEES AND  
ENFORCE RATE SET BY ORDER OF THE COMMISSION**

25. On information and belief, Covered Bridge/Hayfield is attempting to charge the Movant's resident property owners a rate substantially similar to the rate that had been previously disallowed by this body by classifying itself a "transporter" rather than a treatment facility.

26. In fact, Covered Bridge and Hayfield are, in essence, the same entity and, as such, transport and treat the Countryside wastewater as a single entity. Any other conclusion would allow all utilities to remove themselves from the jurisdiction of this body by allowing them to split its collection systems from its treatment systems, thus subverting the ability of the Commission to operate in accordance with the statute.

27. Accordingly, the Commission should enforce its Order of October 9, 1998 in case No. 97-457 (the Hayfield Action) and require the collection of only those fees approved therein until such time as a new rate is set in accordance with the Order of October 9, 1998 in case No. 97-455 (the Covered Bridge Action).

**REQUEST FOR HEARING**

28. For these reasons, the Movant asks that this body schedule and hold a full hearing on the matters alleged herein, and that the prior Orders of this body be enforced by proper means, for the benefit of the Movant and its resident property owners.

**WHEREFORE**, the Movant asks as follows:

- A. For an Order consolidating action No. 99-079, No. 97-455 and No. 97-457, or, alternatively, for an Order granting Full Intervention for the Movant in Case No. 97-455.
- B. For an Order enjoining Covered Bridge/Hayfield from collecting any sums not approved by the Public Service Commission in action No. 97-457 until further Order of the Commission.
- C. For an Order setting a full hearing on this matter, where all interested parties, including the Movants, be allowed to be heard and present evidence.
- D. For any and all other relief to which the Movant may appear entitled.

Dated at Prospect, Kentucky on this 23 day of March, 1999.

  
\_\_\_\_\_  
JEFFREY W. KIBBEY

121 S. Seventh St., Ste. 100

Louisville, KY 40202

(502) 584 - 5955

(502) 581 - 1203 (Fax)

Attorney for Countryside Homeowner's Assoc.  
and additional Movants

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was mailed this 20 day of March, 1999, via first class mail postage prepaid, to Carroll F. Cogan, hayfield Utilities, 136 St. Matthews Ave., Louisville, KY 40207.

  
JEFFREY W. KIBBEY

**BEFORE THE PUBLIC SERVICE COMMISSION**

IN RE: COVERED BRIDGE UTILITIES, INC.	)	
ALLEGED FAILURE TO COMPLY WITH	)	NO. 99-079
THE COMMISSION'S OCTOBER 9, 1998	)	
ORDER IN CASE NO. 97-455	)	
	)	

**ORDER GRANTING INTERVENTION**

This matter having come before the Commission on Motion for Full and Partial Intervention, the Commission having considered the Motion, and the Commission being otherwise sufficiently advised,

**IT IS HEREBY ORDERED** that Countryside Homeowner's Association is hereby granted FULL INTERVENTION pursuant to statute and regulation, and shall be a party to this proceeding.

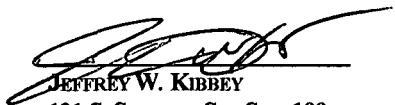
**IT IS FURTHER ORDERED** that all motions, pleadings, documents, papers and other filings shall be provided to counsel for Countryside Homeowner's Association, and that service all papers, motions and other filings shall be made upon said counsel.

PUBLIC SERVICE COMMISSION

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

TENDERED BY:



JEFFREY W. KIBBEY  
121 S. SEVENTH ST., STE. 100  
LOUISVILLE, KY 40202  
(502) 584 - 5955

**BEFORE THE PUBLIC SERVICE COMMISSION**

IN RE: COVERED BRIDGE UTILITIES, INC. )  
ALLEGED FAILURE TO COMPLY WITH ) NO. 99-079  
THE COMMISSION'S OCTOBER 9, 1998 )  
ORDER IN CASE NO. 97-455 )  
)

**CONSOLIDATION ORDER**

This matter having come before the Commission on Motion for Consolidation, the Commission having considered the Motion, and the Commission being otherwise sufficiently advised,

**IT IS HEREBY ORDERED** that the following actions are hereby consolidated into the within action:

No. 97-455, IN RE: Application of Covered Bridge Utilities, Inc. For a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities, and

No. 97-457, IN RE: Application of Hayfield Utilities, Inc. For a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities.

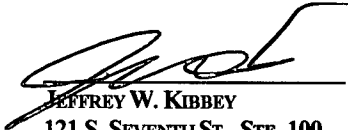
**IT IS FURTHER ORDERED** that all motions, pleadings, documents, papers and other filings shall be provided to counsel for Countryside Homeowner's Association, and that service all papers, motions and other filings shall be made upon said counsel.

PUBLIC SERVICE COMMISSION

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

TENDERED BY:



JEFFREY W. KIBBEY  
121 S. SEVENTH ST., STE. 100  
LOUISVILLE, KY 40202  
(502) 584 - 5955

**BEFORE THE PUBLIC SERVICE COMMISSION**

IN RE: COVERED BRIDGE UTILITIES, INC. )  
ALLEGED FAILURE TO COMPLY WITH ) NO. 99-079  
THE COMMISSION'S OCTOBER 9, 1998 )  
ORDER IN CASE NO. 97-455 )  
)

**ORDER ENJOINING COLLECTION OF FEES**

This matter having come before the Commission on Motion for an Order enjoining the collection of fees for transportation/treatment of wastewater from residents of Countryside Subdivision, the Commission having considered the Motion, and the Commission being otherwise sufficiently advised,

**IT IS HEREBY ORDERED** that Hayfield Utilities, Inc. and Covered Bridge Utilities, Inc. shall be restrained and enjoined from collecting fees from residents of Countryside Subdivision in excess of the fees awarded in the Commission's Order of October 9, 1998 in Case No. 97-457, until further Order of the Commission.

PUBLIC SERVICE COMMISSION

BY: \_\_\_\_\_

DATE: \_\_\_\_\_



TENDERED BY:



JEFFREY W. KIBBEY  
121 S. SEVENTH ST., STE. 100  
LOUISVILLE, KY 40202  
(502) 584 - 5955

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

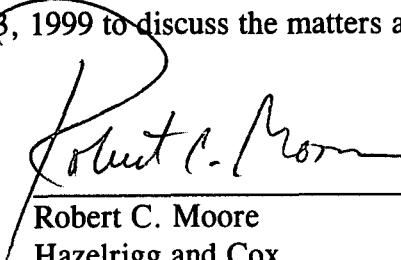
In the Matter of:

COVERED BRIDGE UTILITIES, INC. ) 99-079

RECEIVED  
MAR 23 1999  
PUBLIC SERVICE  
COMMISSION

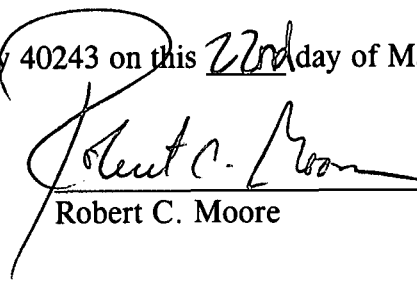
REQUEST OF COVERED BRIDGE UTILITIES FOR INFORMAL CONFERENCE

Comes Covered Bridge Utilities, Inc. ("Covered Bridge"), by counsel, and hereby requests that an informal conference with the representatives of the Public Service Commission (Commission) be scheduled on or before April 13, 1999 to discuss the matters addressed in the Commission's Order of March 10, 1999.

  
\_\_\_\_\_  
Robert C. Moore  
Hazelrigg and Cox  
P.O. Box 676  
415 West Main Street  
Frankfort, Kentucky 40602-0676  
Attorney for Covered Bridge Utilities, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Richard Raff, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602 and Frank G. Simpson, III, Simpson Law Offices, Suite 102, 11414 Main Street, Middletown, Kentucky 40243 on this 22nd day of March, 1999.

  
\_\_\_\_\_  
Robert C. Moore

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC. ) 99-079

RECEIVED  
MAR 23 1999  
PUBLIC SERVICE  
COMMISSION

MEMORANDUM IN RESPONSE TO THE MARCH 10, 1999 ORDER OF THE  
PUBLIC SERVICE COMMISSION AND IN OPPOSITION TO MOTION FOR  
CONTEMPT AND TO REFUND SEWER CHARGES

Comes Covered Bridge Utilities, Inc. ("Covered Bridge"), by counsel, and for its Memorandum in Response to the March 10, 1999 Order of the Public Service Commission ("Commission") and in Opposition to the Motion For Contempt and To Refund Sewer Charges filed on behalf of Covered Bridge Farms Homeowner's Association, states as follows:

The Commissioner's Order of October 9, 1998 in Case No. 97-455 approved a new rate for Covered Bridge and directed Covered Bridge to file a revised tariff setting forth the new rate within thirty (30) days of October 9, 1998. Covered Bridge inadvertently failed to file the new rate until March 9, 1999. The Commission reviewed the tariff filing and has approved it by its letter of March 12, 1999 (See Attachment A).

The Commission's October 9, 1998 Order also required Covered Bridge to file, within sixty (60) days of October 9, 1998, a new rate application to establish an initial non-residential rate for Hayfield Utilities, Inc., which owns the Countryside wastewater treatment plant, since Covered Bridge would now be treating the effluent Countryside, and to adjust as appropriate the residential rate for Covered Bridge. For the following reasons, Covered Bridge was unable to file a new rate application within sixty (60) days of the Order, and requests the Commission for leave to file this new rate application on or before June 1, 1999.

The October 9, 1998 Order recognized that Covered Bridge was in the process of expanding its wastewater treatment plant to add an additional 100,000 gallon per day treatment capacity. This expansion was completed on October 1, 1998. The flow from the Countryside wastewater treatment plant was connected into the Covered Bridge plant on that day. Since that time, Covered Bridge has been diligently working to make the adjustments to operate the new plant properly and efficiently. The addition of this 100,000 gallon per day plant and the additional flow from Countryside has had a substantial affect on the operation of the plant, including a significant increase in the cost to operate the plant.

The following table reflects that the electric bills issued to Covered Bridge by LG&E for the operation of the wastewater treatment plant have more than quadrupled in the last six (6) months, and have not yet stabilized.

<b>Billing Period</b>	<b>Amount of Bill</b>
6/16/98 to 7/16/98	305.77
7/16/98 to 8/14/98	418.33
8/14/98 to 9/15/98	753.26
9/15/98 to 10/14/98	727.34
10/14/98 to 11/12/98	988.96
11/12/98 to 12/14/98	902.30
12/14/98 to 1/15/99	1,202.17
1/15/99 to 2/15/99	1,320.71

The cost of electricity has increased due to the operation of the new 100,000 gallon per day plant, as well as the operation of the pump station on the line from the Countryside wastewater treatment plant to the Covered Bridge Plant.

Similarly, the water bills received by Covered Bridge over the last six (6) months have almost doubled, and these costs have not yet stabilized.

<b>Billing Period</b>	<b>Amount of Bill</b>
6/8/98 to 8/7/98	719.43
8/7/98 to 10/6/98	732.13
10/6/98 to 12/7/98	811.56
12/7/98 to 2/9/99	1,037.14

In addition to the increase in electric and water costs, the remaining costs associated with the plant, such as the cost of chemicals, sludge hauling costs, repair costs and operating/labor costs, have continued to increase. The increase in these costs has also not stabilized.

Until the increased costs resulting from the addition of the 100,000 gallon per day plant have stabilized, Covered Bridge is unable to submit a meaningful application for a rate increase. Submitting a rate application before Covered Bridge has determined the increased cost to operate its facility with some level of accuracy would have been, and remains, an exercise in futility. Covered Bridge anticipates that it will be able to obtain the necessary information to submit a rate application by June 1, 1999.

The October 9, 1998 Order allowed Covered Bridge to increase its residential rate to \$40.06 per month. Covered Bridge is also charging Hayfield a monthly interim rate to treat the effluent from the Countryside plant. With the revenue generated from this increased rate and Hayfield's interim rate, Covered Bridge has received sufficient funds over the last several months to bring its accounts payable current. This included paying the balance due on the bill issued to Covered Bridge by Logsdon and Company, the accounting firm which has represented Covered Bridge since its inception and which compiled the necessary financial information for Covered Bridge's last application for a rate adjustment. Now that Logsdon and Company has been paid in full for its work on the past application for rate adjustment, it will be willing to begin compiling the financial information required for the new rate

application.

The above information reflects that Covered Bridge has been unable to submit the rate application provided for by the October 9, 1998 Order because the necessary information has not been available. There are no facts establishing that Covered Bridge had the necessary information and made an intentional decision to delay filing the rate application. The required information was simply not available due to the significant change in the operation of the plant, and the increase in the flow treated by the plant. Again, Covered Bridge should have the necessary information on or before June 1, 1999, and respectfully requests that it be allowed to submit the rate application at that time.

As indicated above, Hayfield is paying a temporary interim rate to Covered Bridge for the treatment of the effluent from Countryside. Both Covered Bridge and Hayfield recognize that this interim rate will require adjustment after the new rate is approved by the Commission, and reimbursements or additional charges, using October 1, 1998 as the starting point, may be necessary.

The movant asserts that the hookup between the Covered Bridge wastewater treatment plant and the Countryside wastewater treatment plant is illegal. However, Covered Bridge was authorized by the Division of Water to make this hookup. The Commission's October 9, 1998 Order recognized that this hookup was to take place. The residents of Covered Bridge Farms have not been required to bear any additional costs as the result of this hookup. Their rate increase was based only on the cost to operate the then 40,000 gallon per day treatment plant. As anticipated, the additional flow from the Countryside plant has made the Covered Bridge system operate more efficiently, which will benefit the residents now and in the future.

The new \$40.06 rate approved by the Commission would have first been seen by the residents on their water bills received in December, 1998.

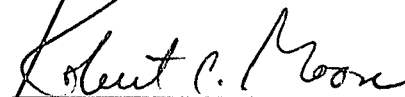
The residents of Covered Bridge Farms have not borne any of the costs to expand the plant or the increased costs resulting from the expansion which was constructed pursuant to the Certificate of Convenience and Necessity issued by the Commission. The residents are currently receiving the benefit of the new equipment installed during the expansion, including but not limited to the new mechanical tertiary, the gas chlorinator and the dechlorinator. Not until the application for a rate adjustment is filed and approved by the Commission will the residents be responsible for paying any part of the \$800,000 expansion.

The movant also asserts that the Franklin Circuit Court has held Covered Bridge and Hayfield in contempt. The Commission should note that this finding of contempt was highly contested, and is not final, as an appeal is now pending. Regardless, any contempt finding and the reference to the allegations contained in an unproven Notice of Violation (NOV) are irrelevant to the motion for contempt now before the Commission. Movant Covered Bridge Farms apparently refers to the non-final contempt finding and the unproven NOV because it recognizes that its motion has no legitimate basis. Additionally, there are no facts supporting the movant's allegation that Marty Cogan misled the Commission while testifying on the rate application.

Covered Bridge acknowledges that its request for extension of time to file the new rate application would more appropriately have been submitted prior to the expiration of the sixty (60) day time period set by the Commission. However, as the above information reflects, it would have been fruitless to attempt to submit a rate application within the sixty (60) day time

period. Additionally, the current rate being paid by the residents of Covered Bridge Farms does not include the cost of the expansion. Therefore, no prejudice has occurred as a result of the delay.

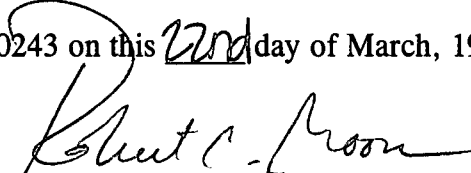
For the above stated reasons, Covered Bridge requests that the Commission deny the Motion for Contempt and Refunding of Sewer Charge, and requests that the Commission allow it to submit the rate application for Covered Bridge on or before June 1, 1999.



Robert C. Moore  
Hazelrigg and Cox  
P.O. Box 676  
415 West Main Street  
Frankfort, Kentucky 40602-0676  
Attorney for Covered Bridge Utilities, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Richard Raff, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602 and Frank G. Simpson, III, Simpson Law Offices, Suite 102, 11414 Main Street, Middletown, Kentucky 40243 on this 22nd day of March, 1999.



Robert C. Moore





COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KENTUCKY 40602  
www.psc.state.ky.us  
(502) 564-3940  
Fax (502) 564-3460

**Paul E. Patton**  
Governor

**Laura Douglas, Secretary**  
Public Protection and  
Regulation Cabinet

March 12, 1999

Mr. Marty Cogan  
Covered Bridge Utilities  
136 St. Matthews ave.  
Suite 300  
Louisville, KY 40207-3191

RE: Tariff Filing T60-279 for ARF rates per Order in Case No. 97-455

Dear Mr. Cogan:

The above referenced tariff filing has been received and reviewed. An accepted copy is enclosed for your files.

Sincerely,

A handwritten signature in cursive script that reads "Donna J. Wainscott".

Donna J. Wainscott  
Public Utility Rate Analyst  
Filings Division

03/15/11

Enclosure

ATTACHMENT A



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**  
 Complete items 1 and/or 2 for additional services.  
 Complete items 3, 4a, and 4b.  
 Print your name and address on the reverse of this form so that we can return this card to you.  
 Attach this form to the front of the mailpiece, or on the back if space does not permit.  
 Write "Return Receipt Requested" on the mailpiece below the article number.  
 The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):  
 1.  Addressee's Address  
 2.  Restricted Delivery  
 Consult postmaster for fee.

3. Article Addressed to:  
 Frank G. Simpson III  
 11414 Main St., Suite 102  
 Middletown, KY 40243

4a. Article Number  
 Z 098 985 857

4b. Service Type  
 Registered  Certified  
 Express Mail  Insured  
 Return Receipt for Merchandise  COD

7. Date of Delivery  
 3-12-99

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)  
*[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

99-079

Postmark or Date	
TOTAL Postage & Fees	\$ 3.66-386
Return Receipt Showing to Whom, Date, and Addressee's Address	11414 Main St., Suite 102, Middletown, KY 40243
Return Receipt Showing to Whom & Date Delivered	1-10-25
Restricted Delivery Fee	
Special Delivery Fee	
Certified Fee	1.35-1.40
Postage	\$ 1.21
P.O., State and ZIP Code	Middletown, KY 40243
Street and No.	11414 Main St., Suite 102
Sent to	Frank G. Simpson III

UNITED STATES POSTAL SERVICE  
 (See Reverse)  
 No Insurance Coverage Provided  
 Do not use for International Mail  
 Certified Mail  
 Receipt for

Z 098 985 857

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**  
 Complete items 1 and/or 2 for additional services.  
 Complete items 3, 4a, and 4b.  
 Print your name and address on the reverse of this form so that we can return this card to you.  
 Attach this form to the front of the mailpiece, or on the back if space does not permit.  
 Write "Return Receipt Requested" on the mailpiece below the article number.  
 The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):  
 1.  Addressee's Address  
 2.  Restricted Delivery  
 Consult postmaster for fee.

3. Article Addressed to:  
 Lawrence W. Smither  
 136 St. Matthews Ave.  
 Suite 275  
 Louisville, KY 40207-3191

4a. Article Number  
 Z-098-985-856

4b. Service Type  
 Registered  Certified  
 Express Mail  Insured  
 Return Receipt for Merchandise  COD

7. Date of Delivery  
 3-11-99

5. Received By: (Print Name)  
 For FRANK SIMPSON

6. Signature: (Addressee or Agent)  
*[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

PS Form 3800, March 1993



Receipt for Certified Mail  
 No Insurance Coverage Provided  
 Do not use for International Mail  
 (See Reverse)

Sent to	Lawrence W. Smither
Street and No.	136 St. Matthews Ave., Suite 275
P.O., State and ZIP Code	Louisville, KY 40207-3191
Postage	\$ 1.21
Certified Fee	1.35-1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1-10-25
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$ 3.66-386
Postmark or Date	

Z 098 985 856

99-079



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

March 10, 1999

Lawrence W. Smither  
President  
Covered Bridge Utilities, Inc.  
136 St. Matthews Avenue  
Suite 275  
Louisville, KY. 40207 3191

Hon. Frank G. Simpson  
Simpson Law Offices  
Suite 102  
11414 Main Street  
Middletown, KY. 40243

RE: Case No. 99-079

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC.	)	
_____	)	CASE NO. 99-079
	)	
ALLEGED FAILURE TO COMPLY	)	
WITH THE COMMISSION'S	)	
OCTOBER 9, 1998 ORDER IN	)	
CASE NO. 97-455	)	

O R D E R

Covered Bridge Utilities, Inc. ("Covered Bridge") is a Kentucky corporation that owns facilities used for the treatment of sewage for the public for compensation and is a utility subject to Commission jurisdiction. KRS 278.010.

By Order dated October 9, 1998, in Case No. 97-455,<sup>1</sup> the Commission approved new rates for Covered Bridge and directed the utility to file (1) revised tariffs setting forth the new rates within 30 days of October 9, 1998; and (2) a new rate application to establish an initial rate for Hayfield and to adjust as appropriate the residential rate, within 60 days of October 9, 1998.

No petition for rehearing or appeal was filed with respect to the October 9, 1998 Order, and it has remained in full force and effect since its entry. A review of the Commission's docket indicates that Covered Bridge did not file the new rate application as ordered by the October 9, 1998 Order. By letter dated February 5, 1999, Covered

---

<sup>1</sup> Case No. 97-455, The Application of Covered Bridge Utilities For a Rate Adjustment Pursuant To The Alternative Rate Filing Procedure For Small Utilities.

Bridge was requested to file within 10 days a report on the status of that rate application. To date, Covered Bridge has not responded to the February 5, 1999 letter, and has not filed its revised tariffs.

On February 16, 1999, Covered Bridge Farms Homeowner's Association ("Homeowner's Association"), an intervenor in Case No. 97-455, filed a motion requesting that Covered Bridge be held in contempt for failing to comply with the October 9, 1998 Order and requesting a refund of sewer charges. Pursuant to KRS 278.990(1), any utility that willfully fails to obey any Order of the Commission shall be subject to a civil penalty for each offense not less than \$25 nor more than \$2500. Based on the record in Case No. 97-455 and the motion for contempt filed by the Homeowner's Association, the Commission finds that there is a sufficient basis to indicate that two probable violations of the October 9, 1998 Order in Case No. 97-455 have been committed by Covered Bridge. Those probable violations are the failure to file within 30 days the revised tariffs, and the failure to file within 60 days a rate application to establish a rate for Hayfield and to adjust as appropriate the residential rate.

The Commission further finds that the motion for contempt filed by the Homeowner's Association, attached hereto as Appendix A, should be addressed in this case rather than Case No. 97-455.

IT IS THEREFORE ORDERED that:

1. Covered Bridge shall submit to the Commission with 20 days of the date of this Order its written response to: (a) the two probable violations discussed herein;

and (b) the motion for contempt filed by the Homeowner's Association, which is hereby made a part of the record in this case.

2. Covered Bridge shall appear on April 13, 1999, at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, to present evidence concerning the alleged violations of the October 9, 1998 Order and the allegations set forth in the motion for contempt, and to show cause, if any it can, why it should not be subject to the penalties of KRS 278.990 for the two probable violations of the aforementioned Commission Order.

3. Any request by Covered Bridge for an informal conference with the Commission Staff shall be set forth in writing and filed with the Commission within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 10th day of March, 1999.

By the Commission

ATTEST:

  
Executive Director

RECEIVED

FEB 16 1999

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF COVERED BRIDGE UTILITIES, )  
INC. FOR AN ADJUSTMENT OF RATES )  
PURSUANT TO THE ALTERNATIVE RATE ) NO. 97-455  
FILING PROCEDURE FOR SMALL UTILITIES )

**MOTION FOR CONTEMPT AND TO REFUND SEWER CHARGES**

Comes the Intervenor, Covered Bridge Farms Homeowner's Association, by counsel, and moves the Commission to enter an order holding the Applicant, Covered Bridge Utilities, Inc., in contempt for its failure to abide by the Order of the Public Service Commission entered in this action on October 9, 1998, and to order a refund of sewer charges paid by the residents of Covered Bridge Farms.

As grounds for this motion, Intervenor states that on September 10, 1998, a formal hearing was held in this matter on the proposed rate increase sought by the Applicant against the residents of Covered Bridge Farms subdivision. As the Commission's Order of October 9, 1998 indicates, applicant, through the testimony of Martin Cogan, its Vice President, testified that it had no idea when it would be able to connect the adjacent Hayfield Utility treatment plant<sup>1</sup> into the Covered Bridge facility, and that the connection "was not even a certainty at this point" (Order at page 3).

---

<sup>1</sup> Hayfield serves the Countryside Subdivision, which is adjacent to Covered Bridge Farms.

However, on September 30, 1998, Mr. Cogan notified the Natural Resources and Environmental Protection Cabinet that the Hayfield/Countryside plant had been taken out of service with the flow being pumped into the Covered Bridge Farms facility (See Exhibit 1, attached hereto). Mr. Cogan reiterated this fact in correspondence of October 2, 1998 to the Cabinet (See Exhibit 2, attached hereto).

The Order of October 9, 1998 directed the applicant to:

1. File with the Commission and the Intervenor a notice of the connection of the Hayfield/Countryside residents into the Covered Bridge facility within 10 days of the connection;
2. To file a new rate application to establish an initial rate for Hayfield/Countryside and to adjust the Covered Bridge rate accordingly, both with 60 days of October 9, 1998.

**Applicant has failed to perform either of these mandated tasks.** As such, it has, since September of 1998, been treating the effluent of the Countryside subdivision in the Covered Bridge facility and allowing the residents of Covered Bridge to bear all the expense of such treatment without equitable diminution of the new rate, which was only to reflect the costs of serving only the Covered Bridge subdivision.

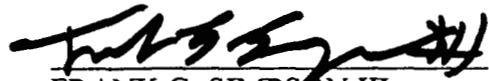
It is apparent by the timing of the actions of the applicant and the Hayfield Utility Co. that the testimony of Mr. Cogan before the Commission was false and that Applicant was at that time preparing the Countryside connection in order to profit by adding Countryside residents into its system without the knowledge of the Commission or the Intervenor. This action is particular egregious in light of the fact that Applicant and Hayfield Utility has been held in contempt by the Franklin Circuit Court for failing to



operate the plants properly, and Applicant has just been cited again by the Cabinet for its failure to properly operate the Covered Bridge plant (See Exhibit 3, attached hereto).

Accordingly, the Intervenor respectfully requests that the Commission find the Applicant in contempt of the Order of October 9, 1998, and enter appropriate sanctions against the Applicant and its officers.

Further, Intervenor requests that an immediate proceeding be initiated to determine how much Applicant has been overpaid by the residents of Covered Bridge Farms due to the illegal hookup of the Countryside subdivision, and that reimbursement to the residents be ordered.



FRANK G. SIMPSON III  
Simpson Law Offices  
Suite 202  
207 Old Harrods Creek Road  
Louisville, Kentucky 40223  
(502) 329-0265  
Fax (502) 244-1811  
Attorney for Covered Bridge Farms  
Homeowner's Association

#### CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of this Motion to Compel Production of Documents has been mailed, First Class, postage prepaid, to the following this 12th day of February, 1999 to Lawrence W. Smither, President, Covered Bridge Utilities, Inc., 136 St. Mathews Ave., Suite 275, Louisville, KY 40207



Frank G. Simpson III

RECEIVED  
OFFICE OF  
LEGAL SERVICES

OCT 9 9 21 AM '98

**Carroll Cogan Companies, Inc.**

136 St. Matthew's Ave.

Suite #300

Louisville, Kentucky

40207-3191

(502) 899-1950

October 6, 1998

Natural Resources and Environmental Protection Cabinet  
Division of Water  
KPDES Branch  
14 Reilly Road  
Frankfort, Kentucky 40601

Attn.: Mr. R. Bruce Scott, P. E.  
Branch Manager

Re: Hayfield Utilities, Inc. Countryside WWTP  
Oldham County, Kentucky  
KPDES NO. KY0029653

Dear Bruce:

We have attached the **No Discharge Certification** form for the Countryside WWTP. This plant was taken out of service on September 30, 1998 and the flow is being pumped to and treated by the expanded Covered Bridge WWTP.

Please let me know if you require any additional information.

Sincerely,



Martin G. Cogan  
Vice - President

cc: Mr. Jack Wilson, DOW  
Mr. Gary Levy, DOW  
Mr. Mike Mudd, DOW  
Ms. Yvette Hurt, DOL  
Mr. Robert McClure  
Mr. Robert Moore

# NO DISCHARGE CERTIFICATION

NPDES NO. KY0029653	COUNTY Oldham
FACILITY NAME Countryside W.W.T.P.	
Associated DSMRE No.(s) or Oil & Gas Registration No.(s) if applicable	

Listed on the back of this sheet is a list of wastewater sources often overlooked as requiring a Kentucky Pollutant Discharge Elimination System (KPDES) permit. Please review this list to determine if a KPDES permit is required. If a KPDES permit is no longer required because the facility no longer discharges to waters of the Commonwealth or is approved for an alternate means of wastewater disposal, complete the information requested below.

Date facility ceased discharge (approximate) 9/30/98  
Current means of wastewater treatment and disposal (e.g., discharge to another wastewater collection system, land application with no point source discharge, etc.)

Plant abandoned; wastewater now discharges to another collection system.

If discharge is to another wastewater collection system, indicate the name of the system,

Covered Bridge W.W.T.P.

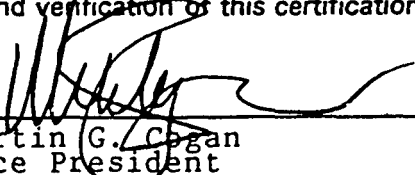
For the following means of inactivation attach a copy of the requested document.

- surface mining operations - a copy of the final bond release
- oil and gas operations - a copy of UIC permit, TOS approval, etc.
- septic tank and holding tank installations - approval from the local health department

*I certify that I am familiar with the operation of this facility and to the best of my knowledge this facility no longer discharges pollutants to waters of the Commonwealth, will not discharge process wastewater in the future, and the information provided is true, complete, and accurate. This certification must be signed as follows:*

1. For a corporation, by a principal executive officer of at least the level of vice president.
2. For partnership or sole proprietorship, by a general partner or the proprietor.
3. For a municipality, by either a principal executive officer or ranking elected official.

Upon receipt and verification of this certification, your KPDES permit will be inactivated.

Signature  Address 136 St. Matthews Ave #300  
Title Martin G. Cogan Vice President Louisville, KY 40207-3191  
Date 10/6/98 Telephone No. 502-899-1950

Complete and return to: KPDES Branch, Division of Water  
Frankfort Office Park  
14 Reilly Road  
Frankfort, KY 40601  
Attention: Inventory & Data Management Section

RECEIVED  
OFFICE OF  
LEGAL SERVICES

OCT 6 9 09 AM '98

**Covered Bridge Utilities, Inc.**

136 St. Matthew's Ave.  
Suite #300  
Louisville, Kentucky  
40207-3191

(502) 899-1950

October 2, 1998

Natural Resources and Environmental Protection Cabinet  
Division of Water  
Facilities Construction Branch  
14 Reilly Road  
Frankfort, Kentucky 40601

Attn.: Mr. William B. Gatewood, PE, and Manager

Re: Covered Bridge Utilities, Inc.  
Oldham County, Kentucky  
KPDES NO. KY0047635  
Facility No. 08050011

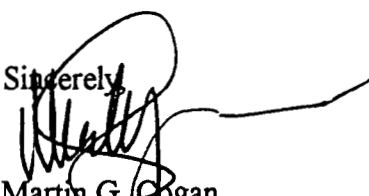
Dear Mr. Gatewood:

On July 15, 1994, Covered Bridge Utilities received a Construction Permit from your office for the expansion of the Covered Bridge WWTP. This expansion would increase the total daily flow of this plant to 140,000 GPD. The Construction Permit also included removal of the Countryside WWTP and allowed for the flow from the Countryside WWTP to be pumped to and treated by the Covered Bridge WWTP.

The expansion of the Covered Bridge WWTP has been completed. Additionally, as required by an Agreed Order between the DOW and Hayfield Utilities (Countryside WWTP), the inspection of the collection system for the Countryside WWTP has been performed and the necessary repairs completed. The final connections in the new sewers and force mains were made and after receiving approval from the Enforcement Branch and your office in the Facilities Construction Branch, we completed the required connections so that the flow from the Countryside WWTP is now being treated at the new Covered Bridge facility.

It is my understanding that Countryside will submit to the DOW a **No Discharge Certification** within 30 days as required by the Agreed Order between the DOW and Hayfield Utilities, Inc.

Sincerely,



Martin G. Cogan  
Vice - President

cc: Mr. Jack Wilson, DOW  
Mr. Gary Levy, DOW  
Mr. Mike Mudd, DOW  
Ms. Yvette Hurt, DOL  
Mr. Robert McClure  
Mr. Robert Moore

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
SECOND DIVISION  
94-CI-01481

NATURAL RESOURCES

PLAINTIFF

VS.

NOTICE-MOTION

COVERED BRIDGE, ET AL.

DEFENDANTS

\*\*\*\*\*

NOTICE

TO: Hon. Robert C. Moore  
P.O. Box 676  
Frankfort, Kentucky 40602-0676  
Counsel for Defendants

Hon. Robert D. McClure  
Two Paragon Centre  
Suite 202  
Louisville, Kentucky 40205-3305  
Counsel for Defendants

Please take notice that on Monday, February 22, 1999 at or about the hour of 9:00 a.m. local time, Plaintiff, by Counsel, will make the following Motion and tender the enclosed Order before the Franklin Circuit Court, 224 St. Clair Street, Frankfort, Kentucky 40601-1843.

MOTION

On March 11, 1998, this Court entered an Opinion and Order in which the Court found, among other things, that Covered Bridge and Hayfield failed to properly operate and maintain the sewage treatment plants in violation of 401 KAR 5:065; that the lagoon was not properly maintained; that excessive sludge was preventing the biological treatment process from functioning properly; and that there were noxious septic fumes to which residential customers have been exposed, (pages 6 through 12 of the Opinion and Order are attached and marked as "P1 through 7").

The Defendants' continue to violate this Court's Order, even one (1) year after the Court has found Defendants in contempt of Court because of violations of an Agreed Order that was entered August 1, 1996. To recap, the Agreed Order was entered August 1, 1996; on March 11, 1998, one (1) year and eight (8) months after the Agreed Order was entered, the Court found the Defendants in contempt of the Agreed Order; and now, one (1) year after the finding of contempt, and two (2) years, eight (8) months after the Agreed Order, the Defendants have still not obeyed this Court's Order.

On February 4, 1999, Ms. Suzanne Rebert, Inspector for the Cabinet inspected Covered Bridge, and the same violations exist. Plaintiff attaches the Notice of Violation and Inspection Report completed by Ms. Rebert, marked "P's 8 and 9", respectively. Residents state that odor problems still exist. Nothing has changed with respect to the lagoon at Covered Bridge. Overflow of the plants, probably due to excessive infiltration/inflow, still exist.

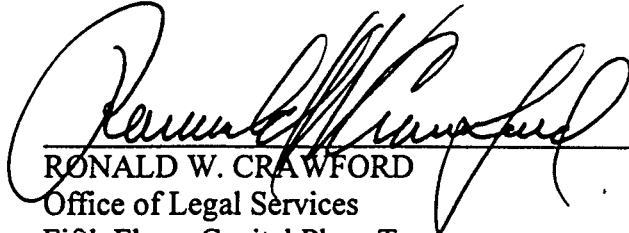
Plaintiff respectively moves the Court for a Second Finding of Contempt against the Defendants and against the individuals who control the corporations which supposedly "own" the plants, namely Martin G. Cogan, as well as the individuals who are supposed to be operating the plants, namely, Larry Smither.

Plaintiff moves the Court to set a hearing for a date and time certain on Plaintiff's Motion for a Second Finding of Contempt against the Defendants as well as the individuals who control and operate the plants. Plaintiff estimates the hearing will take one (1) full day.

Respectfully, Plaintiff points out that a hearing is set for the Motion Hour on Wednesday, March 3, 1999, as to whether or not the Court will impose a penalty of fifty thousand dollars (\$50,000) on both plants as a result of the Court's finding of contempt on March 11, 1998. We only point this out as it may have some bearing as to whether or not the Court wants to proceed

with the March 3, 1999 hearing, or continue it to the date of the hearing on Plaintiff's second Motion for a Finding of Contempt.

Respectfully submitted,



RONALD W. CRAWFORD  
Office of Legal Services  
Fifth Floor, Capital Plaza Tower  
Frankfort, Kentucky 40601  
(502) 564-5576 Telephone  
(502) 564-6131 Facsimile

COUNSEL FOR PLAINTIFF

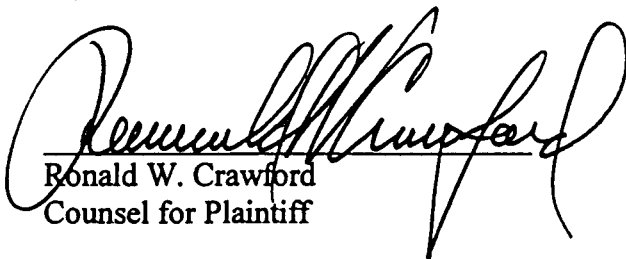
**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>TH</sup> day of February, 1999, a true and accurate copy of the foregoing NOTICE-MOTION was mailed, postage prepaid, to the following:

Hon. Robert C. Moore  
P.O. Box 676  
Frankfort, Kentucky 40602-0676  
Counsel for Defendants

And

Hon. Robert D. McClure  
Two Paragon Centre, Suite 202  
Louisville, Kentucky 40205-3305  
Counsel for Defendants



Ronald W. Crawford  
Counsel for Plaintiff

nmotioncoverdbridge-RWCbjc299



are forbidden [or required] . . . ." *In re: Wall*, 60 B.R. 512, 516 (W.D. Ky. 1986).

**2. Defendants' Failure to Properly Operate and Maintain Plants**

The Cabinet contends that both Covered Bridge and Hayfield violated KRS Chapter 224 and 401 KAR 5:005 and 5:006 (relating to permits and wastewater planning requirements) in the following ways: 1) allowing excessive accumulation of sludge inside the plant, 2) failing to maintain the digesters, aeration tanks, and clarifiers in good working condition, 3) failing to address severe odor problems, and 4) permitting untreated sewage sludge in the receiving streams. (Defendants' Exhibit #1).

With respect to Covered Bridge, the Cabinet asserts an additional violation of 401 KAR 5:065 (relating to KPDES permit conditions), including Covered Bridge's failure to clean up and close a lagoon that was previously part of the Covered Bridge Farms facility's treatment system, but which is no longer in use.

With respect to Hayfield and the Countryside plant, the Cabinet alleges that the bar screen leading from the collection line to the plant was clogged, causing overflow of sewage, and that the flow measuring device was inoperable.

The KPDES permits owned by Covered Bridge and Hayfield and which allow operation of the two sewage treatment plants, contain the condition that "[t]he permittee is . . . advised that all KPDES permit conditions in KPDES Regulation 401 KAR 5:065, Section 1 will apply to all discharges authorized by this permit." (KPDES Permit Nos. KY0029653 and KY0047635.)

401 KAR 5:065, Section 1, contains the proper operation and maintenance requirement:

- (5) 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



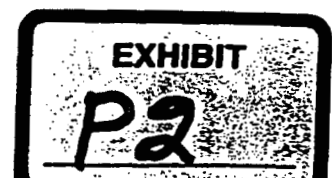
installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures.

\* \* \*

Mr. Mudd testified for the Cabinet that after his June 4, 1997 inspections at both plants, and based on his substantial experience with sewage treatment plants, the Covered Bridge Farms and Countryside plants were not being properly operated and maintained. Mr. Mudd stated that when he returned to inspect the plants on August 25, 1997, some work had been done to correct the problems, but neither plant had achieved an adequate level of operation and maintenance. (Inspection Reports 6/4/97 and 8/25/97, Defendants' Exhibit #1.)

Mr. Mudd stated that he observed the following conditions at Covered Bridge Farms on June 4, 1997: the plant was in severe neglect and appeared abandoned; no notification to DOW of any problems; too many solids in tanks and digester full and septic; chlorine contact tanks full of sludge; no efforts being made to address problems. He also testified that the lagoon, which Covered Bridge previously used in its operation but which is now out of service, was stagnant and tomato plants were growing. Furthermore, there was a severe septic odor about the plant.

Covered Bridge argues that the majority of the Cabinet's complaints concern the lagoon and the new, expanded portion of the plant. Neither of these areas is currently utilized as part of the treatment plant, and as such are not playing any role in the treatment of waste. Covered Bridge claims that improper maintenance of these areas is not a violation of permit conditions. In support, the defendants cite 401 KAR 5:065 (quoted above) which provides that a permittee is only under a duty to "properly operate and maintain all facilities and systems of treatment and control and related



appurtenances which are installed and [sic] used by the permittee to achieve compliance with the conditions of the permit." (Defendants' Post Hearing Brief at 8. As cited above herein, the regulation reads "installed *or* used.") Because the lagoon and the new plant do not produce effluent discharge, and do not affect permit conditions, the defendants apparently believe they are not legally required to properly maintain these areas of the plant.

Mr. Mudd stated in his report that there was excessive sludge inside the plants. Mr. Rick Mills, the operator for both plants, testified that he allows the sludge to settle and then calls a truck to haul it away. He further stated that sometimes the trucks do not come to haul the sludge for several days, and that he has no control over this.

In addition, Mr. Marty Cogan testified that the "main problem" with the plant is that it is designed to handle two hundred and twenty-six (226) homes, but only twenty (20) homes are currently connected to the pump station. Because so little flow is created from these twenty (20) homes, the waste often sits in the pipes for over two (2) days before reaching the treatment plant, during which time the sewage becomes septic and anaerobic and filamentous bacteria forms. This bacteria prohibits the separation of sludge and clear water. Because Covered Bridge is an extended aeration treatment plant, it is not designed to handle anaerobic waste. These factors combine to create the extremely noxious odor emanating from the plant which, as community residents testified, is prevalent. Covered Bridge argues that the only solution is to connect the remaining one hundred forty-six (146) homes in the Countryside subdivision to the Covered Bridge Farms plant.

With respect to Hayfield's alleged violations, Mr. Mudd testified to the following violations at Countryside on June 4, 1997: the plant was in serious neglect; raw sewage in the stream; unsatisfactory digesters; solids in the chlorine contact tank; insufficient chlorine tablets; solids leaving

the facility; severe septic waste odor. He also noted on his inspection report some problems with a clogged bar screen and flow meter.

Hayfield offered no evidence on why it should not be found in violation of 401 KAR 5:065 for the conditions noted by Mr. Mudd during his June 4 and August 25, 1997 inspections, except that Countryside did not exceed any monthly permit maximums from January, 1996 to August, 1997, and that Hayfield did not fail to implement an *I/T* correction plan, which was previously discussed. The issue of daily and monthly maximum or average exceedances will be addressed in the next section of this Opinion pertaining to permit limits.

The Court finds that both Covered Bridge and Hayfield have failed to properly operate and maintain the sewage treatment plants in violation of 401 KAR 5:065. Mr. Mudd's June 4 and August 25, 1997 inspection reports clearly indicate observations at the plants which are indisputably violations pertaining to proper operation and maintenance.

Covered Bridge's argument that it is not responsible for properly operating and maintaining the lagoon is without merit. Even if common sense did not lead to this conclusion, the pertinent regulation provides that the permittee is required to properly operate and maintain anything which the permittee installs *or* uses to comply with the terms of the permit. Obviously, the lagoon was installed at some point and used in the treatment of wastewater at the plant. It is of no consequence that it no longer is in use. Covered Bridge may not relinquish responsibility over it simply because it is not using it.

As to the excessive sludge found at both plants, there was testimony that excessive sludge prevents the biological treatment process from properly functioning. The defendants may not be held harmless because they cannot control when the sludge hauling trucks arrive. It is their absolute duty



under the permit to prevent sludge or anything else from interfering with the treatment process. Furthermore, there was also evidence of untreated sewage sludge in the receiving streams of both plants, which in itself indicates a failure to properly operate and maintain the plant *regardless* of whether excessive sludge was present inside the plant.

Covered Bridge contends that the cause of the odor problems at Covered Bridge is the fact that too few homes are connected to the pump station, as discussed above. The Court declines to comment on the likelihood that this is the actual cause, given that Countryside residents are enduring the same noxious septic fumes to which Covered Bridge residents are exposed, and apparently Countryside has plenty of residences connected. In any case, Covered Bridge has a duty to take whatever steps necessary to eliminate the odor problem, whether that means connecting to the Countryside sewage treatment plant, connecting to the Oldham County Sanitation District (OCSD) treatment facility, or somehow increasing the flow of water through the plant's pipes in order to prevent the sewage sitting in the pipes for days. The defendants have not shown, to the Court's satisfaction, why Covered Bridge has not already connected to the Countryside plant, if that will in fact alleviate the odor problem.

Finally, while the defendants have made an argument purporting to justify the odor problem at Covered Bridge, they have not even addressed the odor problem at Countryside subdivision. At the hearing there was citizen testimony that the odor at Countryside is so bad that children are unable to play outside and that significant health problems have occurred. Furthermore, Countryside, as well as Covered Bridge, is a breeding ground for mosquitoes. Thus, the Court cannot attribute much credibility to defendants' argument as to Covered Bridge, when the same problem is occurring at Countryside where there are presumably enough homes to adequately flush the lines.



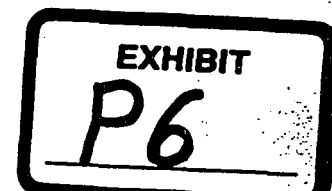
For the foregoing reasons, the defendants have failed to properly operate and maintain the sewage treatment plants in accordance with the applicable statutes, regulations, permits, and Agreed Orders.

**3. Defendants' Failure to Operate Within Permit Limits and Conditions**

Mr. Mudd testified that both facilities' Discharge Monitoring Reports (DMRs) indicated numerous violations of the KPDES permit limits. The defendants contest Mr. Mudd's interpretation that exceedances of the daily maximum permit conditions in the fecal coli category are violations, rather than observing the monthly average. Covered Bridge did not violate the monthly average in fecal coli from August 1996 to June 1997. However, the defendants admit that Covered Bridge did violate monthly averages seven out of twelve times in the Biochemical Oxygen Demand ("BOD") category in December 1996 and January 1997, and the ammonia nitrogen category in September - November and May-June, 1997.

Hayfield argues that Countryside did not violate any monthly average permit limits, and offered the testimony of Mr. Paul D. Barker of Beckmar Environmental Laboratory to prove that due to the biological nature of treatment plants, periodic exceedances in daily averages will inevitably occur. This is why federal law places total reliance on the monthly averages. 40 CFR 123.45(a). The monthly DMRs show that no monthly averages exceeded permit limits from January, 1996 to August, 1997. Hayfield states that it should not have violations, then, for exceeding daily maximums and averages, and should certainly not be held in contempt when Hayfield was in compliance with federal law.

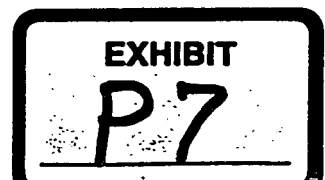
The Court finds that based on the evidence presented, both Covered Bridge and Hayfield are in violation of permit limits and conditions in their operation of the subject sewage treatment plants.



The KPDES permits for each facility clearly require that the facility shall abide by the limits and conditions of the permit. Mr. Mudd testified that since August, 1996, Covered Bridge has exceeded its permit limits on twenty-seven (27) occasions. Countryside has violated its permit limits on nine (9) occasions. Between the two (2) facilities, nineteen (19) of those violations were in the fecal coliform parameter. Fecal coliform poses a potentially serious risk to human health. While the defendants complain that exceedances in daily maximum permit conditions are inevitable and that only the monthly exceedances should be considered as they are under federal law, they cite no authority which would insulate them from liability under the permit. The federal system only requires monthly testing under the Clean Water Act. 40 C.F.R. § 123.45. Furthermore, the state regulations are intended to be compatible with the federal regulations. 401 KAR 5:050. However, nothing in either the federal or state law provides that a state's having additional daily maximums and averages in its permit limits and conditions is *not* compatible with federal regulations. In fact, if a permittee complied with the daily limits as prescribed by Kentucky state regulations, then he would be assured of meeting the federal monthly averages and limits. Therefore, it appears to this Court, that the two (2) systems are perfectly compatible, and that the state method serves only to reinforce the federal. Thus, Covered Bridge and Hayfield are in violation of the permit limits and conditions.

**B. Contempt**

The United States District Court for the Western District of Kentucky has stated the following law: "The purpose of civil contempt is to compel a reluctant party to do what a court requires of him." *Tate v. Frey*, 673 F. Supp. 880 (W.D. Ky. 1987). In this case, the defendants certainly were reluctant to comply with any of the Agreed Orders, but the Court is particularly concerned because they have failed to comply with the Third Agreed Orders, entered by this Court in an attempt to



COMMONWEALTH OF KENTUCKY  
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
DIVISION OF WATER  
FRANKFORT, KENTUCKY 40601

NOTICE OF VIOLATION

TO: MARTY COGAN/LARRY SMITH Facility Name: COVERED BRIDGE WWTTP  
Responsible Party  
COVERED BRIDGE UTILITIES, INC. I.D.# (if applicable): KY0047635  
136 ST. MATTHEWS AVE, STE 275 County: OLDHAM  
Address  
LOUISVILLE, KY 40207-3191 Date of Violation: ONGOING; 2/4/99  
City, State, zip

This is to advise you that, as specified below, you are in violation of the provisions of ( ) KRS 146, ( ) KRS 151, ( ) KRS 223,  KRS 224

Regulation: 401 KAR 5:065 Section: 1

A description of the violation(s) follows: FAILURE TO PROPERLY OPERATE AND MAINTAIN THE WASTEWATER TREATMENT PLANT.

Remedial measures required include, but are not limited to: COMPLY WITH ALL APPLICABLE KENTUCKY ADMINISTRATIVE REGULATIONS.

Remedial measures must be completed by: IMMEDIATELY

Violations of the above cited statutes and regulations are subject to penalties of up to \$25,000 per day. Compliance with remedial measure deadlines does not provide exemption from liability for violations during the period of remediation. Any person who knowingly violates the aforementioned statutes may be subject to criminal prosecution. To discuss this Notice of Violation, please contact the undersigned at: (502) 425-4671.

Issued By: Suzanne Robert Date: 2/4/99  
Date: \_\_\_\_\_

Name of person to whom copy was delivered: \_\_\_\_\_  
Date: \_\_\_\_\_

How Delivered:  Certified Mail  Personal Service

DEP4025A  
(02/91)

EXHIBIT  
**P8**



NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET  
DIVISION OF WATER

WASTEWATER TREATMENT PLANT INSPECTION REPORT

Facility Name COVERED BRIDGE UTILITIES, INC County OLDHAM

TRANS. CODE <b>N</b>	<b>5</b>	K <b>Y</b>	0 <b>0</b>	4 <b>7</b>	6 <b>6</b>	3 <b>3</b>	5 <b>5</b>	VR <b>9</b>	MO <b>9</b>	DA <b>10</b>	TYPE <b>R</b>	INSPECTOR <b>S</b>	FAC. TYPE <b>1</b>
RATING <b>U</b>	REMARKS												
58	66	67	69	70	71	72	73	74	75	77	EMPLOYEE NO. <b>81213</b>		

RATING CODES: S = Satisfactory; U = Unsatisfactory; M = Marginal; OUT = Out of Operation

SUMMARY OF FINDINGS / GENERAL COMMENTS

	CONDITION / APPEARANCE	RATING	COMMENTS
PRELIMINARY	Bar Screen		
	Disposal of Screenings		
	Comminutor		
	Grit Chamber		
	Disposal of Grit		
PRIMARY / SECONDARY	Settling Tanks		
	Scum Removal / return		
	Sludge Removal / return		
	Effluent		
SECONDARY / TERTIARY	Hydroseive		
	Trickling Filter / or RBC(s)		
	Aeration Tank(s)	M	Very full
	Lagoon(s)	U	Full, contains tires (≥1)
	Filter(s) (Tertiary)	M	Mosquito Larvae
SLUDGE DISPOSAL	Clarifiers	U	Caked with sludge, plants growing
	Digesters	U	Full and caked (both plants)
	Temperature & pH		
	Heating Equipment		
	Sludge Pumps		
	Drying Beds		
	Vacuum Filter		
	Incineration		
	Disposal of Sludge	U	needs to be pumped
	Belt Press		
OTHER	Flowmeter and Recorder		
	Records		
	Laboratory Controls		
	Weir(s)		
	Pretreatment		
CHLORINE	Self-Monitoring Program		
	Effluent		
	Chlorinators		
	Effective Dosage		
	Contact Time		
GEN. -	Contact Tank		
	Grounds		
	Buildings		
	Stream		

12 No. DMRs

9/98 - pH, TSS (2)

8/98 - DO

7/98 - DO, NH<sub>3</sub>N (4), CBOD (4)

6/98 - DO, NH<sub>3</sub>N (4); Fecal & CBOD missing

5/98 - NH<sub>3</sub>N (4)

4/98 - NH<sub>3</sub>N (5), CBOD (3)

3/98 - NH<sub>3</sub>N (2), CBOD (2)

2/98 - NH<sub>3</sub>N (1), CBOD

1/98 - CBOD (2)

IDENTIFICATION SECTION

On-Site Representative / Title

Owner or Responsible Party / Title

Marty Cogan / Larry Smith, pres  
Covered Bridge Utilities

Person(s) Contacted

Inspector's Signature

Suzanne Robert

EXHIBIT  
**P9**

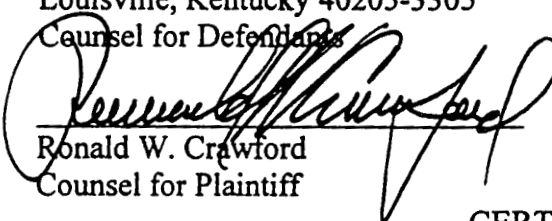
CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>TH</sup> day of February, 1999, a true and accurate copy of the foregoing ORDER was mailed, postage prepaid, to the following:

Hon. Robert C. Moore  
P.O. Box 676  
Frankfort, Kentucky 40602-0676  
Counsel for Defendants

And

Hon. Robert D. McClure  
Two Paragon Centre, Suite 202  
Louisville, Kentucky 40205-3305  
Counsel for Defendants

  
Ronald W. Crawford  
Counsel for Plaintiff

CERTIFICATE OF CLERK

I hereby certify that on the \_\_\_\_\_ day of February, 1999, a copy of this Order setting a hearing date and time was mailed to:

Hon. Robert C. Moore  
P.O. Box 676  
Frankfort, Kentucky 40602-0676  
Counsel for Defendants

Hon. Robert D. McClure  
Two Paragon Centre, Suite 202  
Louisville, Kentucky 40205-3305  
Counsel for Defendants

and

Ronald W. Crawford  
Office of Legal Services  
Fifth Floor, Capital Plaza Tower  
Frankfort, Kentucky 40601

JANICE MARSHALL, CLERK

By \_\_\_\_\_, D.C.