



Ernie Fletcher
Governor

Teresa J. Hill, Secretary
Environmental and Public
Protection Cabinet

Timothy J. LeDonne
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Mark David Goss
Chairman

John W. Clay
Commissioner

May 17, 2007

PARTIES OF RECORD

Re: Case No. 2006-00558

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact 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

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: File

FROM: J. Robert Cowan, Staff Attorney *JRC*

DATE: May 17, 2007

RE: Case No. 2006-00558
In the Matter of Airview Utilities, LLC, and Martin Cogan and Larry Smither in their Individual and Official Capacities – Alleged Failure to Comply with Commission's Order

By letter to the Commission's Executive Director, Respondents requested an informal conference, which was held on May 15, 2007, at the Commission offices pursuant to Notice. The Notice requested that Respondents provide Staff and any intervenors with a memorandum describing Respondents' purpose and objectives in requesting the conference. A copy of Respondents' memorandum is attached as Attachment A. Respondents presented a document entitled "Timeline" at the conference that is attached as Attachment B.

Participating in the conference were those persons whose names appear on the sign-in sheet, attached as Attachment C.

The conference focused on surcharge proceeds collected by Airview Utilities, LLC ("Airview") from its customers pursuant to an Order entered in Case No. 2005-00022¹ ("Order"). This case involved the transfer of Airview Estates, Inc. to Respondent Airview (then Elizabethtown Utilities, LLC). The initial issues were whether Airview violated the Order by failing to obtain competitive bids for projects approved by the surcharge and whether Airview violated the Order by expending surcharge funds for unauthorized expenditures. Airview acknowledged that funds had been spent on at least two unauthorized projects. On the other issue, Respondents contested the position that they were subject to the Order at the time certain projects had been completed. Staff noted that there was more than a 5 month period between the entry of the Order and the time the transfer was "closed." It was during this period that the projects at issue were started. Airview contested whether it had violated a provision of the Order requiring that the transfer occur within 90 days.

The conference participants also discussed the fact that Airview had a shortfall of more than \$20,000.00 in its surcharge account. Respondents were unable to ascertain the exact amount during the conference. Respondents opined that the deficiency was due primarily to customers not paying the surcharge portion of their bills. Staff noted that the Order requires 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.

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).

Commission Staff expressed concern with whether Airview would proceed with the remainder of its surcharge projects, given the shortage and the fact that the surcharge terminates next month. One remaining surcharge project is expected to cost \$75,000.00 and is scheduled to start this month. The other remaining project is expected to cost \$5,400.00 and is scheduled to start next month. Respondents assured Staff and the Attorney General that these projects would continue on schedule.

In order to further review matters including the apparent shortage in the surcharge account, Staff and the Attorney General requested additional documents from Respondents. Respondents agreed to provide the documents no later than May 30, 2007.

The conference was then adjourned.

HAZELRIGG & COX, LLP

ATTORNEYS AT LAW

415 WEST MAIN STREET

P.O. Box 676

FRANKFORT, KENTUCKY 40602-0676

WILLIAM P. CURLIN, JR.
DANDRIDGE F. WALTON
JOHN B. BAUGHMAN
ROBERT C. MOORE
CLAYTON B. PATRICK
SQUIRE N. WILLIAMS III
J. SCOTT MELLO
SARAH K. MELLO

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

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

May 15, 2007

RECEIVED

MAY 15 2007

**PUBLIC SERVICE
COMMISSION**

VIA HAND DELIVERY

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: Airview Utilities, LLC: Case Nos. 2006-00094 and 2006-00558

Dear Ms. O'Donnell:

The Commission Staff's Notice of Informal Conference directed Airview Utilities, LLC, to submit a memorandum describing Respondent's purpose and objective in requesting the Informal Conference and such other matters as may be useful to Staff and other parties in the preparation for the Informal Conference. Accordingly, Airview Utilities, LLC provides the following information:

- 1) On June 12, 2006, the Commission Staff served Interrogatories and Requests for Production of Documents in Case No. 2006-00094. On June 27, 2006, Airview Utilities, LLC, filed its Answers to Commission Staff's Interrogatories and Requests for Production of Documents.
- 2) On December 22, 2006, the Commission entered its Order in Case No. 2006-00058 concerning the alleged failure of Airview Utilities, LLC, Martin Cogan and Larry Smither to comply with the Commission's Order in Case No. 2003-00494 authorizing the implementation of a monthly surcharge to pay for badly needed repairs at the Airview Estates Wastewater Treatment Plant. On February 20, 2007, the Response to the Public Service Commission's Order of December 22, 2006 was filed.
- 3) The Informal Conference was requested in this case to determine:
 - a) The status of the above referenced cases;
 - b) To confirm that any surcharge funds used were expended to pay for necessary and badly needed repairs to the Airview Estates Wastewater Treatment Plant;

ATTACHMENT A

MS. BETH O'DONNELL

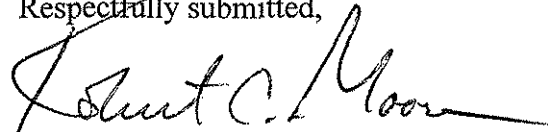
May 15, 2007

Page 2

- c) To discuss whether the information submitted concerning the repairs to the Airview Estates Wastewater Treatment Plant was sufficient to document same;
- d) To discuss the proper operation of the Airview Estates Wastewater Treatment Plant since ownership was transferred to Airview Utilities, LLC;
- e) To discuss, what, if any, additional information will be needed by the Commission in issuing a decision in this case;
- f) To discuss the impact inflation has had on the cost to implement the approved repairs; and
- g) To discuss whether a formal conference is necessary.

Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert C. Moore". The signature is written in a cursive style with a large, looping initial "R".

Robert C. Moore

RCM/neb

cc: Robert Cowan (Via Electronic Mail)
David Spenard (Via Facsimile)

Timeline

- July 24, 2004 - Commission entered Order approving surcharge.
- January 7, 2005 - Application for Approval of Transfer filed.
- April 28, 2005 - Commission approved application to transfer WWTP.
- June 2, 2005 - Work on the 13 1/4" diffuser drops with 3/8" diffusers initiated.
- June 9, 2005 - Replacement of remote lift station initiated.
- June 17, 2005 - Work on two blower motors and control panel initiated.
- September 12, 2005 - When working on on the 13 1/4" diffuser drops with 3/8" diffusers, discovered that air header was falling apart and needed to be replaced. Installation of air header completed on this date.
- September 15, 2005 - Airview Utilities, LLC filed its Irrevocable Letter of Credit.
- September 22, 2005 - Work on two blower motors and control panel completed.
Work on the 13 1/4" diffuser drops with 3/8" diffusers completed.
- October 3, 2005 - Work to demolish and construct new chlorinator building initiated.
- October 4, 2005 - Closing held whereby WWTP was transferred to Airview Utilities, LLC.
- October 12, 2005 - Work to demolish and construct new chlorinator building completed.
- November 15, 2005 - Work began on the job to pump out and dispose of the lagoon sludge.
- January 5, 2006 - Work on remote lift station completed.
Chlorinator failed and new chlorinator installed on this date.
- February 27, 2006 - Request to extend surcharge and to include the cost of the replacement of the chlorinator building and the chlorinator in the surcharge.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CASE NO. 2006-00558

AIRVIEW UTILITIES, LLC, AND MARTIN COGAN AND LARRY SMITHER
IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES ALLEGED FAILURE
TO COMPLY WITH COMMISSION'S ORDER

SIGN IN

May 15, 2007

PERSON

REPRESENTING

<u>David Edward Spenzard</u>	<u>Office of the Attorney General</u>
<u>Marty Cogan</u>	<u>Airview</u>
<u>Rob Moore</u>	<u>Hazlett Riggs & Cox, LLP</u>
<u>Larry Smither</u>	<u>Airview</u>
<u>JAMES RICE</u>	<u>KY. PSC</u>
<u>Eddie Beavers</u>	<u>PSC</u>
<u>David Samford</u>	<u>PSC</u>
<u>Mark Frost</u>	<u>PSC</u>
<u>Robert Cowan</u>	<u>PSC</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>