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October 16, 2007

TO: PARTIES OF RECORD
RE: Case No. 2006-00558
Airview Utilities, LLC

Enclosed is a memorandum that has been filed in the record of the above-referenced case. Any comments regarding the content of this memorandum should be submitted to the Commission within five days of receipt of this letter. Questions regarding this matter should be directed to Robert Cowan at 502/564-3940, Extension 247.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Beth O'Donnell".

Beth O'Donnell
Executive Director

vh/
Enclosure

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.

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.