



Steven L. Beshear
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Mark David Goss
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John W. Clay
Vice Chairman

Caroline Pitt Clark
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Rodney Ratliff
Director
Downstream, Inc.
207 Holmes Street
P. O. Box 191
Frankfort, KY 40602

February 12, 2008

RE: Case No. 2008-00024

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

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

Beth O'Donnell
Executive Director

BOD/tw
Enclosure



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Lawrence W. Smither
Member
Fox Run Utilities, LLC
1706 Bardstown Road
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF DOWNSTREAM,)	
INC. AND FOX RUN UTILITIES, LLC)	
FOR APPROVAL OF THE TRANSFER OF)	CASE NO. 2008-00024
WASTEWATER TREATMENT PLANT TO)	
DOWNSTREAM, INC.)	

O R D E R

Rodney R. Ratliff, on behalf of Downstream, Inc. ("Downstream") and Lawrence W. Smither, on behalf of Fox Run Utilities, LLC ("Fox Run") have filed a joint application, pursuant to KRS 278.020(5), seeking the Commission's permission to transfer complete control and ownership of Downstream to Fox Run. Downstream is a wastewater treatment facility and collection system serving approximately 34 single-family homes in the Fox Run Subdivision in Franklin County, Kentucky.

The Kentucky Bar Association has advised Commission Staff that neither Mr. Ratliff nor Mr. Smither is an attorney licensed to practice law in Kentucky. No person may engage in the practice of law in Kentucky without first obtaining a license to practice. The practice of law is:

[A]ny service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.¹

¹ Kentucky Supreme Court Rule 3.020.

It includes, as Kentucky's highest court held in Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967), the representation of a corporation before a state administrative agency.²

As to its own proceedings, this Commission has adopted a similar position and has required that those representing the interests of others before us be licensed attorneys. In a previous case, the Commission ordered that:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission must engage a member of the Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.³

Based on the above, the Commission finds that the joint application fails to comply with Kentucky law and should not be accepted for filing. The Commission further finds that the joint applicants should be afforded the opportunity to file an amended joint application signed by an attorney licensed to practice law in Kentucky.

IT IS THEREFORE ORDERED that:

1. The joint application is rejected for filing.

² While we find no authority regarding the representation of a limited liability company before an administrative agency, there is a large body of case law that holds that representation of a limited liability company constitutes the practice of law. See Winzer v. EHCA Dunwoody, LLC, 627 S.E.2d 426 (Ga.App. 2006); Gilley v. Shoffner, 345 F.Supp.2d 563 (M.D.N.C. 2004); Sharp v. Bivona, 304 F.Supp.2d 357 (E.D.N.Y. 2004); Kipp v. Royal & Sun Alliance, 209 F.Supp.2d 962 (E.D.Wisc. 2002).

³ Administrative Case No. 249, Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky (Ky. PSC June 15, 1981) at 2.

2. The Joint Applicants shall be permitted to file an amended joint application submitted by an attorney licensed to practice in Kentucky within 20 days of the date of this Order.

3. At the end of the 20-day period, if the Joint Applicants have not filed an amended application, this case shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 12th day of February, 2008.

By the Commission

ATTEST:



Executive Director