

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

PUBLIC SERVICE
COMMISSION

THE APPLICATION OF FARMDALE DEVELOPMENT)
CORPORATION FOR AN ADJUSTMENT IN RATES)
PURSUANT TO THE ALTERNATIVE RATE FILING)
PROCEDURE FOR SMALL UTILITIES)

CASE NO. 2007-00436

**FARMDALE DEVELOPMENT CORPORATION'S
REPLY TO THE BRIEF OF THE ATTORNEY GENERAL**

Comes the Applicant, Farmdale Development Corporation ("Farmdale"), by counsel,
and for its Reply to the Brief of the Attorney General, states as follows:

The Attorney General ("AG") asks the Commission to merely rubber-stamp the
adjustments recommended by Commission Staff set forth in the Staff Report and the Amended
Staff Report. In making this request, the AG ignores the evidence in the record on the
following issues.

A. Owner/Manager Fee.

The AG requests the Commission to approve an owner/manager fee of \$6,000 instead
of the owner/manager fee of \$9,600 requested by Farmdale. The AG correctly noted that
Commission Staff "uses a water district commissioner's compensation as a proxy" in setting a
WWTP owner/manager's compensation. (AG's Brief, p. 14). The AG failed to note that
Farmdale established through undisputed evidence that: 1) a WWTP has substantially more
equipment that requires attention and that can break down than does a water district; 2) a
WWTP owner/manager shoulders significantly greater duties and liabilities than does a water
district commissioner; 3) Commission Staff failed to introduce any evidence reflecting that the

duties of a WWTP owner/manager and a water district commissioner are similar; 4) Mr. Cogan is the sole owner/manager of the Farmdale WWTP, while water districts generally have 3 commissioners; and 5) Mr. Cogan's 30-plus years of owning and operating WWTPs, as well as his licensure as a Professional Engineer have helped to save or avoid expenses for the Farmdale WWTP.

The AG asserts that a \$9,600 fee is unreasonable because a number of the WWTP tasks are carried out by subcontractors. However, the AG again overlooks the fact that Mr. Cogan is in constant contact with and oversees contractors doing the work, inspects the plant 4 to 6 times a year and he is the one that handles customer complaints. (T, pp. 103 & 104). Additionally, Mr. Cogan has to personally guarantee loans made to the WWTP, he is subject to substantial potential liability arising out of the operation of the WWTP and "if the taxes aren't right or if the KPDES aren't correct" it is his responsibility. (T, p. 61). As testified to by Mr. Cogan, the buck stops at his desk. (T, p. 121). The AG also asks the Commission to ignore the evidence reflecting the fees paid to the commissioners of the four water districts that are in the same geographic area as the Farmdale WWTP. The fees paid to the commissioners of these water districts closest to the Farmdale WWTP further establish that the \$9,600 owner/manager fee, which is less than that paid the commissioners of the water districts, is reasonable.

In summary, the AG fails to consider the substantial undisputed evidence presented to the Commission establishing the reasonableness of the \$9,600 owner/manager fee. The AG failed to introduce any evidence contrary to the evidence of the fee's reasonableness, presumably because no such evidence exists. Accordingly, the \$9,600 owner/manager fee

should be used by the Commission in setting the rate for the Farmdale WWTP.

B. Sludge Hauling Expense.

The Commission Staff and the AG both agree that “the test period is the starting point to look at [in] determining an expense which is normal, reasonable, and ongoing.” (T, p. 178; See also AG’s Brief, p. 4). It is undisputed that: 1) the sludge hauling expense incurred in 2006 was \$5,450; and, 2) that in May of 2005, “to insure the proper operation of the Farmdale WWTP and in response to complaints by the Commission”, Lawrence Smither became operator of the Farmdale WWTP. (Farmdale Ex. No. 1, Paragraph 11(a)). It is also undisputed that in 2007, Farmdale paid \$4,250 to haul sludge from the WWTP and another two loads were hauled at no charge to Farmdale, saving Farmdale \$850. The testimony of Mr. Smither and Mr. Cogan establishes this fact. (Farmdale’s Exhibit No. 1, Attachment C; Affidavit of Mr. Smither and Paragraph 11(a)). Finally, it is undisputed that sludge is being hauled in 2008 at the same rate as that experienced in 2008, and that hauling sludge on a more frequent basis results in improved treatment and avoids or defers the significant cost of pumping the lagoon.

In the face of this undisputed evidence, the AG asks the Commission to rely upon sludge hauling costs incurred prior to Mr. Smither’s operation of the WWTP at a time when the Commission was complaining about its operation. The Commission should reject the AG’s request and rely upon the evidence in the record establishing the current annual cost to haul sludge and the benefits of hauling sludge on a more frequent basis.

C. Fuel/Power for Pumping.

The AG points out that the fuel/power expense incurred by Farmdale in 2006, the test year, was \$3,847 more than that incurred in 2005. (AG’s Brief, pp. 6 & 7). However, the AG

cannot, and does not, claim that this expense was not legitimately incurred. Accordingly, the Commission should either use the test year cost in determining Farmdale's Fuel/Power expense or allow it to recover the \$3,846 cost by amortizing it over several years. The AG's claim that the Commission should reject this expense based on a procedural technicality should be rejected in this case, which was filed pursuant to the Commission's alternative rate filing regulation, which is intended to simplify and expedite this process.

In the event the Commission does not approve the use of the test year expense in determining the fuel/power expense, the Commission should use Farmdale's projected 2008 cost for 2008 of \$16,705.44, which includes Bluegrass Energy's proposed 9.01 percent increase.

D. Billing and Collection Fee.

The AG argues that the Commission should not approve Farmdale's use of the Farmdale Water District's ("FWD") billing and collection services because Farmdale has not taken "all reasonable measures to demonstrate that its billing practices and corresponding expense amounts are appropriate." (AG's Brief at p. 13). In making this claim, the AG again ignores the undisputed evidence in the record establishing that:

- 1) Farmdale's request that the FWD reduce its fee to 7 ½ percent of collections was rejected;
- 2) Farmdale's request that the FWD agree to cut off water service to Farmdale's delinquent customers even if the FWD did not provide billing and collection services was rejected;
- 3) Farmdale contacted the billing and collection services listed in the Yellow Pages and each of these entities declined to perform Farmdale's billing and collection;
- 4) Farmdale requested the two large utilities in the area to perform its billing and collection and both refused to do so;

- 5) Farmdale established that due to the FWD's unique ability to maximize payment, using its billing and collection services actually cost less than would be paid for the services of another billing and collection service; and,
- 6) Farmdale's cost to perform its own billing and collection would exceed the FWD's cost.

This undisputed evidence establishes that the billing and collection fee proposed by Farmdale is reasonable. The Commission's previous approval of the FWD's fifteen percent (15%) billing and collection fee further underscores this fact.

Commission Staff's assertion that the proposed billing and collection expense is far higher per customer than that charged by other jurisdictional utilities around the state that list agency collection fees in their annual reports was made without taking into consideration the above-listed evidence. Additionally, it is unknown whether the agency collection fees reviewed by Commission Staff included attorneys fees, court costs, other collection costs and the effectiveness of the collection efforts. The evidence in the record establishes that the proposed billing and collection fee is reasonable.

Surprisingly, the AG suggests that Farmdale file a complaint against the FWD and incur additional attorneys fees in the proceeding resulting from the complaint. Farmdale requests the Commission to reject this attempt to side-step the issue of whether the proposed fee is reasonable, and approve the fee as proposed.

CONCLUSION

Farmdale respectfully requests the Commission to set its new rate using costs as proposed by Farmdale, which are based upon undisputed evidence. Commission Staff's proposed adjustments in dispute should be rejected.

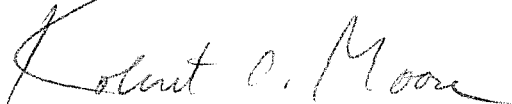
Respectfully Submitted,



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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 14th day of July, 2008.



Robert C. Moore