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October 23, 2007

RECEIVED

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PUBLIC SERVICE
COMMISSION

Via Facsimile - 564-7279

Hon. J. Robert Cowan
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: Airview Utilities, LLC, and Martin Cogan and Larry Smither in their individual and official capacities; Case No. 2006-00558

Dear Mr. Cowan:

Please find enclosed my comments to the Intra-Agency Memorandum that was prepared by you subsequent to the two Informal Conferences held in the above-referenced case. This Intra-Agency Memorandum was received by me on October 19, 2007. The following are my comments to the Intra-Agency Memorandum:

1) The following language should be inserted at No. 1 of the Memorandum. "Staff was advised that not all of the customers of the Airview Wastewater Treatment Plant paid the surcharge. Accordingly, Airview deposited into the surcharge account on a monthly basis all of the funds received from its customers, but these monthly deposits did not always equal or exceed \$3,306.21.";

2) The following language should be inserted at No. 2 of the first paragraph. "The Staff's satisfaction";

3) The following language should be inserted at No. 3 of the Memorandum. "Respondents previously submitted to Staff documents establishing that work began on the remote lift station on June 9, 2005, work began on the installation of the two blower motors and control panel on June 17, 2005 and work began on the construction and installation of the 13 1/4 diffuser drops with 3/8th inch diffusers on June 2, 2005. This was prior to the October 4, 2005, transfer of the Airview Wastewater Treatment Plant to Airview Utilities, LLC. Accordingly, it was the Respondent's position that it was not required to obtain additional competitive bids for this work since 1) the work was performed by entities selected by the prior owner of the Airview Wastewater Treatment Plant, 2) the bids submitted by the entities performing the work had been relied upon by the Public Service Commission in approving the surcharge, and 3) the work was initiated prior to the October 4, 2005, transfer of the Wastewater Treatment Plant.";

4) The following language should be inserted at No. 4 of the Memorandum.

“Respondents stated that it was necessary to construct a new chlorinator building in October 2005 due to the upcoming winter season at a cost of \$4,202.48 and replaced the chlorinator when it failed in early January 2006 at a cost of \$1,303.15 in order to insure the Airview Wastewater Treatment Plant operated in compliance with its KPDES permit.”;

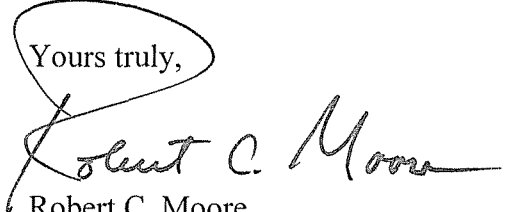
5) The following language should be inserted at No. 5 of the Memorandum.
“Respondents stated that not all of the customers of the Airview Wastewater Treatment Plant had paid the applicable surcharge, but that it had deposited into the surcharge account on a monthly basis all of the funds received from its customers and these monthly surcharge deposits did not always equal or exceed \$3,306.21. The Respondents provided records reflecting the monthly deposits made to the surcharge account and the total amount deposited into the surcharge account. Respondents also stated that it was their belief that the applicable order required them to deposit the monthly surcharge collections into the surcharge account, even if the monthly surcharge collections were less than \$3,306.21.”;

6) The word “stated” should be inserted in place of “argued” at No. 6;

7) The following language should be inserted at No. 7. “The Notice of Filing of Irrevocable Letter of Credit and Name Change was filed with the Public Service Commission on September 15, 2005, and no objection to same has ever been filed or received.”; and,

8) The following language should be inserted at No. 8. “even though any shortage was due to the failure of all customers to pay the surcharge.”;

Thank you for your consideration of these comments and please feel free to contact me to discuss same.

Yours truly,

Robert C. Moore

RCM/neb
Enclosure

cc: Larry Smither
Marty Cogan
David Spenard

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File No. 2006-00558

FROM: J. Robert Cowan, Staff Attorney

DATE: October 16, 2007

RE: Airview Utilities, LLC, and Martin Cogan and Larry Smither
in their Individual and Official Capacities
Alleged Failure to Comply with Commission's Order

On May 15, 2007, at Respondents' request, Commission Staff convened an informal conference ("IC") in this matter. During the IC, among other things, Staff became aware of an apparent shortage in Airview Utilities, LLC's ("Airview") surcharge account. Respondents were unable to explain the exact amount or reasons for the shortage and agreed to provide Commission Staff with additional documents. The participants decided that another IC would be needed to review the documents.

On September 25, 2007, a second IC ("Second IC") was held in this case to review the additional documents and continue discussion of certain other issues before the Commission. These other issues reviewed at the Second IC included whether Respondents violated a Commission Order entered in Case No. 2005-00022¹ ("Order") by: (1) failing to obtain competitive bids for projects approved to be funded through a surcharge in that Order, (2) making unauthorized expenditures of surcharge funds, (3) failing to make the required deposits into the surcharge account, and (4) failing to consummate the transfer of Airview from its prior owners within 90 days.²

Participating in the Second IC were: attorney Robert Moore for Respondents, and Respondents Marty Cogan and Larry Smither; attorney Dennis Howard, II for the Attorney General's Office of Rate Intervention ("AG"); and James Rice, Eddie Beavers, Mark Frost and J. Robert Cowan for the Commission.

The following positions were taken by the Second IC participants:

(1) Respondents contended that they were not required to obtain competitive bids on the surcharge projects due to the timing of the transfer of Airview. They also noted that entities connected to Respondents had been selected by the prior owner to perform the work.

(2) Respondents agreed that certain unauthorized expenditures had been made from the surcharge account. However, they stated that the purchases were necessary for the operation

¹ Case No. 2005-00022, Joint Application of Airview Estates, Inc. and Elizabethtown Utilities, LLC for Approval of the Transfer of Wastewater Treatment Plant to Elizabethtown Utilities, LLC (April 28, 2005).

² Case No. 2005-00022 involved the transfer of Airview Estates, Inc. to Respondent Airview Utilities, LLC (then Elizabethtown Utilities, LLC).

of the facility and that the funds had since been deposited back into the surcharge account. (3) Staff and the AG opined that it appeared that the Order required Airview to deposit \$3,306.21 per month into a separate interest-bearing account from collections of gross revenues prior to those revenues being dispersed for another purpose. Respondents argued that deposits were to be based on amounts received by Airview from the separate entity responsible for its billing which were designated as surcharge receipts rather than the exact amount of \$3,306.21 per month. (4) Respondents argued that they were unable to "close" the transfer within the required 90 days due to their inability to obtain an irrevocable letter of credit.

Insert 4

Insert 5

Insert 6

Insert 7

Finally, Respondents acknowledged that the surcharge account remained short an amount of at least \$1,276.91. Individual Respondents stated that they would deposit that amount into the surcharge account from their personal funds. Respondents then agreed to submit a proposal to the Commission for a final resolution of this matter.

The conference was then adjourned.

Insert 8