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September 22, 2004

Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602-0615

RE: Application on behalf of Hendron Water District

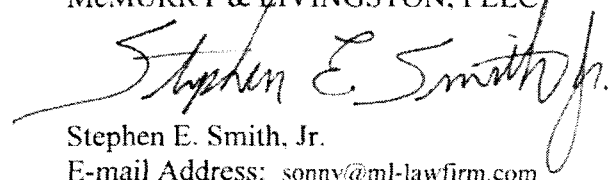
Dear Sir or Madam:

Enclosed for filing is the original and ten copies of an application of Hendron Water District for a declaratory ruling authorizing applicant to collect payment of sewer service bills on behalf of the Paducah-McCracken County Joint Sewer Agency and to discontinue water service for non-payment. One extra copy is enclosed for you to file stamp and return to me.

Thank you for your assistance in this matter.

Very truly yours,

McMURRY & LIVINGSTON, PLLC



Stephen E. Smith, Jr.
E-mail Address: sonny@ml-lawfirm.com

SESjr:mlm
Enclosures

cc: Hendron Water District
Paducah-McCracken County Joint Sewer Agency

COMMONWEALTH OF KENTUCKY

REC'D

BEFORE THE PUBLIC SERVICE COMMISSION

SEP 24 2004

IN THE MATTER OF:

PUBLIC SERVICE
COMMISSION

APPLICATION OF HENDRON WATER)
DISTRICT FOR A DECLARATORY RULING)
AUTHORIZING APPLICANT TO COLLECT)
PAYMENT OF SEWER SERVICE BILLS ON)
BEHALF OF THE PADUCAH-McCRACKEN)
COUNTY JOINT SEWER AGENCY AND TO)
DISCONTINUE WATER SERVICE FOR)
NON-PAYMENT)

CASE NO.
04-00316

APPLICATION

The application of the Hendron Water District (herein "Hendron Water") respectfully shows:

(a) That Hendron Water is a water district created and existing under KRS Chapter 74 and is engaged in the business of distributing potable water to approximately 2,423 residential and 53 commercial customers located in McCracken County, Kentucky outside the city limits of the City of Paducah, Kentucky.

(b) That the post office address of Hendron Water is 4410 A.T. Massa Drive, Paducah, KY 42001.

(c) That Hendron Water's most recent annual reports are on file with the Commission.

(d) That the Paducah-McCracken County Joint Sewer Agency (herein "JSA"), is a joint sewer agency created by the City of Paducah and County of McCracken under the authority of KRS 76.231, *et seq.*, and is engaged in the business of providing sanitary sewage collection, treatment and disposal services for all of Paducah and part of McCracken County, Kentucky.

(e) That 333 residential customers and four commercial customers of Hendron Water also receive sanitary sewage services provided by JSA.

(f) That Hendron Water and JSA have agreed that in regard to the customers of Hendron Water that are also customers of JSA, Hendron Water will bill for JSA's sanitary sewage services, and will serve as JSA's agent in the billing and collection process. A copy of the agreement between Hendron Water and JSA dated August 17, 2004, is attached hereto as Exhibit "A" and incorporated herein by reference. In addition, Hendron Water has agreed to allow JSA, upon request, to discontinue and terminate water service for any customer whose sewer bill has been delinquent for a period of twenty (20) days. Furthermore, Hendron Water and JSA have agreed to restore water and sewer service once JSA's bill has been paid in full, including any penalties, interest, and fees for terminating and reinstating water service. The agreement also provides that JSA shall indemnify Hendron Water from claims arising from any act performed by Hendron Water at the request of JSA.

(g) That the Kentucky Revised Statutes authorize JSA to have all the powers granted a metropolitan sewer district. KRS 76.231 (3). Under KRS 76.090 (4) it is unlawful for any public water service to furnish a delinquent sewer user with water to be discharged into a public sewer operated by a metropolitan sewer district. Furthermore, the statute authorizes metropolitan sewer districts to enter into agreements with a public water service providing for the discontinuance of water service to delinquent users. The ordinance creating JSA specifically authorizes JSA to discontinue service for non-payment and to make agreements with water service providers for the discontinuance of water service to delinquent customers. *Code of Ordinances, City of Paducah, Kentucky*, § 114-247 (m) (copy attached hereto as Exhibit "B").

(h) That public policy favors and encourages collaboration among water and sewer services. The Commission has recognized that discontinuance of utility service is the most effective means of bill collection. *In the Matter of an Investigation into the Collection and Billing Practices of Privately Owned Sewer Utilities*, Administrative Case No. 347 (1995) (copy attached hereto as Exhibit "C"). Likewise, the Kentucky General Assembly has authorized and even mandated discontinuance of water service to collect delinquent sewer bills by requiring water utilities to discontinue water service for customers who are delinquent in paying sewer service charges owed to a municipality (KRS 96.934 (2)) or a sanitation district (KRS 220.510 (1)). In addition, the Kentucky Court of Appeals upheld a contract requiring the Louisville Water Company to terminate water service of customers that were delinquent in paying for sewer services provided by the Louisville-Jefferson County Metropolitan Sewer District. *Rash v. Louisville and Jefferson County Metropolitan Sewer Dist.*, Ky., 217 S.W.2d 232 (1949).

(i) That Hendron Water is concerned that Commission regulations may prohibit Hendron Water from discontinuing a customer's water service for delinquent sewer service bills owed to JSA. 807 KAR 5:006, § 14 (1). According to the Commission's interpretation of this regulation, Hendron Water may discontinue service only for non-payment of charges for services it provides. Based on this interpretation Hendron Water would not be allowed to discontinue service for non-payment of sewer service charges owed to JSA, since Hendron Water does not provide sewer services. Administrative Case No. 347 at 3-4. Notwithstanding this policy, the Commission has expressed a willingness to consider favorably requests for a deviation from this regulation. *Id.* at 8.

(j) That if approved by the Commission, Hendron Water is willing to bill and collect JSA's charges for sewer service to Hendron Water customers that are also customers of JSA, and

allow JSA, upon request, to terminate water service to any customers who are delinquent in paying bills for sewer services provided by JSA. The public interest will best be served by allowing JSA and Hendron Water to use the most effective means to collect charges for sewer services, and thereby avoid having to pass the cost of serving delinquent users along to other users.

(k) That Hendron Water's currently filed Rules and Regulations beginning on Sheet No. 9 provide that Hendron Water will terminate a customer's service for non-payment of a bill if payment has not been received within twenty (20) days after the date of billing. Hendron Water's tariff also stipulates that a written termination notice will be sent to a delinquent customer ten (10) days prior to disconnection. However, Hendron Water will not terminate service for thirty (30) days if it receives written medical certification that termination of service will aggravate a debilitating illness or infirmity of a customer. These Rules and Regulations are not specifically limited to water bills and no revisions appear to be necessary.

(l) That Hendron Water hereby submits for the Commission's consideration the following exhibits:

"A" - Billing agreement between Hendron Water and JSA dated August 17, 2004.

"B" - Code of Ordinances, City of Paducah, Kentucky, § 114-241, et seq.

"C" - Order dated January 9, 1995 in Administrative Case No. 347 (*An Investigation the Collection and Billing Practices of Privately Owned Sewer Utilities*).

"D" - Hendron Water's Rules and Regulations Sheet Nos. 9 and 10.

WHEREFORE, Hendron Water respectfully requests that the Commission grant unto Hendron Water the following:

(a) A declaratory ruling authorizing Hendron Water to bill and collect fees for sanitary sewer services on behalf of JSA, and allowing Hendron Water to discontinue water services to customers of Hendron Water who fail to pay charges to JSA; or

(b) In the alternative, an order allowing Hendron Water to deviate from the requirements of Administrative Regulation 807 KAR 5:006, Section 14, and any other pertinent requirement.

Respectfully submitted,

McMURRY & LIVINGSTON, PLLC
P.O. BOX 1700
PADUCAH, KY 42002-1700
(270) 443-6511
ATTORNEYS FOR HENDRON WATER
DISTRICT

BY:

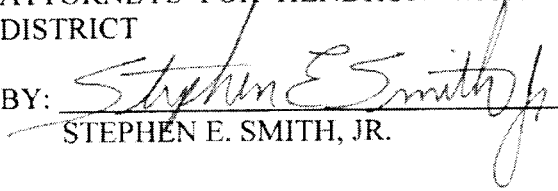

STEPHEN E. SMITH, JR.

EXHIBIT "A"

BILLING AGREEMENT BETWEEN
HENDRON WATER AND JSA DATED
AUGUST 17, 2004

BILLING AGREEMENT (Alternative)

THIS BILLING AGREEMENT (herein "Agreement") made and entered into and effective this ____ day of August, 2004, by and between the PADUCAH-McCRACKEN COUNTY JOINT SEWER AGENCY, 621 Northview Street, Paducah, Kentucky 42001 (herein "JSA") and HENDRON WATER DISTRICT, 4410 A.T. Massa Drive, Paducah, Kentucky 42003 (herein "HWD").

WITNESSETH:

WHEREAS, the JSA was created by the adoption of identical ordinances by the City of Paducah and the McCracken County Fiscal Court pursuant to KRS 76.231; and

WHEREAS, HWD is a water district created and existing under KRS Chapter 74, and renders water service to retail customers, consisting of approximately 2,423 residential and 53 commercial customers in and around the Hendron community in McCracken County, Kentucky; and

WHEREAS, the JSA and HWD desire to enter into this Agreement for the purpose of establishing an economical, feasible, and mutually beneficial plan for billing and collecting accounts owed by JSA customers that are customers of HWD.

NOW, THEREFORE, for valuable consideration, the legal adequacy and sufficiency of which is hereby acknowledged by all parties, the parties do covenant and agree as follows:

Section 1 - Services. In regard to the HWD's customers that are also customers of JSA as well as other HWD customers that become customers of JSA in the future, HWD shall include on its monthly bills charges for sanitary sewage services provided by JSA, and shall act as the JSA's agent in the collection of JSA's charges.

Section 2 - Compensation. For its services rendered to the JSA in billing and collecting sewer service charges, HWD will receive as compensation forty-two cents (\$.42) per bill beginning when HWD starts billing for JSA. Thereafter, on January 1 of each year, HWD's charges shall be increased proportionally by the increase in HWD's costs including labor, material, postage and other incidental costs. Additionally, if changed conditions should indicate the need therefor, HWD and the JSA shall negotiate in good faith in order to agree to a reasonable increase in the billing charge. HWD shall transfer all funds collected for sanitary sewage services to JSA weekly. Such funds will remain in HWD accounts until transferred to JSA.

Section 3 - Disconnection. HWD shall permit JSA to discontinue and terminate water service to any premises where payment of the bill for sanitary sewage services has been delinquent for a period of twenty (20) days after the date of billing, and shall not reinstate water service to such premises until said bill is paid in full, including any penalties and interest which may be incurred in connection therewith, and any fees charged by HWD for terminating and reinstating water service. JSA shall issue a written termination notice to the delinquent customer ten (10) days prior to disconnection. HWD shall furnish JSA with all locks and other

EXHIBIT

tabbies

A

equipment necessary to effectuate the disconnection. HWD shall retain all fees and/or penalties associated with delinquent payments as well as its fees for discontinuing and reconnecting water service.

Section 4 - Term. The initial term of this Agreement shall be for six (6) months from the effective date set forth herein. After the initial term of this Agreement, this Agreement shall be automatically renewed for successive six (6) month renewal terms unless either party shall have delivered written notice to the other, not later than ninety (90) days prior to the expiration of the initial term or any renewal term, that such party does not intend to renew this Agreement.

Section 5 - Indemnity. HWD shall have no liability for discontinuing water service pursuant to the request of JSA, except to the extent of its own negligence or other improper conduct. JSA shall indemnify, hold harmless and defend HWD and its directors, officers, employees, contractors, and agents from and against any claim, liability, loss, or costs (including reasonable attorneys' fees and costs of defense actually incurred) arising from or connected with any act performed by HWD at the request of JSA. HWD agrees to promptly notify JSA of the commencement of any litigation or the making of any claim that is subject to indemnity under the terms of this provision.

Section 6 - Successors Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors, and assigns.

Section 7 - Entire Agreement. This Agreement contains the entire agreement between the parties concerning the subject matter contained herein and there are no other terms, covenants, obligations, or representatives, oral or written, of any kind whatsoever. Any modification, addition, or alteration of this Agreement must be in writing and signed by both parties.

INTENDING TO BE LEGALLY BOUND, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT THE DATE FIRST ABOVE WRITTEN.

PADUCAH-McCRACKEN COUNTY JOINT
SEWER AGENCY

By: J. Rayla Marr
Title: Executive Director

HENDRON WATER DISTRICT

By: Don E. Peck
Title: Chairman

EXHIBIT “B”

CODE OF ORDINANCES
CITY OF PADUCAH, KENTUCKY
§ 114-241, ET SEQ.

- (2) Fees for monitoring, inspections and surveillance procedures;
- (3) Fees for reviewing accidental discharge procedures and construction;
- (4) Fees for filing appeals;
- (5) Other fees as the city may deem necessary to carry out the requirements contained in this article.

(Ord. No. 91-11-4697, 11-26-91; Code 1996, § 51.176)

Secs. 114-238—114-240. Reserved.

DIVISION 9. JOINT SEWER AGENCY*

Sec. 114-241. Establishment of Joint Sewer Agency.

In order to provide for the protection of public health, safety, and welfare of its citizens, there is hereby created and established, under and pursuant to the provisions of KRS 76.231, a joint sewer agency (hereinafter "Agency") to own, manage, control, and operate regional comprehensive wastewater facilities within McCracken County. The jurisdiction of the Agency shall include all of McCracken County, including the City of Paducah and the City of Lone Oak.

(Ord. No. 98-8-5927, § 1, 8-25-98)

Sec. 114-242. Board.

(a) The Agency shall be managed by a Board of Directors (hereinafter "Board") consisting of seven persons, one of whom shall be a sitting member of the Paducah City Commission and elected by the Commission, one of whom shall be a sitting member of the McCracken County Fiscal Court and elected by the Fiscal Court, two of whom shall be appointed by the Mayor of the City of Paducah and subject to approval of the City Commission, two of whom shall be appointed by the McCracken County Judge-Executive and subject to approval of the Fiscal Court, and one of whom shall be

*Editor's note—Ord. No. 98-8-5927, §§ 1—19, adopted August 25, 1998, did not specifically amend the Code; hence, inclusion as Div. 9, §§ 114-241—114-259 was at the discretion of the editor.

jointly appointed by both the Mayor and the County Judge Executive, subject to the approval of both legislative bodies.

(b) Members of the Board shall be persons of outstanding reputations for ability and integrity, shall be at least 25 years of age, a resident of McCracken County for a period of no less than three years. No person shall be appointed a member of the Board who is related within the third degree to the Mayor, the Judge Executive, or any member of the governing body of the city or county.

(c) Initial Board appointments shall be as follows: the jointly appointed member shall serve a one year term; the representatives of the McCracken County Fiscal Court and the Paducah City Commission shall serve a two year term; one appointment by each governing body shall serve a two year term; one appointment by each governing body shall serve a three year term. All private sector appointments made at the conclusion of the initial term shall thereafter be for a term of four years, except that the representatives of the McCracken County Fiscal Court and the Paducah City Commission shall serve two year terms.

(d) In the event of a Board vacancy and also at least 30 days preceding the expiration of the term of office of any appointed Board member, a successor shall be appointed by the appropriate government body. However, the incumbent member shall serve until such time as the vacancy has been filled. All vacancies shall be filled for the unexpired term.

(e) Any Board member shall be eligible for reappointment upon expiration of their term; however, no member shall serve more than two consecutive terms.

(f) Any person who shall have held an elective office within McCracken County shall not be eligible for appointment until at least one year after the expiration of the term for which the appointee was elected. Except for the representatives of the legislative bodies on the Board, no employees of the City of Paducah or McCracken County shall be eligible for appointment as a member of the Board.



(g) Each appointed Board member shall be removable for "cause", which shall mean inefficiency, neglect of duty, malfeasance or conflict of interest. Any member of the Board appointed by the Mayor may be removed by the Paducah City Commission, for cause, after hearing by the Paducah City Commission, and after at least ten days' notice in writing shall have been given to the member, specifying the charges against the member. The finding of the Paducah City Commission shall be final and removal results in vacancy in such office. Any member of the Board appointed by the Judge-Executive may be removed by the McCracken County Fiscal Court, for cause, after hearing by the McCracken County Fiscal Court, and after at least ten days, notice in writing shall have been given to the member, specifying the charges against the member. The finding of the McCracken County Fiscal Court shall be final and removal results in vacancy in such office. A member subjected to removal proceedings may be represented by counsel.

(h) Any appointed Board member failing to attend three regularly-scheduled successive meetings, or a minimum of 75% of all meetings within a one year period, without cause acceptable and approved by the Board, shall automatically be removed from office, and the vacancy shall be filled as provided for herein.

(i) Each Board member shall be insured by the Agency against liability for acts and omissions as a member of the Board.

(j) Members of the Board shall be paid \$200.00 per month and shall be reimbursed for mileage and out-of-pocket expenses for Agency business conducted outside of McCracken County.

(k) All members of the Board shall be required to comply with any applicable rules, regulations and reporting requirements established by the appropriate city or county ethics commission.
(Ord. No. 98-8-5927, § 2, 8-25-98)

Sec. 114-243. Fiscal year.

The fiscal year of the Agency shall begin on July 1 of each year and end on June 30 next following.
(Ord. No. 98-8-5927, § 3, 8-25-98)

Sec. 114-244. Meetings of board; quorum.

(a) The Board shall meet no less than once per month, and may adopt rules and bylaws for the time and location of their meetings and conduct thereof.

(b) A majority of the members of the Board shall constitute a quorum, and the affirmative majority vote of a minimum of three affirmative votes shall be required for the adoption of any motion, measure, or resolution.

(c) A permanent record of Board proceedings shall be maintained, and shall be available for inspection as a public record, in accordance with the procedures established in the Kentucky Open Records Act.

(Ord. No. 98-8-5927, § 4, 8-25-98)

Sec. 114-245. Officers and employees.

(a) The jointly appointed member of the Board shall serve as its Chairperson during the first year, and the members of the Board shall elect from its members a Vice Chairperson. Beginning with the second year and continuing annually thereafter, the members of the Board shall elect the Chairperson and Vice Chairperson. The Chairperson shall preside at all meetings when present, and shall call special meetings on the Chair's own motion or when requested to do so by three other Board members. The Vice Chairperson shall preside at any meeting in which the Chairperson is absent.

(b) The Board shall have the power to employ, fix the compensation of and discharge at will an Executive Director and/or Chief Engineer, and a Secretary-Treasurer. Excepting the foregoing, the Executive Director shall have the power to direct, employ, fix the compensation of, and discharge at will any employees of the agency subject to the general policies of the board and its right to review such actions. The Board shall have the power to establish rules and regulations for all employees of the Agency.

(c) The Board shall require the Executive Director and/or Chief Engineer and Secretary-Treasurer to execute a bond, and may exact from such of its other officers and employees bonds as it deems expedient. All bonds shall be payable to

the Agency in the sums as the Board may fix with approved corporate surety, and premiums therefor shall be paid by the Agency. The bonds shall obligate the makers thereof to faithfully perform the duties of their respective offices and positions and to fully account for and pay over all money, property, or other thing of value of the Agency, which may come into their possession, custody or control.

(d) The Board may also employ, and remove at pleasure, accountants, engineers, legal counsel, professional and technical advisors or services, experts, and other persons, skilled or unskilled, as it deems requisite for the performance of its duties.

(e) No person shall be hired as an employee of the Agency who is related within the third degree to the Mayor, the Judge Executive, any member of the governing body of the city or the county, any member of the Board, the executive director and/or chief engineer, or the secretary-treasurer.

(f) The Agency may contract with the City of Paducah or McCracken County for financial, engineering, personnel and other services it deems expedient.

(Ord. No. 98-8-5927, § 5, 8-25-98; Ord. No. 2002-12-6594, § 1, 12-2-02)

Sec. 114-246. Merger; agency to take over existing facilities.

(a) After the Agency has organized, obtained approval of the Kentucky Public Service Commission (if required), and made all necessary arrangements to assume or refinance the debts and liabilities of the Existing Agencies, the sanitary and combined sewer facilities of the Existing Agencies shall be merged into the Agency, together with all contracts, books, maps, plans, papers and records, of whatever description pertaining to or relating to the design, construction, maintenance, operation, and affairs of the Existing Agencies, and shall thereafter be assigned, transferred, and dedicated to the use of and be in possession, and under the jurisdiction, control, and supervision of the Agency. The Existing Agencies shall also assign, transfer and convey to the Agency all property (whether real, personal or mixed), easements, equipment, inventory, ac-

counts receivable, contracts and rights thereunder and causes of action owned by the Existing Agencies. The Agency shall thereafter have complete jurisdiction, control, possession, and supervision, of all sanitary and combined sewer systems and facilities in the City of Paducah and McCracken County.

(b) Upon establishment of the Agency, the Agency shall immediately make a determination of all existing assets, liabilities, easements, personnel, control, management, and authority of the Existing Agencies to be transferred to, and become a part of, the Agency. All Existing Agencies are expected to cooperate fully with the Agency and each Existing Agency shall promptly prepare a comprehensive list of its assets, liabilities, easements, and personnel.

(c) All personnel of the Existing Agencies shall be offered employment by the Agency, and shall retain all existing and accrued benefits, including but not limited to, wages and/or salaries, vacations, sick leave, years of service and pension investment. All employees of the Agency shall be employees at will.

(d) At such time as the transfer of assets, liabilities, easements, personnel, and authority of the Existing Agencies is complete, the Existing Agencies shall no longer retain any power or authority and shall be dissolved.

(e) In the event that the legislative bodies of the City of Paducah and the McCracken County Fiscal Court decide to dissolve the Agency, all existing assets, liabilities, easements, personnel and authority shall be distributed as stipulated in identical ordinances approved and adopted by both governing bodies.

(Ord. No. 98-8-5927, § 6, 8-25-98)

Sec. 114-247. General powers of the agency.

The Agency created under this ordinance is empowered:

(a) To have full and complete jurisdiction, control, possession, and supervision of the sanitary and combined sewer systems in McCracken County, including the maintenance, operation, reconstruction, and improvements to the same as a regional

comprehensive sanitary and combined sewer system; to make additions, betterments, and extensions thereto; and to have all the privileges, and jurisdiction necessary or proper for carrying such powers into execution. No enumeration of powers shall operate to restrict the meaning of this general grant of power, or to exclude other powers comprehended within this general grant.

- (b) To prepare or cause to be prepared, and to be thereafter revised and adopted, plans, designs, and estimates of costs, of a system of trunk, intercepting, connecting, lateral and outlet sewers, pumping and ventilating stations, disposal and treatment plants and works, and all other appliances and structures which in the judgment of the Board will provide an effective and advantageous means for relieving McCracken County from inadequate sanitary drainage and from inadequate sanitary disposal and treatment of the sewage thereof, and may take all steps the Board deems proper and necessary.
- (c) To construct any additions, betterments and extensions to the facilities of the Agency by contract or under, through, or by means of its own officers, agents and employees.
- (d) To establish, construct, operate and maintain, as a part of the sanitary sewer system of the Agency, sewage treatment and disposal plants and systems and all the appurtenances and appliances thereunto belonging. The sewage treatment and disposal plants may be located anywhere the Board deems expedient.
- (e) To acquire and hold the personal property the Board deems necessary and proper for carrying out the corporate purposes of the Agency, and to dispose of personal property when the Agency has no further need therefor.
- (f) To acquire by purchase, gift, lease, or by condemnation, real property or any interest, right, easement, or privilege therein, as the Board determines necessary, proper and convenient for the purposes of the Agency, and to use the same so long as the Agency's existence continues. Condemnation proceedings may be instituted in the name of the Agency pursuant to a resolution of the Board declaring the necessity for the taking, and the method of condemnation shall be the same as provided in the Eminent Domain Act of Kentucky. When the Board by resolution declares that any real property which it has acquired, or any interest therein, is no longer necessary or useful to the Agency, the real property and interest therein may be disposed of. If any property to be disposed of has been acquired by condemnation and has not been used by the Agency for the purpose condemned, the Agency shall first offer to sell the property back to the original owner for its then existing fair market value.
- (g) To make bylaws, regulations and agreements for the management and regulation of its affairs and for the regulation of the use of property under its control, including the power to establish pretreatment regulations.
- (h) To make contracts and execute all instruments necessary or convenient in the premises.
- (i) To recommend and initiate all user charges adequate to meet the projected revenue requirements necessary to maintain and operate the complete sanitary and combined sewer collection system and treatment facilities in a manner that complies with federal and state requirements.
- (j) To borrow money and issue negotiable revenue bonds to provide for the rights of the holders thereof, and to assume existing financial obligations of any of the Existing Agencies.
- (k) To enter any lands, waters, and premises for the purpose of making surveys, soundings and examinations.

- (l) To require payment by customers for wastewater service provided and tap-on fees.
- (m) To discontinue service for non-payment and to make agreements with water service providers for the discontinuance of water service to delinquent customers.
- (n) To approve or revise the plans and designs of all wastewater treatment facilities proposed to be constructed, altered, or reconstructed, including but not limited to, sewer lines and pump stations, by any other person or corporation, public or private, within McCracken County, in order to insure that such proposed construction, alteration, or reconstruction shall conform to, and be a part of, a comprehensive wastewater plan for McCracken County. No construction or extensions in the City of Paducah shall be started until, firstly, the City Engineer, and secondly, the Agency have approved the plans. No construction or extensions in McCracken County outside the City of Paducah shall be started until, firstly, the County Engineer, and secondly, the Agency have approved the plans. These projects shall also be subject to inspection and supervision by the Agency.
- (o) To prepare a budget annually for wastewater activities, effective beginning with fiscal year July 1, 1999.

(p) To promote the public good by offering reasonable and prudent incentives to promote commercial and economic development efforts within the system where permitted by the laws of the Commonwealth of Kentucky.
 (Ord. No. 98-8-5927, § 7, 8-25-98; Ord. No. 2002-12-6594, § 5, 12-2-02)

Sec. 114-248. Privately constructed sewers to be approved.

(a) Any person or corporation, public or private, in McCracken County shall submit for approval plans and designs for sanitary sewers to be constructed by written application to the Agency.

(b) An application for approval of plans or designs of sanitary sewers to be constructed shall be referred by the Agency to the City Engineer or County Engineer, as determined by the area of jurisdiction for which the project is proposed for approval. After approval by the appropriate engineer, the Agency shall have the right to examine, inspect and investigate the sufficiency of the proposed facilities to serve the purposes intended, and to establish and make reasonable charges for such services as may be required to make such investigation.

(c) The construction of any sanitary sewer facilities shall be subject to inspection and supervision by the Agency to assure the protection of public health and the proper completion of such facility for the purposes intended, and the Agency shall charge for such inspection and supervision on the basis of the actual cost of inspection plus a reasonable additional cost of supervision.
 (Ord. No. 98-8-5927, § 8, 8-25-98)

Sec. 114-249. Rates and charges; use of funds of agency; cutting off sewer and water service to delinquents.

(a) The existing user rates and charges as established by the Existing Agencies shall be adopted by the Agency. All user rates and charges to be collected from all the real property within McCracken County served by facilities of the Agency shall remain in effect until such time as an adjustment thereof has been approved by the Paducah City Commission and McCracken County Fiscal Court. Notwithstanding the foregoing, all tap-on fees previously established by the Existing Agencies on existing sewer lines at the time the Agency is created shall not be changed. Any proposed adjustments of the schedule of rates and charges shall be recommended by the Agency at a joint meeting of the Paducah City Commission and McCracken County Fiscal Court. The Paducah City Commission and McCracken County Fiscal Court shall approve or disapprove all rate changes recommended by the Agency by majority vote of each body. Neither the Paducah City Commissioner nor the McCracken County Fiscal Court shall have the authority to initiate rate changes. If for any reason the Paducah City Commission

and McCracken County Fiscal Court cannot agree to amendments to a rate schedule, the current schedule shall remain in effect until such time as an agreement can be reached. The schedule of rates and charges may be based upon either:

- (i) the consumption of water on premises connected with the facilities, taking into consideration commercial and industrial use of water; or
- (ii) the number and kind of plumbing fixtures connected with the facilities; or
- (iii) the number of persons served by the facilities; or
- (iv) may be determined by the Agency on any other basis or classification which the Agency determines to be fair and reasonable, whether similar or dissimilar to those enumerated; except that the schedule shall be equitable for all residential property. Provided, however, pursuant to HB 739, enacted by the 2002 Kentucky General assembly, if the Paducah City Commission, McCracken County Fiscal Court and the Agency find that local needs warrant, uniformity of rates for all residential property shall not be required for a period of no more than ten years from the date the Agency was established on July 1, 1999; or
- (v) any combination thereof.

This schedule may include additional charges for treatment of sewage, with a surcharge where the sewage contains industrial waste or other waste in excess of limitations established by the regulations of the Agency.

(b) Prior to modification of the schedule of rates and charges, the Agency shall adopt a proposed schedule and publish notice thereof pursuant to KRS Chapter 424. The notice so published shall be dated as of the date of first publication thereof and shall state that the proposed or revised schedule of rates and charges will remain open for inspection in the office of the Agency for 30 days from the date of the notice, and that objections thereto in writing may be filed during that period with the Agency by any person aggrieved thereby. The Board shall examine and

hear any and all complaints, may modify the proposed schedule, and may recommend to the Paducah City Commission and McCracken County Fiscal Court a final schedule within 60 days after the date of the notice. The schedule so adopted and established shall thereafter be the rates and charges for the use of the facilities of the Agency by users within McCracken County until changed in the manner provided herein. The schedule of rates and charges shall be established and revised from time to time so as to produce aggregate revenues to the Agency sufficient:

- (i) for the payment of interest on and principal of all revenue bonds and other obligations of the Agency;
- (ii) for the payment of all costs and expenses of operating and maintaining the sewer system of the Agency, including but not limited to that portion of the salaries, wages, and fees of all officers and employees of the Agency; and
- (iii) for the payment of all costs of renewals and replacement of such system within McCracken County; provided, however, that all expenses, salaries, wages, and fees necessary or incident to improvements: for the account of which bonds are issued or other indebtedness incurred may be included as a part of the cost of the improvements; and paid from the proceeds of the bonds or other indebtedness.

The use of all monies of the Agency received from any and all sources shall be limited exclusively and devoted solely to the payment of all obligations of the Agency and no funds from any sources shall be diverted to any other purposes than those described in this division.

(c) Whenever any sewer rates or charges for services rendered remain unpaid for a period of 30 days after the same becomes due and payable, the Agency shall declare the property, the owner thereof, and the user of the service, delinquent until such time as all rates and charges are fully paid, and may cut off the sewer connection and service. The Agency may enter into agreements

with any water company or water service, public or private, providing for the discontinuance of water service to delinquents.

(Ord. No. 98-8-5927, § 9, 8-25-98; Ord. No. 2002-12-6594, § 6, 12-2-02)

Sec. 114-250. Power to acquire land.

(a) The Agency shall have the power to acquire by purchase, gift, or eminent domain proceedings, the fee or such right, title, interest or easement, in such lands as may be deemed by the Agency necessary for any of the purposes mentioned in this division, and any personal property necessary for the purpose of the Agency. Such lands or interests therein, or personal property may be so acquired whether or not the same are owned or held for public use by corporations, associations, or other persons having the power of eminent domain, or otherwise held or used for public purposes. Forthwith upon the acquisition of any such fee, right, title, interest or easement, or personal property, the same shall become dedicated to the uses and purposes of the Agency.

(b) The method of condemnation of such property shall be pursuant to the Eminent Domain Act of Kentucky.

(c) When the Agency has filed a proceeding to condemn land or any interest therein, or personal property, pursuant to the provisions of the Eminent Domain Act of Kentucky, and the Board shall determine that the necessity for procuring possession of the property is urgent, it may pass a resolution, at the time that said condemnation is authorized or at any time thereafter for a declaration of taking, declaring that said lands are to be taken for the use of the Agency. Said declaration of taking shall contain, or have annexed thereto, the following:

- (i) a statement of the authority under which and, the public use for which, said lands are taken;
- (ii) a description of the lands taken sufficient for identification thereof;
- (iii) a statement of the estate or interest in said lands taken for said public use; and
- (iv) a plat showing the lands taken.

(d) At any time after the report of the Commissioners has been made, the Agency may file said declaration of taking and make a deposit with the Clerk of the Court of the sum of money stated in the award of the Commissioners appointed. Title to said lands in fee simple or such lesser estate as is specified in said declaration or to said personal property shall then vest in the Agency, and the right to just compensation for said land or interest therein or personal property shall vest in the persons entitled thereto. Said compensation shall be ascertained and awarded in said proceeding as otherwise provided in the Eminent Domain Act of Kentucky.

(e) Any property owner whose property is proposed to be the subject of a condemnation action by the Agency shall be provided by U.S. mail at his/her last known address, at least five days prior to the meeting, a copy of the official agenda of the Agency meeting wherein the initial resolution for condemnation is to be acted upon. In addition to the agenda, the property owner shall be informed by an accompanying letter from the Agency of his/her rights of appeal under section 114-256 herein, in the event the aforesaid resolution is adopted. Each property owner so adversely affected shall be invited to attend the meeting wherein the Agency will act upon the resolution for condemnation.

(Ord. No. 98-8-5927, § 10, 8-25-98; Ord. No. 2002-12-6594, § 7, 12-2-02)

Sec. 114-251. Agency revenue bonds.

(a) The Agency may, from time to time, issue its negotiable interest-bearing revenue bonds for any of its corporate purposes, and it may also, from time to time, issue its negotiable interest-bearing revenue bonds to refund any of its bonds at maturity or pursuant to redemption provisions, or at any time before maturity with the consent of the holders. All the bonds, including interest, are payable solely from and secured only by the revenues of the Agency realized through the collection of rates or other charges, imposed for use of the facilities of the Agency. The bonds shall be authorized by resolution of the Board and shall bear the dates, mature at the times not exceeding 40 years from their respective dates, bear interest at the rate or rates, or method of determining

rates, payable at least annually, be in the denominations and form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment at the place, and be subject to the terms of redemption, with or without premium, as the resolutions provide. The bonds shall be sold at public sale for the price the Board determines.

(b) Any resolution authorizing any bonds may contain provisions which shall be a part of the contract with the holders of the bonds as to:

- (i) pledging all or any part of the gross or net revenues of the Agency to secure the payment of the bonds and interest on the bonds;
- (ii) the amounts to be raised in each year by rates and charges, and their use and disposition, and of any other revenues of the Agency;
- (iii) the setting aside of reserves or sinking funds and their regulation and disposition;
- (iv) limitations on the right of the Agency to restrict and regulate the use of its facilities;
- (v) limitations on the purposes to which the proceeds of sale of any issue of bonds to be issued may be applied;
- (vi) limitations on the issuance of additional bonds; and
- (vii) the procedure, if any, by which the term of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent, and the manner in which the consent may be given.

(c) The bonds or other obligations of the Agency shall not constitute an obligation or indebtedness of the City of Paducah or of McCracken County and it shall be plainly stated on the face of each bond of the Agency that it has been issued under the provisions of this ordinance, and that it does not constitute an indebtedness of the City of Paducah or McCracken County. All bonds authorized may be issued without a vote of the voters and without any other proceedings or happenings

of any other conditions or things than those proceedings, conditions and things described herein. The bonds shall be signed in the name of the Agency by the chairperson or vice chairperson of the Board, and attested by the signature of the secretary-treasurer.

(Ord. No. 98-8-5927, § 11, 8-25-98)

Sec. 114-252. Enforcement of rights of bondholders.

(a) In the event the Agency shall default in the payment of principal or interest on any of the revenue bonds issued pursuant to this ordinance after the said principal or interest shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the Agency shall default in any agreement made with the holders of the bonds, the holders of 20% in aggregate principal amount of the bonds then outstanding, by instrument or instruments filed in the office of the McCracken County Court Clerk and approved or acknowledged in the same manner as a deed to be recorded, may apply to a judge of the McCracken Circuit Court to appoint a trustee to represent all of the bondholders for the purposes herein provided. Upon such application the judge shall appoint a trustee and such trustee may, and upon written request of holders of 20% in principal amount of the bonds of the Agency then outstanding shall, (1) by mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the bondholders, including but not limited to the right to require the Agency to collect rates and other charges, adequate to carry out any agreement as to, or pledge of, the revenues of the Agency and to require the Agency and its officers to carry out any other agreement with the bondholders and to perform its and their duties; (2) bring suit upon the bonds; (3) by action or suit in equity, require the Agency to account as if it were the trustee of an express trust for the bondholders; (4) by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of bondholders; (5) declare all bonds due and payable, and if all defaults shall be made good then to annul such declaration and its consequences.

(b) Any such trustee shall be entitled as of right, upon application to the judge, to the appointment of a receiver, who may enter upon and take possession of the facilities of the Agency, or any part or parts thereof, and operate and maintain the same, and collect and receive all rates and charges and other revenues of the Agency, thereafter arising therefrom, in the same manner as the Agency and its officers might do, and shall deposit all monies in a separate account and apply the same in such manner as the court shall direct. In any suit, action, or proceeding, by the trustee, the fees, the counsel fees, and expenses of the trustee and of the receiver shall constitute disbursements taxable as costs. All costs and disbursements allowed by the court shall be a first charge on any revenue derived from the facilities of the Agency. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any function specifically set forth herein or incident to the general representation of the bondholders and the enforcement and protection of their rights.

(Ord. No. 98-8-5927, § 12, 8-25-98)

Sec. 114-253. Apportionment of construction costs.

(a) A resolution of the Board providing for the construction of sewerage facilities and appurtenances shall describe the nature and kind of facilities to be furnished and shall describe the particular area to be benefitted by said sewerage facilities.

(b) The costs of the sanitary sewers and appurtenances, excepting, at the option of the Agency, core and trunk facilities, shall be assessed against the land in the benefitted area. The square foot method, the front foot method, the equivalent residential unit method, the ten-year net revenue method, or any other equitable basis may be used for determining the assessment. No property which has been assessed for collector lines shall be reassessed for the installation or reinstallation of collector lines. The Agency may, at its option, pay for core and trunk facilities through the Agency's revenues, loans, grants, assessments, or any combination thereof.

(c) The costs of property service connections from the sewer to the property line or easement line as required shall be assessed against the individual lots or tracts to which such property service connections are furnished. The costs to be assessed for the property service connections shall be fixed by regulation of the Agency based on its experience of costs for such work.

(d) All land included in the benefitted area shall be assessed, except public roadways and property owned by the city or county.

(e) When the Board determines that construction of sanitary sewers and appurtenances or property service connections shall be necessary, the Agency shall cause its engineers to prepare complete drawings and specifications for the work and to keep same available for inspection in its offices.

(f) The actual construction work of the sanitary sewers and appurtenances shall be done by, or under the control of, the Agency. The cost of the sanitary sewers and appurtenances or property service connections shall include not only the actual construction cost and the cost of any easements required for the sewers, but also cost of surveys, designs, plans, specifications, advertising, inspection and administration; provided, however, these additional costs shall not exceed 15% of the actual construction cost of the project.

(g) A lien superior to all liens except the liens for state, county, city, school and road taxes and liens prior in time for other public improvements shall exist against the respective lots or tracts of land for the cost of the sanitary sewers, appurtenances or property service connections for apportionment as provided herein, plus interest thereon at the rate of six percent (6%) per annum.

(h) If sanitary sewers, appurtenances or property service connections are constructed as provided in the resolution, the Agency shall not be liable for the cost of the sanitary sewers, appurtenances or property service connections and shall have the right to enforce such costs against the property receiving the benefit.

(i) Upon completion and acceptance of the sewer facility constructed, the Agency shall make out all apportionment warrants for which liens are given

for improvements of sewer facilities and shall immediately enter them in alphabetical order upon a register kept for that purpose. When the holder of the warrant has obtained payment, such holder shall notify the Agency and the Agency shall mark upon the register the fact of payment.

(j) The lien shall exist from the date of the apportionment warrant, but a lien shall not be valid against a purchaser for a valuable consideration without notice, unless the apportionment warrant is entered and registered within ten days of its issuance.

(k) After any sewer facilities have been constructed, the Agency shall give notice by publication pursuant to KRS Chapter 424 of the costs apportioned, and the amounts assessed and levied on the various tracts of land liable for the payment.

(Ord. No. 98-8-5927, § 13, 8-25-98; Ord. No. 2002-12-6594, §§ 8, 9, 12-2-02)

Sec. 114-254. Combined sewers.

(a) All facilities in the City of Paducah that are a combination of wastewater and stormwater sewers shall be included in the assets transferred to the Agency.

(b) The Agency shall have the responsibility to maintain all combined sewer system facilities in the City of Paducah. The combined sewer system facilities visible on the surface, (such as inlets, grates, inlet throats, open-ended pipes, surface ditches, surface drainages, etc.), and the connector pipe to the combined sewer main shall be maintained by the City of Paducah.

(c) The Agency shall be responsible for compliance with all environmental regulations and requirements for combined sewer overflow established by the Commonwealth of Kentucky. (Ord. No. 98-8-5927, § 14, 8-25-98)

Sec. 114-255. Coordination of operations with other agencies.

(a) The Agency shall take all necessary efforts and make all necessary agreements with the City of Paducah to establish procedures for coordinating the use and operation of all flood control pump stations used when the Ohio River reaches flood stage.

(b) The facilities that constitute the City of Paducah flood control system shall not be part of the assets transferred to the Agency and shall remain the property of the City of Paducah.

(c) The Agency shall coordinate with the City of Paducah the operation of the compost facility operated by the City of Paducah and make such agreements as may be necessary for the disposal of sludge generated by the operations of the Agency.

(d) The Agency may enter into an agreement with the City of Paducah and McCracken County to provide necessary maintenance of storm sewers. (Ord. No. 98-8-5927, § 15, 8-25-98)

Sec. 114-256. Appeal process.

(a) Any entity or person, other than employees of the Agency, aggrieved by any final action of the Agency may appeal from said action to a grievance committee which shall be composed of one member of the McCracken County Fiscal Court selected by the McCracken County Fiscal Court and one member of the Paducah City Commission selected by the Paducah City Commission, and the two members thus appointed shall jointly select a third person to serve on the committee. The representatives of the legislative bodies shall not be the same representatives who are then sitting on the Board of the Agency. The aggrieved person and the Agency shall be allowed to appear before the grievance committee to state their

position. The grievance committee may modify, sustain, or overrule the action taken by the Agency.

(b) Appeals by the aggrieved party shall be made in writing by filing the appeal with the Secretary-Treasurer of the Agency thirty (30) days after the decision of the Agency. All decisions which have not been appealed within 30 days shall become final.

(Ord. No. 98-8-5927, § 16, 8-25-98)

Sec. 114-257. Additional authority.

McCracken County Fiscal Court and the City of Paducah, within their respective jurisdictions, shall have the authority to establish with sufficient funding, a separate and independent stormwater utility by separate ordinance, under the management and control of the Agency.

(Ord. No. 98-8-5927, § 17, 8-25-98)

Sec. 114-258. Effective date.

This division shall become effective immediately upon passage and publication.

(Ord. No. 98-8-5927, § 18, 8-25-98)

Sec. 114-259. Name of agency.

The name of the Agency shall be the "Paducah-McCracken County Sewer Agency," in which name it may act in accordance with the powers set forth in this division.

(Ord. No. 98-8-5927, § 19, 8-25-98)

Sec. 114-260. Reserved.

ARTICLE III. WATER

DIVISION 1. GENERALLY

Sec. 114-261. Contract required for use of city water; permitting unauthorized use of water.

(a) No person shall take or use any water furnished or supplied through the waterworks system of the city for domestic or other purposes without contracting for the same pursuant to the rules and regulations of the waterworks as approved by the Commissioners of Waterworks, nor

EXHIBIT "C"

ORDER DATED JANUARY 9, 1995
IN ADMINISTRATIVE CASE NO. 347
*(AN INVESTIGATION THE COLLECTION
AND BILLING PRACTICES OF PRIVATELY
OWNED SEWER UTILITIES)*

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE COLLECTION AND)
BILLING PRACTICES OF PRIVATELY-OWNED) ADMINISTRATIVE
SEWER UTILITIES) CASE NO. 347

O R D E R

On March 5, 1993, the Commission initiated an investigation into the billing and collection practices of privately-owned sewer utilities. This action followed the Commission's receipt of a petition from 30 sewer utilities requesting that Commission regulations be amended to permit agreements between water and sewer utilities for the collection of unpaid sewer service bills. As part of its investigation, the Commission ordered all water and sewer utilities to complete a questionnaire on collection and billing practices. Having reviewed and considered their responses, the Commission finds that its investigation should be closed.

Background

Discontinuance of utility service has long been recognized as the most effective means of bill collection.¹ Sewer service,

¹ It is the generally accepted rule in this jurisdiction that a public service company may adopt and enforce regulations providing for the discontinuance of its service to any customer who, after reasonable notice, fails to pay his bill. This principle of law is based upon a sound public policy which recognizes that it would be highly impractical to compel a utility company to resort to an infinite number of actions at law to collect small accounts against scattered customers.

Huff v. Electric Plant Bd. of Monticello, Ky., 299 S.W.2d 817, 818 (1957) (citations omitted)



however, cannot be easily disconnected. There is no switch to pull or valve to turn to discontinue service. The delinquent customer's sewer line must be plugged or his water service must be discontinued. Plugging a sewer line is costly and not usually environmentally sound. It imposes a disproportionate hardship on the customer. Once the sewer line is dug up and plugged, his residence is rendered unfit for habitation.

The General Assembly has recognized discontinuance of water service as an alternative collection mechanism. KRS 96.934(2) requires water utilities to discontinue water service where customers have failed to pay sewer service charges owed to a municipality. KRS 220.510(1) imposes a similar requirement when charges are owed to a sanitation district.

Kentucky courts have supported this alternative. In Rash v. Louisville and Jefferson County Metropolitan Sewer Dist., Ky., 217 S.W.2d 232 (1949), the Court of Appeals upheld a contract requiring the Louisville Water Company to terminate water service to customers failing to pay for sewer service charges owed to the Louisville-Jefferson County Metropolitan Sewer District. The court found "no reason why the Water Company under a contract with the Sewer board may not discontinue its service to delinquent sewer users. The use of both services is interdependent." Id. at 239. See also City of Covington v. Sanitation District No. 1 of Campbell and Kenton Counties, Ky., 301 S.W.2d 885 (1957) (citing Rash with approval).

In Cassidy v. City of Bowling Green, Ky., 368 S.W.2d 318 (1963), the City of Bowling Green enacted an ordinance requiring the termination of water service for any person failing to pay garbage and sewer disposal service charges. Several city residents challenged the ordinance. Reviewing the reasonableness of the ordinance, the Kentucky Court of Appeals declared:

The reasonableness of discontinuing one public service for failure to pay for a related public service was recognized in Rash v. Louisville & Jefferson County Met. Sewer Dist., 309 Ky. 442, 217 S.W.2d 232, and City of Covington v. Sanitation District No. 1, Ky., 301 S.W.2d 885. We are not inclined to say that interdependence is necessarily a controlling factor. However, the record shows that garbage disposal and water supply are closely related from a sanitation standpoint and we can find nothing arbitrary or unreasonable about this method of collecting service charges.

Id. at 320. The Court allowed the ordinance to stand.

Commission regulations currently prohibit public water utilities from discontinuing a customer's water service for delinquent sewer service bills. Commission Regulation 807 KAR 5:006, Section 14(1), states:

A utility may refuse or terminate service to a customer only under the following conditions

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this regulation. [Emphasis added].

A utility may discontinue service only for nonpayment of charges for services which it provides. As they do not provide sewer

service, water utilities may not discontinue service for nonpayment of sewer service charges.²

Many sewer utilities have claimed that the lack of effective collection mechanisms undermine their financial viability. As they operate on small profit margins, any loss of revenue has a significant impact. While these utilities can employ other means to collect unpaid charges, they contend that these methods are expensive and time consuming.

To remedy this problem, several sewer utilities proposed to amend existing Commission Regulation 807 KAR 5:006, Section 14, to permit sewer utilities and water utilities to enter collection agreements which require the termination of water service for unpaid sewer service charges. Lacking any data on the magnitude of this problem, the Commission initiated this proceeding to collect and analyze information on sewer utilities' billing and collection practices.

Survey Results

Sewer Utilities. On March 5, 1993, the Commission ordered all sewer utilities to respond to a short questionnaire on billing and collection issues. Although the Order was served on 105 sewer utilities, only 40 sewer utilities, or approximately 38 percent of all jurisdictional sewer utilities, responded. Four were combined

² Combined water and sewer districts are an exception to this rule. Since they provide both services, the Commission has permitted such districts to discontinue a customer's water service for failure to pay sewer service charges. See, e.g., Boone County Water and Sewer District, Case No. 91-428 (April 6, 1992).

water and sewer districts. Two were private corporations providing water and sewer service.

Thirty-eight sewer utilities stated that legal action to collect delinquent bills is not an effective means of collection. Only six sewer utilities, however, have used legal process to collect unpaid bills. Of those, two stated that legal action is an effective collection tool.

Seven of the responding utilities attempted to negotiate a contract with the local water supplier to discontinue water service. Three utilities (A-1 Builders, Burl Park Sanitation Association, and Ridgelea Investments) negotiated such agreements. The water utilities, however, refused to honor them after learning of possible conflicts with Commission regulations.

Twenty-three of the 40 sewer utilities found that their inability to terminate service for non-payment did not have a significant impact on their operations. Twenty-five utilities, however, stated that their operations would be significantly affected if the Commission permitted the discontinuance of water service for a customer's failure to pay sewer service charges.

Water Utilities. The Commission served a questionnaire upon 206 water utilities. Only 60 utilities, or approximately 29 percent, responded. Of these utilities, 11 currently provide billing and collection services for privately owned sewer utilities. Fourteen provide such services for municipal utilities or sanitation districts.

Thirty-three water utilities expressed some willingness to enter into agreements with sewer utilities for billing and collection services. Fourteen gave qualified support to a Commission regulation ordering water utilities to discontinue water service upon a sewer utility's request.

The water utilities proposed several conditions to the discontinuance of water service. Most urged that sewer utilities be required to compensate water utilities for the cost of discontinuing and restoring water service. They also sought indemnification from any liability for wrongful termination of service. Several water utilities suggested that any administrative regulation on this issue expressly relieve the water utility of liability in the same manner as KRS 96.942.³ Several were concerned that their reputation would be tarnished if they were forced to discontinue service for nonpayment of sewer service charges. Some suggested that termination of service not be mandated unless the sewer utility had a written agreement with the water utility.

Most emphasized the need for notification procedures similar to those currently in effect. Several proposed that a water utility's contract expressly state that water service could be discontinued for failure to pay sewer service charges. In this manner, customers would have full knowledge of the consequences of

³ "No water supplier who discontinues water service pursuant to an order from the sewer body as provided in KRS 96.930 to 96.943 shall incur any liability by reason thereof, except to the extent of its own negligence or other improper conduct."

their failure to pay for sewer service. One utility suggested that no disconnection be permitted until the sewer utility presented proof of customer notification. Some proposed exceptions for health and hardship be included in any administrative regulation requiring discontinuance.

Analysis

The tepid response to the Commission's Order of March 5, 1993 raises doubts about the need for change. If the problem were serious, the level of response should be higher. Moreover, of those sewer utilities making the effort to respond, fewer than half view billing and collection as a significant problem.

The survey also indicates that few sewer utilities use existing remedies to collect delinquent bills. Less than 20 percent of the responding utilities have used legal action to collect delinquent bills. Of those which did, 33 percent found legal action to be effective. The failure to use existing remedies undercuts the argument that existing remedies are ineffective.

The survey also indicates water utility opposition to changes in existing policy. Many are willing to implement such a policy change only if insulated from liability for wrongful termination of service. While indemnification agreements between sewer and water utilities may achieve this objective, most water utilities apparently prefer statutory protection to contractual protection and are unwilling to enter agreements for the discontinuance of service without such protection.

This attitude would limit the impact of any change in Commission regulations. While the Commission may amend its regulations to permit water utilities to discontinue water service for a customer's failure to pay sewer service charges, it cannot relieve water utilities from their liability for wrongful termination. Such relief can come only from the General Assembly. Without such relief, the Commission expects few water utilities voluntarily to become involved in sewer utility collections.

Given the sewer utilities' tepid response and the opposition of water utilities, the Commission is unwilling to mandate the discontinuance of water service at a sewer utility's request. Water and sewer utilities should develop an agreed approach to address this issue.

Absent a strong demand for change in the existing Commission regulation and the likelihood that such changes would have a significant impact, no attempt to amend Commission Regulation 807 KAR 5:006, Section 14, to create an industry-wide remedy should be made. Those seeking changes in current sewer billing and collection practices should focus their efforts on the General Assembly.

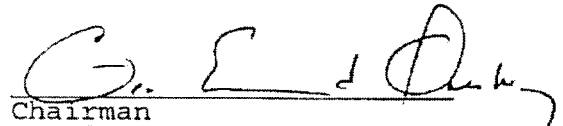
Meanwhile, those sewer and water utilities which agree to the discontinuance of water service for delinquent sewer service bills may petition the Commission for a deviation from Commission Regulation 807 KAR 5:006, Section 14. Absent unusual circumstances, the Commission will favorably consider such petitions.

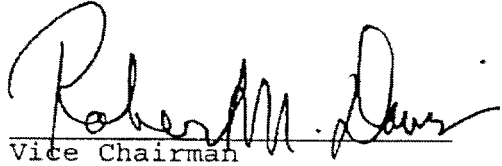
IT IS THEREFORE ORDERED that:

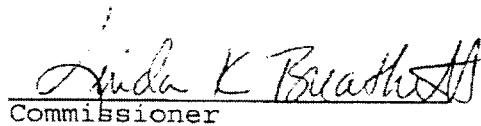
1. This investigation is concluded.
2. This case shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 9th day of January, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

EXHIBIT "D"

HENDRON WATER'S
RULES AND REGULATIONS
SHEET NOS. 9 AND 10

NEW

P.S.C. KY. NO. 4

CANCELS P.S.C. KY. NO. 3

HENDRON WATER DISTRICT

McCRACKEN COUNTY, KENTUCKY

RATES, RULES AND REGULATIONS FOR FURNISHING
WATER

AT

HENDRON, KENTUCKY (McCRACKEN COUNTY)

Filed with PUBLIC SERVICE COMMISSION OF
KENTUCKY

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

JUN 25 1992

ISSUED 6-25-92

EFFECTIVE _____

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)

BY: [Signature]
PUBLIC SERVICE COMMISSION MANAGER



ISSUED BY HENDRON WATER DISTRICT

BY [Signature]
Chairman of the Board

FOR Entire Area Served

P.S.C. KY NO. 4

Original Sheet No. 9

Hendron Water District

Cancelling P.S.C. KY No. 2

Original Sheet No. 7

RULES AND REGULATIONS

- 10. The District will not furnish free water to any person for any purpose.
- 11. The District will not allow temporary services. A meter may be put on a fire hydrant for one (1) week with a \$25.00 service charge and a water charge based on standard rates between May 1 and October 31. Otherwise customers are required to tap the main.
- 12. The District shall terminate a customer's service for non-payment of a bill; if, twenty (20) days after the date of billing, payment has not been received. The District shall issue a written Termination Notice to the delinquent customer ten (10) days prior to date of disconnection. The District shall not terminate service for thirty (30) days beyond the date of termination if a physician, registered nurse, or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity on the affected premises. Also, if the District receives payment after the issuance of the Termination Notice, but before the disconnection date, the customer's service will not be disconnected. If the District does not receive payment within fifteen (15) days of date of billing, a penalty of ten percent (10%) of the bill shall be added to the bill.

The District shall require a Reconnection Fee and payment of all delinquent water bills, including penalties, in full, before reconnection is made for non-payment.

- A Fee of \$15.00 shall be required for reestablishing service when water is shut off, but meter remains in place. If service is reestablished after office hours or on weekends and holidays, the Fee will be \$35.00.
- A Fee of \$25.00 shall be required for reestablishing service when the water is shut off, and the meter is physically removed. If service is reestablished after office hours or on weekends and holidays, the Fee will be \$50.00.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

DATE OF ISSUE _____ DATE EFFECTIVE FEB 1 1993

ISSUED BY Don E. Park TITLE Chairman Board of Commissioners PURSUANT TO KAR 5:011, SECTION 9(1)
Name of Officer

Issued by authority of an Order of the Public Service Commission of Kentucky in Case No. 92-321 dated FEBRUARY 1, 1993 BY: [Signature] PUBLIC SERVICE COMMISSION MANAGER

FOR Entire Area Served
 P.S.C. KY NO. 4
Original Sheet No. 10
 Cancelling P.S.C. KY No. 2
Original Sheet No. 7

Hendron Water District

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RULES AND REGULATIONS

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12. (Continued)

The District shall require a \$15.00 Service Charge to transfer a service into a homeowner's name with a signed homeowner's Contract. This Service Charge shall be \$35.00 if done after hours or on weekends and holidays.

The District shall charge a Fee of \$15.00 to transfer services to a new buyer, if the meter is left in place. This Fee shall be \$35.00 if done after office hours or on weekends and holidays.

FEE SCHEDULE

<u>Service Description</u>	<u>8:00 a.m. - 4:30 p.m. (Office Hours)</u>	<u>Before 8:00 a.m. or After 4:30 p.m. and Holidays/Weekends</u>
a. Establish service	\$25.00	
b. Reestablish service (after non-payment)	\$15.00	\$35.00
c. Meter replacement (after non-payment)	\$25.00	\$50.00
d. Service calls	\$15.00	\$35.00
e. Returned checks	\$15.00	
f. Meter testing	\$15.00	
g. Meter tamper repair	\$50.00	

PUBLIC SERVICE COMMISSION
 OF KENTUCKY
 EFFECTIVE

DATE OF ISSUE _____ DATE EFFECTIVE FEB 1 1993
 ISSUED BY Don E. Beck TITLE Chairman Board of Commissioners PURSUANT TO 807 KAR 5:011.
 Name of Officer _____

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 in Case No. 92-321 dated FEBRUARY 1, 1993