RECEIVED
JUL 09 2008
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF FARMDALE DEVELOPMENT)
CORPORATION FOR AN ADJUSTMENT IN RATES) CASE NO. 2007-00436
PURSUANT TO THE ALTERNATIVE RATE FILING)
PROCEDURE FOR SMALL UTILITIES)

POST HEARING BRIEF OF FARMDALE DEVELOPMENT CORPORATION

Comes the Applicant, Farmdale Development Corporation ("Farmdale"), by counsel, and for its Post Hearing Brief states as follows:

KRS 278.030(1) states that:

> Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.

John W. Kaninberg, Commission Staff's primary witness, agreed that the Commission is to set rates that are fair, just and reasonable for not only the ratepayers, but also the utility. (Transcript of June 24, 2008 Hearing("T"), p. 158). Based upon the language of KRS 278.030(1) and the testimony of Mr. Kaninberg, Farmdale respectfully requests the Public Service Commission ("Commission") to set a fair, just and reasonable rate in the amount of $42.75 per month as requested in its application.

On October 3, 2007, Farmdale filed its application to adjust its sewer rates pursuant to the Alternative Rate Filing Procedure for Small Utilities ("Application"). Commission Staff reviewed Farmdale's Application and on February 11, 2008, its Report containing its findings and recommendations regarding the proposed rates was issued. (See Commission Staff Exhibit 1). Subsequently, Commission Staff's Amended Report was filed on May 5, 2008. (See

Commission Staff Exhibit 4). Ultimately, Commission Staff agreed with Farmdale's proposal for the following items contained in its Application: Other - Labor, Material and Expenses, Chemicals, Routine Maintenance Fee, Maintenance-Collection System, Office Supplies/Other, Insurance Expense, Regulatory Commission Expense, Miscellaneous Expense, Rent, Taxes OT Income and Income Taxes. Accordingly, these categories of expenses are not in dispute in this proceeding. However, Commission Staff made substantial adjustments to the following categories: Owner/Manager Fee, Sludge Hauling, Fuel/Power for Pumping, Maintenance of Treatment & Disposal, Maintenance of Other, Agency Collection Fee, Outside Services Employed, Depreciation Expense, Amortization Expense and Interest Expense. These items are in dispute in this hearing. A very minor adjustment was made to the Water Cost category and therefore it is not in dispute at this hearing.

The full Commission held a hearing in this matter on June 24, 2008. Based upon the evidence in the record and for the reasons set forth below, the Staff adjustments to the following items should be rejected.

A. The Commission Should Approve the Proposed Owner/Manager Fee of $9,600.

Farmdale's Application included an owner/manager fee of $9,600 based upon the substantial duties and responsibilities undertaken by Carroll F. Cogan, Farmdale's owner/manager, Mr. Cogan's expertise and many years of experience in operating, maintaining and constructing WWTPs, and his qualifications as a Professional Engineer. The Staff Report recommended decreasing the fee by $3,600, for a total fee of $6,000. However, based on the evidence in the record, an owner/manager fee of $9,600 should be approved.

The testimony of Mr. Cogan and Mr. Kaninberg established that the Commission has historically authorized the payment of a WWTP owner/manager salary in the amount of $3,600.00, which is equivalent to the salary authorized for a single water district commissioner, on the theory that the duties of a water district commissioner and WWTP owner/manager are similar. However, Mr. Kaninberg was not aware of any document produced by the Commission comparing the duties of a water district commissioner, nor did he have a direct working knowledge of either a WWTP or a water district. (T, pp.160 and 161). Accordingly, there is no evidence in the record establishing that the duties of a water district commissioner and an owner/manager of a WWTP are similar. In fact, the evidence in the record establishes that an owner/manager of a WWTP has substantially more duties and responsibilities than does a water district commissioner.

In discussing the duties of a water district commissioner, Mr. Cogan pointed out that a water district has a:

> [M]aster meter that they draw water from Shelbyville or Frankfort and then they disperse out through their pipeline to individual members.

(T, p. 107). A water district has a "full time maintenance man that reads the meters and attends to any potential problems, but the potential problems are minimal because there is very little rotating equipment as compared to" a WWTP. (T, p. 108). On the other hand, Mr. Cogan testified that the Farmdale WWTP has a:

> [R]emote lift station, two sewer plants, and a pump station at the plant, a tertiary lagoon with two aerators in the lagoon, blowers, and standby blowers in the building, chlorination equipment, dechlorination equipment. So there's just quite a few things to pay attention to and take care of...

(T, p. 108). Mr. Cogan also pointed out that as the owner/manager of a WWTP he has had to personally guarantee loans made to Farmdale because a financial institution will not make a loan to a WWTP without such a guarantee. (Farmdale's Exhibit No. 3). Furthermore, he is subject to substantial potential liability arising out of the operation of the WWTP. Mr. Kaninberg agreed that Mr. Cogan is subject to potential liability in the event that the Division of Water imposes fines due to an upset at the WWTP. He could not say the same was true for a water district commissioner in the event that water was not properly treated. (T, p. 164).

Mr. Kaninberg stated that normally a water district has at least 3 commissioners. (T, p. 164). Each Commissioner is paid at least $3,600 per year. The evidence in the record reflects that the commissioners of the Farmdale Water District ("FWD") are paid a total of $10,800 per year, the officers and managers of the Jessamine South Elkhorn Water District are paid a total of $30,000 per year, the officers and managers of the Northeast Woodford County Water District are paid a total of $18,000 per year and the officers and manager of the South Woodford Water District are paid a total of $10,800 per year. (See Farmdale's Exhibit No. 1, Pre-Filed Testimony of Carroll F. Cogan (Hereinafter "Farmdale's Exhibit No. 1"), Answer 10a). Each of these water districts are in the same general geographic area as the Farmdale WWTP. (T, p. 165).

As the owner/manager of the Farmdale WWTP, Mr. Cogan is ultimately responsible for:

- the operation and management of the Farmdale WWTP, consisting of the plant site, two extended aeration treatment plants, blower building with blowers and electrical controls, raw sewage pump station at the plant, chlorine contact system, chlorination system, dechlorination system, flow meter, tertiary lagoon, lagoon aerators, approximately 14,000 feet of 8" sanitary sewer line and one remote lift station.
- insuring proper maintenance, repairs and improvements to the plant.
- preparing and submitting the required reports, applications for rate adjustment and tax returns to the Commission and the Revenue Department.
- preparing and submitting the required reports to the Kentucky Division of Water, including the monthly discharge monitoring reports.
- compliance by the Farmdale WWTP with the regulations of both the Commission and the Kentucky Division of Water.
- He is subjected to substantial potential liability arising out of the operation of the WWTP, including potential liability in the event that Farmdale has an upset and fails to comply with its KPDES permit or one of its customers experiences a backup of wastewater into his/her home. The applicable statutes authorize a fine of up to $5,000 for discharges in violation of the KPDES permit.
- hiring and supervising the professionals retained by Farmdale, including

accountants and attorneys.
- personally guaranteeing loans obtained by Farmdale, as lending institutions will not loan monies to a privately owned sewer utility without an adequate guarantee. (See Farmdale's Exhibit No 1, Attachment B).
- hiring and supervising Farmdale's part-time employee and its subcontractors.
- monitoring the billing and collection of Farmdale's total revenue exceeding $80,000 from its 241 customers and payment of Farmdale's total expenses, which exceed $95,000.
- He does not employ a superintendent or treasurer as is authorized for water districts. (KRS 74.040 and KRS 74.050).

(Farmdale's Exhibit No. 1, Answer 10b). Mr. Kaninberg was unable to testify that Mr. Cogan's description of his duties was inaccurate. (T, p. 162). Furthermore, no evidence was introduced establishing that a single water district commissioner's duties and responsibilities are similar to those of an owner/manager of a WWTP.

The evidence of Mr. Cogan's training and experience further justifies an owner/manager fee of $9,600. In authorizing annual compensation of $6,000 in this case, Staff referred to KRS 74.020(6) which provides for annual compensation of $6,000 for a water district commissioner who, among other things, meets certain enhanced training requirements. Staff recommended the allowance of an owner/manager fee of $6,000 in this case based upon Mr. Cogan's 30-plus years of experience owning and operating jurisdictional sewer utilities. In fact, at the June 24, 2008 Hearing, Mr. Kaninberg agreed "with Mr. Cogan that he has substantial experience in the sewer business." (T, p. 135). Of course, if all three commissioners of the FWD had the training and experience sufficient to satisfy KRS 74.020(6), they would receive total compensation of at least $18,000. Accordingly, the Commission should authorize the payment of the reasonable owner/management fee in this case of $9,600, which is approximately one-half of the total amount the FWD commissioners could receive if they had the required training.

This is particularly true where Mr. Cogan has been a licensed professional engineer since approximately 1960, and for over 30 years owned and operated the Andriot-Davidson Co., Inc., a company that manufactured, repaired and sold WWTPs and their components. Additionally, Mr. Cogan's professional licensure and substantial experience has helped to save or avoid expenses for the Farmdale WWTP, as the need to hire outside engineering services has been minimized and unnecessary maintenance and repair expenses were avoided. (Farmdale's Exhibit No. 1, Answer 10a).

Finally, the Commission should approve the $9,600 owner/manager fee because it has been using the $3,600 owner/manager fee for a least ten (10) years. (T, p. 134). Increasing the amount of the owner/manager fee to the $9,600 requested would merely take into account the fact that costs have increased in the last ten (10) years. Mr. Kaninberg agreed, stating that "it seems to me appropriate to adjust that upward, whether it's $6,000 or some other number." (T, p. 134).

The above cited evidence establishes that the owner/manager of the Farmdale WWTP has substantially more duties and responsibilities than all three water district commissioners combined. Therefore, a fee of $9,600 is reasonable and should be allowed by the Commission, particularly where Mr. Cogan has the significant expertise and experience described above.

B. The Sludge Hauling Expense of $5,450 Proposed by Farmdale is Reasonable.

Farmdale's Application included sludge hauling expense of $5,450, which is identical to the sludge hauling expense incurred by Farmdale in 2006, the test year. The evidence introduced into the record established that the sludge hauling expense should be maintained at $5,450. Indeed, the Amended Staff Report acknowledged the payment of sludge hauling expense of at least $4,250 in 2007. (See Staff Exhibit No. 4).

Mr Cogan testified that in May of 2005, in order to insure the proper operation of the Farmdale WWTP and in response to complaints by the Commission, Farmdale began using

Lawrence Smither as the WWTP's operator. (Farmdale Exhibit No. 1, Answer 11a; See also T, p. 167). Mr. Smither knows that the wasting of sludge on a regular basis is important to insure proper and efficient plant operation, to obtain the most effective treatment of the wastewater and to obtain better plant results. (Farmdale Exhibit No. 1, Answer 11a). As stated by Mr. Cogan, an increase in aeration time and frequency of wasting and hauling sludge prevents bulking and overflow, resulting in improved efficiency in the operation of a WWTP. (Farmdale Exhibit No. 1, Answer 11a). Therefore, the evidence reflects that the hauling of sludge improves the efficient operation of the Farmdale WWTP.

It is undisputed that the cost to haul sludge to maintain the efficient operation of the plant in 2006 was $5,450. It is also undisputed that the amount paid to haul sludge in 2007 to maintain the efficient operation of the WWTP was $4,250, and this cost did not include two loads of sludge that were hauled away by Martin's Sanitation at no charge. Mr. Cogan's testimony reflected that the normal cost of $850 was not charged for these two loads because Farmdale allowed Martin's Sanitation to process through the WWTP liquids it generated during the pumping and cleaning of the WWTP's lagoon. (Farmdale Exhibit No. 1, Answer 11a). Mr. Kaninberg failed to allocate any value to these two loads of sludge. (T, p. 170). Accordingly, the cost to haul sludge in 2007 would be $5,100, which is close to the 2006 expense of $5,450. Therefore, the proposed expense of $5,450 to haul sludge should be maintained, as the expense to haul sludge cannot be reduced without impacting the efficient operation of the plant.

Mr. Cogan also testified that if the sludge is not wasted and hauled when needed in order to maintain the efficient operation of the WWTP, the sludge will overflow into the tertiary lagoon. The lagoon will eventually fill up and require pumping and cleaning. (Farmdale Exhibit No. 1, Answer 11b). Mr. Kaninberg testified that it is proper to haul sludge before it goes into the lagoon. (T, p. 171). In rate Case No. 2006-00028, the Commission authorized a surcharge which included the cost of $58,750 incurred to pump and clean the subject lagoon. Mr. Cogan also stated that the hauling of sludge on a more frequent basis not only results in improved wastewater treatment, but also avoids or defers the significant cost of pumping and cleaning the lagoon. Furthermore, if the sludge is allowed to build up in the lagoon, it becomes even more important to waste and haul the sludge before it enters the lagoon in order to maintain the efficient operation of the plant and also to avoid the sludge being wasted into the receiving stream after a heavy rainfall. (Farmdale Exhibit No. 1, Answer 11c).

Applicant's Exhibit No. 6 reflects sludge hauling expense of $850.00 paid in 2008 for sludge hauled in the latter part of 2007 and $425 for sludge hauled in 2008. Accordingly, sludge is being hauled at the same rate in 2008 as occurred in 2007. However, the need to haul sludge is variable and is based on weather conditions. (Farmdale Exhibit No. 1, Answer 11d). Therefore, the evidence shows that a sludge hauling expense of $5,450 is justified, but in no event should the expense allocated be less than the $5,100 cost incurred in 2007, taking into consideration two loads that were hauled at no cost. Commission Staff does not dispute the use of either of these figures, as Mr. Kaninberg testified that he has not "had a chance to develop a revised recommendation relative to sludge hauling." (T, pp. 169 & 170).

C. Farmdale's Fuel/Power for Pumping Expense Should Be Approved.

Farmdale's Application proposed the amount of $19,150 to pay for fuel/power consumption. The evidence reflects that this amount was directly based upon the cost of fuel/power used in 2006, and Farmdale made no increase to this number. (Farmdale Exhibit No. 1, Answer 12).

Staff proposed to adjust downward by $3,847 the expense of fuel/power for pumping to

$15,303. In making this recommendation, Commission Staff ignores actual expenses incurred by Farmdale in the test year of 2006. Furthermore, the evidence in the record reflects that the projected fuel/power cost for 2008 is $15,324.69. (Farmdale's Exhibit No. 1, Answer 12). Additionally, by letter dated April 11, 2008, Blue Grass Energy advised Farmdale that it has filed an application for rate adjustment seeking to increase its rate by 9.01 percent. (Farmdale Exhibit No. 1, Answer 12). Accordingly, taking into consideration the 9.01 percent increase proposed by Blue Grass Energy, Farmdale's energy costs for 2008 are projected to be $16,705.44. The Commission should approve fuel/power costs of at least $16,705.44 in order to avoid bankrupting Farmdale by not allowing it to recover the full amount of its energy costs, or to avoid forcing it to operate its WWTP under unsatisfactory conditions to save energy costs.

D. The Evidence Reflects That The Fifteen Percent Billing and Collection Cost Should Be Approved.

Farmdale included billing and collection costs in the amount of $22,934 in its Application. This $22,934 cost is based on the fifteen percent (15%) fee charged by the FWD for billing and collection services on its proposed base rate and the $9.92 per month surcharge. The evidence in the record reflects that Farmdale has used the billing and collection services provided by the FWD since Farmdale has owned the WWTP. Mr. Cogan testified that Farmdale uses this billing and collection service due to the unusually high successful collection percentage and minimal collection problems experienced by FWD. The reason for the extremely high collection rate is that FWD includes the sewer charge on its water bill, and if a customer fails to pay the bill in full, FWD can cut off the delinquent customer's water service. FWD's unique ability to insure a high collection rate is a primary reason that Farmdale utilizes it services. FWD's billing and collection services are also used because it is able to accurately and expeditiously identify any changes in customers. (Farmdale Exhibit No.1, Answer 14). The following review of the record establishes that FWD's fee is reasonable and the Commission should approve same.

First, as testified to by Mr. Kaninberg, Farmdale has paid the FWD a fifteen percent (15%) fee for billing and collection services since 1981, and this has been an arms length transaction with no cross ownership between Farmdale and FWD. (T, p. 143). Mr. Kaninberg further testified that in Farmdale's 1997 rate case the Commission had approved the payment of Farmdale's billing and collection fee of fifteen percent (15%). (T, pp. 142 & 144). Then, in rate Case 2006-00028, Farmdale included the FWD 15% billing and collection fee in its Application for Rate Adjustment. Staff noted the FWD fee, but did not propose any adjustment to this expense in its Staff Report in Case No. 2006-00028. Mr. Cogan testified that the parties to Case No. 2006-00028 then filed a Stipulation and Agreement with the Commission which included the FWD fee in the WWTP's operating expenses. This Stipulation and Agreement was approved by the Commission when it issued its April 11, 2007 Order approving the increase in Farmdale's rate from $19.05 to $28.00 per month and approving a surcharge of $9.92 for a period of 5 years. Even Mr. Kaninberg testified that the Commission had approved the fifteen percent (15%) billing and collection fee in Farmdale's 1997 rate case and approved the same amount in the 2006 case. (T, pp. 180 & 181). Accordingly, since the Commission has previously approved FWD's fifteen percent (15%) billing and collection fee in rate cases filed by Farmdale, it should find this billing and collection fee to be reasonable in this case

Mr. Cogan's testimony pointed out that the billing and collection services provided by FWD are particularly important because the bill for sewer services is included on the water bill, and water service to a customer can be cut off if the bill, including the charge for sewer services, is not paid in full. Mr. Cogan also testified that FWD will not accept a partial payment. (T, p. 85).

Mr. Kaninberg agreed that it "would be preferable for a sewer utility to contract with a water utility to cut off, if need be." (T, p. 184). He also agreed that it is more likely that a sewer utility customer will pay his sewer bill if it is included on the water bill. (T, p. 185). Here, the proof is in the pudding, because, as stated by Mr. Cogan "since 1982, I don't know that I've ever had to pursue anybody about not paying a sewer bill." (T, pp. 84 & 85). The simple procedure of cutting off a customer's water is only available to the FWD if a sewer customer fails to pay his/her sewer bill. Instead of merely turning off the water supply at the meter, Farmdale would have to dig up the sewer line using a backhoe and then cap it in order to cut off sewer service to a delinquent sewer customer. If the sewer bill is paid in full, the sewer line must be reconnected and the excavation closed up. This procedure is both time consuming and expensive to Farmdale, particularly where there is no guarantee that Farmdale will be able to recover the cost of same. This procedure is also costly to the individual that pays his delinquent sewer bill and then has to pay for the disconnection and the re-connection of the sewer line. Furthermore, this procedure is costly to the rate payers, who must ultimately shoulder these costs if the delinquent customer does not pay same. Finally, the capping of the sewer line could result in health problems where a customer continues to use the bathroom facilities even though the sewer connection has been capped. (Farmdale Exhibit No. 1, Answer 14b).

In addition, if Farmdale ceased using FWD's billing and collection services, it would have to hire an employee to handle the billing and collection administrative duties because it has been unable to locate another third party that will provide this service. This employee would also handle the process of collecting delinquent accounts, filing cases in small claims court and disconnecting and re-connecting customers to the system. The only evidence in the record is that the salary of such an employee, including benefits, would exceed the fifteen percent (15%) fee charged by FWD. (Farmdale Exhibit No. 1, Answer 14b).

The evidence reflects that because of FWD's unique ability to insure payment, its services are valuable and actually result in a savings to Farmdale's customers and the utility, because of lower collection costs incurred by the utility and little lost revenue from delinquent customers. This ability to ensure collection is even more critical where an unpopular surcharge, in addition to the base rate, must be paid. These avoided costs translate into a lower rate for Farmdale's customers. (Farmdale's Exhibit No. 1, Answer 14b)

The evidence in the record also reflects that Farmdale made substantial efforts to locate a cheaper billing and collection service. Farmdale requested quotes from all three (3) companies that perform billing services that are listed in the Yellow Pages for the City of Frankfort phone book and that are still in business. (Farmdale's Exhibit No. 1, Attachment G). The first quote for billing and collection services was received from Bluegrass Billing Services, LLC. (Farmdale's Exhibit No. 1, Attachment H). A review of its quote, as testified to by Mr. Cogan, reflects that it charges a fee of 10% of gross collections. (Farmdale Exhibit No. 1, Answer 14c). Its quote also states that in its experience, 10 to 15% of customers billed fail to pay their bill, and the cost Bluegrass Billing Services, LLC charges for collections is 30% of the amount collected. Mr. Cogan's analysis of the quote reflected that the use of Bluegrass Billing Services, LLC results in billing and collection charges slightly higher than that charged by FWD, with no guarantee of comparable effectiveness and ultimately less revenue to Farmdale:

Proposed revenue in Application:	$123,629
Delinquent accounts (12.5%):	($23,454)
Total revenue collected:	$100,175
Collection fee (10%):	($10,018)
Sub-total of revenue:	$90,157
Recovery from delinquent accounts (50%) minus 30% collection fee	$8,209

Total Revenue recovered: $98,366

Based on this analysis, greater revenue is received by Farmdale using FWD's services ($105,085.00) as compared to the billing and collection agency ($98,366.00). (Farmdale Exhibit No. 1, Answer 14c). Mr. Kaninberg stated that he had "no reason to doubt the numbers that Bluegrass Billing" gave Farmdale. (T, p. 192).

Liberty Billing, LLC responded, stating that it has no experience in this type of billing and collection and only performs medical billing. Liberty Billing also stated in its response that it unsuccessfully used its contacts to attempt to locate a company specializing in billing and collection service for companies providing waste water treatment service. (Farmdale's Exhibit No. 1, Attachment I). Cap Billing Services also declined to provide billing and collection services for Farmdale, stating that it only performs medical billing and does not want to handle funds paid to another company. (Farmdale's Exhibit No. 1, Attachment J).

Farmdale also contacted the Electric and Water Plant Board of the City of Frankfort and Blue Grass Energy and asked if either of these entities would provide billing and collection services to Farmdale. Both of these entities declined to do so. (Farmdale's Exhibit No. 1, Attachment K).

The evidence reflects that Farmdale went so far as to request FWD to reduce the percentage it charges for its billing and collection services from fifteen percent (15%) to seven and one-half percent (7.5%), resulting in a total fee of $11,467, but FWD denied this request. (Farmdale's Exhibit No. 1, Answer 14f). Farmdale subsequently asked FWD if, based upon KRS 96.930, it would cut off water service to its customers who fail to pay their sewer bill, even if FWD does not provide billing and collection services to Farmdale. KRS 96.930 provides that the use of water in any manner tending to contaminate it raises a duty to provide for the proper disposition of the wastewater according to the highest public health standards and such duty includes full responsibility for paying the cost of such disposition. FWD denied this request as well. (Farmdale's Exhibit No. 1, Attachment L). This information establishes that Farmdale made every reasonable attempt to negotiate a fee that was more economical for its customers, but was unable to do so. Again, based upon the evidence in the record, the Commission should approve Farmdale's use of FWD to perform its billing and collection services at a fee of fifteen percent (15%).

E. The Commission Should Include the Cost of the Sewer Mains and Manholes Survey in the Maintenance of Treatment and Disposal Expenses Category.

The Staff Report initially removed the $597.52 cost of the annual survey of Farmdale's sewer mains and manholes. However, the evidence reflects that this annual survey is required by Commission regulation 807 KAR 5:071, Section 7(4). Accordingly, the Amended Staff Report "recommends that this expense be fully included in operations and recovery annually." (See Commission Staff Exhibit No. 4). Accordingly, this expense should be included in operations and recovered annually, as it is a requirement of the Commission's own regulations.

F. The Grass Cutting Expenses Included In The Maintenance Of Other Category Should Not Be Reduced.

Farmdale's Application included an expense in the amount of $1,540 in the Maintenance of Other Category. The amount of this expense was the exact amount incurred in test year 2006. Mr. Kaninberg testified that he reduced this cost from $1,540 to $1,008 to eliminate the cost of driving from Louisville to cut the grass. (T, p. 173). At the hearing, Mr. Kaninberg admitted that he did not know whether it was an option for Farmdale to get someone from the neighborhood to cut the grass at a more reasonable cost. (T, p. 174). Mr. Kaninberg also refused to revise his estimate of the grass cutting cost despite agreeing that gas prices have increased since he made his estimate. (T, pp. 171 & 172).

Mr. Kaninberg admitted in his testimony that "the test period cost is the starting point to look at [in] determining an expense which is normal, reasonable, and ongoing." (T, p. 178). Here, Mr. Kaninberg has erroneously rejected the actual test period cost and has engaged in speculation in determining the amount that should be paid for grass cutting. He has then compounded his error by refusing to take into consideration the higher gas costs that will now be paid by Farmdale in making sure the grass is cut.

Here the Commission should reject Mr. Kaninberg's proposed grass cutting rate because it is unreasonably speculative and fails to take into consideration increased fuel costs. Mr. Kaninberg has failed to provide any evidence justifying the rejection of the grass cutting expense of $1,540 incurred in test year of 2006.

G. Farmdale's Total Interest Expense Should Be Approved.

Farmdale's Application included interest expense of $8,596. Staff recommended adjusting this interest expense downward, by deducting $2,313.00 in interest incurred by Farmdale on a one year $25,000 renewable loan from National City Bank. (Farmdale's Exhibit No. 1, Attachment M). Based upon the following evidence, this interest expense should not be excluded in determining Farmdale's rate.

It is undisputed that Farmdale obtained the $25,000.00 loan from National City because these funds were necessary to pay legal bills, accounting fees, the cost of extraordinary repairs to its remote lift station, and other bills that were due. Mr. Cogan testified that Farmdale incurred accounting fees in the amount of $6,610.00 payable to Logsdon & Co., PC, CPAs, and attorney's fees in the amount of $5,000.00 payable to Hazelrigg & Cox, LLP, in preparing and representing Farmdale in the following cases:

i) the application for rate adjustment and representing Farmdale in rate Case No. 2006-00028 (filed January 12, 2006 and concluded on April 11, 2007);
ii) the petition for the CPCN in Case No. 2006-00209 (filed May 22, 2006 and concluded on April 11, 2007P; and,
iii) the amended application for rate adjustment needed due to the filing of the petition for CPCN (filed June 14, 2006 and concluded on April 11, 2007).

These attorney fees and accountant fees were included in the amortization schedule of the subject Application. Mr. Kaninberg testified that the Commission routinely allows reasonable attorneys fees to be recovered in a rate case. (T, p. 152).

The evidence also established that Farmdale incurred extraordinary costs in February and March of 2006 in the amount of $5,328.56 to keep Farmdale's remote lift station functioning. Additionally, as noted above, Farmdale also incurred fuel/power costs in the amount of $19,150 in 2006, which were $3,847 higher than that incurred in 2005.

As Mr. Cogan testified, Farmdale cannot expect its vendors and/or service providers to wait one (1) year or five (5) years to be paid. If Farmdale does not pay its vendors and service providers in a timely manner, then it will no longer be able to obtain services. (T, pp. 82 & 83). Therefore, Farmdale was required to borrow money from National City Bank in order to pay its vendors and professional advisors in a timely manner so that they would continue to provide needed services. It is undisputed that Farmdale did not need Commission approval to get this loan. (T, p. 152). Furthermore, there is no evidence in the record that Farmdale incurred these expenses due to poor management. Indeed, there is no evidence that these expenses are not legitimate expenses, and even Mr. Kaninberg did not question the legitimacy of these expenses. (T, p. 193). Therefore, the Commission should approve the payment of this interest expense.

The evidence also established that the Commission and the Kentucky Division of Water require proper maintenance and upkeep of Farmdale's WWTP, and compliance with the applicable regulations and its KPDES permit. As Mr. Cogan testified, in a perfect world, the expenses incurred in maintaining and repairing the equipment at the Farmdale WWTP would be identical to the expenses included in setting the rate. However in 2006, Farmdale incurred substantial extraordinary maintenance, repair and energy costs, including but not limited to $5,328.56 of the $8,328.56 cost of keeping the remote lift station in operation and the fuel/power cost of $19,150. The cost of these repairs and new equipment and energy was not included in the prior rate and therefore, monies from the National City loan were used to pay for same. (Farmdale Exhibit No. 1, Answer 15b).

Staff's Recommendation deleting the interest expense is unrealistic, as it assumes:

- the need for and cost of all maintenance and repairs can be accurately predicted.
- vendors will wait for a rate case to be filed and completed, as well as the collection of the monies authorized by the rate case, before seeking payment for the services rendered.
- vendors will continue to work for the utility even though they have not been paid in a timely manner.

The above evidence further establishes that Farmdale should be allowed to recover the interest expense on the loan needed to fund Farmdale's rate case expenses and extraordinary maintenance and repair costs.

Staff states that, historically, the Commission has not allowed utilities to recover interest on loans to cover operating expenses, because it is the responsibility of an owner to monitor a utility's financial condition and seek rate relief in a timely manner. In making this statement, Staff ignores the fact that the large majority of the loan proceeds were used to pay fees associated with rate case No. 2006-00028 and the CPCN Case No. 2006-00209, and extraordinary electricity expenses and expenses to repair the failing remote lift station. Accordingly, these were not normal WWTP operating expenses. Nor could the loan have been avoided by filing the rate case and CPCN case prior to January and May, of 2006, respectively. This evidence confirms that Farmdale should be allowed to recover the $2,313 in interest expenses. (Farmdale

Exhibit No. 1, Answer 15c).

Additionally, the evidence reflects that Farmdale did in fact seek rate relief in a timely manner, but as indicated in the time-line set forth below, it took the Commission over fifteen (15) months to rule on its Application for Rate Adjustment in Case No. 2006-00028.

- January 12, 2006, Farmdale files Application for Rate Adjustment, with surcharge request.
- March 14, 2006, Farmdale files Motion for Informal Conference and also requests expedited approval of the funds necessary to replace the remote lift station.
- April 20, 2006, Informal Conference held, and Staff recommended the filing of an Application for a Certificate of Public Convenience and Necessity ("CPCN") for the replacement of the remote lift station.
- May 22, 2006, Farmdale files Petition for CPCN.
- June 14, 2006, Farmdale files Amended Application for Rate Adjustment to exclude cost of the replacement of the remote lift station and filed Motion to Consolidate CPCN case with this application. The Motion to Consolidate was denied.
- October 4, 2006, Staff forwards First Information Request to Farmdale.
- October 26, 2006, second Informal Conference held.
- February 26, 2007, Order granting Farmdale's Application for a CPCN and consolidating CPCN case with application for rate adjustment entered.
- March 15, 2007, Formal Hearing held in CPCN case.
- April 11, 2007, Commission enters final Order granting rate increase and surcharge.

Due to the length of time (15 months), it took for the Commission to rule in Case No. 2006-00028 and to establish new rates for Farmdale, it would be inequitable to apply the "historical" rules precluding the payment of interest on any loan incurred to pay expenses, which include operating expenses. Accordingly, the Commission should allow Farmdale to recover the interest expense of $2,313.00 incurred on the loan from National City.

H. The Depreciation Expense Should Be Adjusted As Proposed in Staff's Amended Report.

Commission Staff originally proposed to depreciate the $1,635.29 cost of the "motor, materials, labor and mileage; worked on blower at #1 plant" over a period of seven (7) years.

(Commission Staff Exhibit No. 1). However, Commission Staff has agreed to depreciate this cost over five (5) years due to the substantial amount of labor charge included in this cost. (Farmdale's Exhibit No. 1, Answer 16 and Commission Staff Exhibit No. 4). The evidence supports the Commission's approval of this amendment.

I. The Amortization Expense Should Be Adjusted As Proposed in Commission Staff's Amended Report.

Commission Staff initially proposed to amortize the $597.52 cost of the survey of sewer mains and manholes over five (5) years. However, Commission Staff has agreed that this $597.52 cost should be expensed since the survey must be performed on an annual basis. The evidence supports the Commission's approval of this amendment.

J. The Commission Should Approve The Payment of Farmdale's Attorneys Fees Incurred in This Case.

Farmdale has requested that it be allowed to recover its attorneys fees incurred in this case. As of May 31, 2008, Farmdale has incurred attorneys fees of $14,046.66. (Farmdale's Exhibit No. 5). Mr. Kaninberg testified that the Commission routinely allows attorney fees to be recovered in a rate case. (T, 152). Of course, as reflected in Farmdale's Exhibit No. 7, Commission Staff declined to assist Farmdale in preparing and filing this rate case. Accordingly, Farmdale requests the Commission to include attorneys fees of $14,046.66 incurred in preparing for and prosecuting this case.

CONCLUSION

Commission Staff agrees that the Commission is to set rates that are fair, just and reasonable. (T, p. 158). Then, when asked if a fair, just rate would include one that enables a utility to operate in the black, Mr. Kaninberg stated "That would be true if the Commission deems that the utility's expenses are reasonable." (T, p. 158). The above cited evidence establishes that the expenses proposed by Farmdale that are in dispute are reasonable and should be used by the Commission in setting Farmdale's rate based on its 241 customers.

Respectfully Submitted,

Robert C. Moore

Robert C. Moore
Hazelrigg & Cox, LLP
415 West Main Street, 1st Floor
P.O. Box 676
Frankfort, Kentucky 40602-0676

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Stephanie Stumbo, Executive Director, Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602, 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 40602, and Tiffany Bowman, Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602 by placing same in the U.S. Mail, postage pre-paid, this the 9th day of July, 2008.

Robert C. Moore

Robert C. Moore