

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

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| APPLICATION TO REQUEST COMMISSION |) | |
| APPROVAL FOR AN INCREASE IN FARMDALE |) | |
| DEVELOPMENT CORPORATION SEWAGE |) | CASE NO. 2006-00028 |
| TREATMENT PLANT'S RATE PURSUANT TO |) | |
| THE ALTERNATIVE RATE FILING PROCEDURE |) | |
| FOR SMALL UTILITIES |) | |

**RESPONSE OF FARMDALE DEVELOPMENT CORPORATION
TO THE ATTORNEY GENERAL'S WRITTEN MEMORANDUM
IN RESPONSE TO THE PUBLIC SERVICE
COMMISSION'S ORDER OF MARCH 20, 2006**

Comes the Applicant, Farmdale Development Corporation, by counsel, and for its Response to the Attorney General's Written Memorandum in Response to the Public Service Commission's Order of March 20, 2006, states as follows.

KRS 278.040 provides the Public Service Commission ("Commission") with the authority to regulate utilities. KRS 278.040(2) further provides that the Commission "shall have exclusive jurisdiction over the regulation of rates and service of utilities..." KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state. Pursuant to the above mentioned statutes, as well as KRS 278.190, the Commission has exclusive jurisdiction over the setting of rates by utilities such as the Farmdale Development Corporation.

The General Assembly, in recognition of the Commission's exclusive jurisdiction to

establish rates and its expertise in this area, has enacted a number of statutes insuring that the Commission has the information necessary to fulfill its statutory responsibilities. These include the statutes granting the Commission access to property, books and records of utilities (KRS 278.30), authorization to investigate the condition of a utility (KRS 278.250), authorization to call witnesses (KRS 278.330), authorization to take depositions (KRS 278.340), authorization to issue subpoenas, subpoenas duces tecum and all necessary process in proceedings before the Commission (KRS 278.320), and to hold hearings with respect to applications for rate adjustment (KRS 278.190). KRS 278.310 also authorizes the Commission to adopt rules to govern hearings and investigations before the Commission.

Pursuant to the above mentioned statutes, the Commission promulgated 807 KAR 5:076, the alternative rate adjustment procedure for small utilities. 807 KAR 5:076, Section 2 provides that unless a hearing is held by the Commission, the decision on the application for rate adjustment will be based upon the application, past annual reports of the applicant, information provided by the applicant in response to the Commission's and intervenors' requests and the written report submitted by Commission staff subsequent to field review. 807 KAR 5:076, Section 2 (d) recognizes that as the expert in this area, the Commission staff may conduct a field review and then submit its written report concerning this field review to the Commission. In Simpson County Water Dist. v. City of Franklin, Ky., 872 S.W.2d 460, *465 (1994), the Court stated that "The PSC acts as a quasi-judicial agency utilizing its authority to conduct hearings, render findings of fact and conclusions of law, and utilizing its expertise in the area and to the merits of rates and service issues." (Emphasis added). There is no need to allow the Attorney General to participate in the field review where the Commission is the recognized expert in this

area and the Attorney General has no such expertise. Furthermore, there is no requirement set forth in the applicable regulations or statutes allowing or authorizing interveners to participate in the field review.

In its response, the Attorney General is unable to point to any case or statute indicating that due process requires its participation in any field review conducted by Commission staff. Indeed, the Attorney General's interests as an intervenor are fully protected in this matter by allowing it to submit requests for information, allowing it to request a formal hearing and to participate in same. As stated by the Court in Utility Regulatory Com'n v. Kentucky Water Service Co., Inc., Ky. App., 642 S.W.2d 591, 593 (1982):

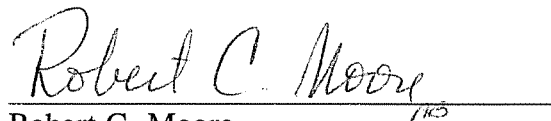
Due process requires, at a minimum, that persons forced to settle their claims of right and duty through the judicial process be given a meaningful opportunity to be heard. *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). It has been said that no hearing in the constitutional sense exists where a party does not know what evidence is considered and is not given an opportunity to test, explain or refute. 16 Am.Jur.2d *Constitutional Law* § 848.

Here, because the Attorney General can serve discovery requests, request a hearing and participate, in same, it has a meaningful opportunity to be heard and its due process rights are satisfied. Additionally, there is no need to allow the Attorney General to participate in the field review because the Commission is an unbiased state agency whose job it is to fairly and accurately apply the statutes under which it operates. The participation by the Attorney General in a field review conducted in this case and in subsequent cases will merely make the alternative rate adjustment procedure for small utilities more cumbersome and expensive. Of course, if the Attorney General is allowed to participate in the field review in this case, then any other intervenor should be authorized to participate in the field review, as the Attorney General certainly has no expertise in the operation of a wastewater treatment plant.

The Attorney General implies that improper ex parte contacts will occur if he is not allowed to participate in the field review. First, the field review conducted by the Commission will result in the inspection of the facilities of Farmdale Development Corporation, and not in improper ex parte contacts. In fact, the participation of the Attorney General in the field review will make the likelihood of ex parte contacts more likely. The representative of the Attorney General would accompany the Commission's employees conducting the field review. It would be difficult for the Attorney General's representative not to engage in discussions during this field review, which would be considered ex parte discussions, unless all counsel are present with the Commission's representatives. Accordingly, the concern that ex parte contacts might occur during a field review would be exacerbated by the participation of the Attorney General.

For the above stated reasons, Farmdale Development Corporation objects to the participation of the Attorney General in the field review, if one is conducted, of its facilities. The Commission is an expert in this area and the Attorney General will be entitled to review the field report issued by the Commission. The Attorney General's due process rights are fully protected by its right to intervene in the proceeding, to request a hearing and to participate in the hearing.

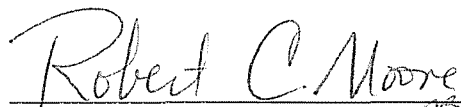
Respectfully Submitted,

A handwritten signature in cursive script that reads "Robert C. Moore". The signature is written in black ink and is positioned above a horizontal line.

Robert C. Moore
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Attorney for Farmdale Development
Corporation

CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of the foregoing was served by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601 and by first class mail, postage prepaid, on David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204, Kenny and Marilyn Glass, 223 Briarwood Drive, Frankfort, Kentucky 40601, Marry Pennington, 210 Cherry Lane, Frankfort, Kentucky 40601 and Beverly J. Hunt, 304 Peachtree Road, Frankfort, Kentucky, on this 18th of April, 2006.


Robert C. Moore