

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPLICATION OF THE R. A. WILLIAMS)
DEVELOPMENT CO., INC. D/B/A)
CEDARBROOK TREATMENT PLANT FOR THE) CASE NO. 2008-00040
APPROVAL OF THE PROPOSED INCREASE IN)
RATES FOR WATER SERVICE)

**JOINT APPLICANTS' REPLY TO ATTORNEY GENERAL'S RESPONSE
TO COMMISSION ORDER DATED 21 MAY 2008**

Come the applicants, R.A. Williams Construction Company, Inc. ("R.A. Williams") and Cedarbrook Utilities, LLC ("Cedarbrook"), by counsel, and hereby file this Reply to the Attorney General's Response to Commission Order dated 21 May 2008 ("Attorney General's Response").

I. A SURCHARGE IS NOT THE APPLICANTS' PREFERRED CHOICE IN FUNDING THE REPAIRS TO THE COLLECTION SYSTEM.

The Commission's May 21, 2008 Order requested the Attorney General to provide:

[T]he AG's position regarding Cedarbrook's statement that a surcharge upon the customer's of the wastewater treatment plant is a possible alternative to fund a portion or all of the costs of repairing the existing wastewater collection and treatment system.

The Attorney General's Response noted that this question is premature, but stated that the Commission has the authority to issue a surcharge.

In asking the AG to answer this question, the Commission failed to note that Cedarbrook has advised it that its preferred option is to implement a long term, phased construction project to make the needed repairs to the collection system. In its Answer to the Second Data Requests, Cedarbrook stated:

[I]n order to begin making the necessary improvements to the collection system, Cedarbrook may enter into a short term loan to borrow the amount of Ten Thousand Dollars (\$10,000.00), which funds would be used to address problems with the collection system on a "worst first" basis. Cedarbrook will be filing a request in the pending rate case involving the subject WWTP (Case No. 2008-00042) for the Commission to include the repayment of the

loan and the expenses associated with same in the new rate to be established. It is anticipated that the project to make the necessary improvements on the collection system will be carried out in a phased manner over a number of years.

(See Supplemental Answers of Cedarbrook Utilities, LLC to Commission Staff's Second Data Request to Petitioners.)

Additionally, in R.A. Williams' and Cedarbrook's Answers to Commission Staff's Second Data Request to Petitioners, Cedarbrook stated:

The financing alternatives that will be considered by Cedarbrook to fund the correction of the infiltration problem are as follows: Cedarbrook will develop a long term program to address the repair of the collection system that will involve the annual expenditure of a to-be-determined amount. The amount and extent of repairs to be spent/made on an annual basis will be determined by the amount approved by the Commission for the cost of the annual repairs. In the alternative, Cedarbrook will request the Commission to fund the cost to correct the collection system through a surcharge approved by the Commission.

(See Answers to Commission Staff's Second Data Request, No. 5a).

An Informal Conference was held by Commission Staff and the parties on April 30, 2008. During the Informal Conference, the applicants reiterated that the proposed plan was to make the necessary repairs to the collection system through a long term, phased construction project, with a projected expenditure of \$10,000.00 a year, with the deficiencies in the collection system to be addressed on a "worst first" basis. Again, the applicants have stated that the use of a surcharge is not the preferred choice for the funding of the repairs to the collection system.

II. EXTRAORDINARY REQUIREMENTS ARE NOT REQUIRED TO MAKE THE TRANSFER IN THE PUBLIC INTEREST.

The Commission also requested the Attorney General to advise it as to the terms and conditions, if any, that:

[A]re necessary and appropriate to render the proposed transfer of control of the wastewater treatment plant from R.A. Williams Construction Company, Inc. to Cedarbrook Utilities, LLC ("Cedarbrook") in the public interest?

In its Response to this question, the AG did not challenge Cedarbrook's technical, financial and

managerial ability to operate the subject WWTP. Instead, the AG suggested that R.A. Williams may have “failed to seek timely adjustments in utility rates, failed to adequately fund the capital construction requirements of the utility, and failed to properly maintain this system” and that R.A. Williams should be required to “infuse capital in order to eliminate the adverse effects of its management.” The following information reflects that this assertion is unfounded.

- 1) **R.A. Williams did not seek an adjustment in rates because it was working to transfer the subject WWTP.**

As stated in the Answer to the Second Data Requests, R.A. Williams assumed the operation of the Cedarbrook WWTP only to facilitate the transfer of the Cedarbrook Subdivision lots to R.A. Williams; not because it wanted to own and operate the Cedarbrook WWTP. In fact, the residents of the Cedarbrook Subdivision were to take over the operation of the WWTP upon the completion of the development. However, the residents have failed to assume this responsibility. Indeed, Commission Staff is aware that R.A. Williams contacted the residents of Cedarbrook and attempted to turn the ownership and operation of the WWTP over to them, but the residents declined to accept this responsibility.

Furthermore, for a number of years, R.A. Williams has been working to transfer the subject WWTP to a technically and financially qualified individual or company. Cedarbrook has previously stated in its Answers to Data Requests:

From the time R. A. Williams realized the residents of the Cedarbrook subdivision were not going to take over operations of the WWTP, R. A. Williams has attempted to find a qualified operator to do so. It has contacted numerous owners/operators of WWTPs on the belief that if these owners/operators were able to attain permits to operate a WWTP that they would be qualified to operate the Cedarbrook WWTP. R. A. Williams worked for some time to transfer the WWTP to Perfect A Waste, but the Kentucky Division of Water was not happy with its performance in operating WWTPs. Aqua Source, a company out of Texas, was interested in acquiring the WWTP, but made a corporate decision not to acquire additional WWTPs in Kentucky. The Northcutt Family handled sewer related services, but R. A. Williams was unable to move forward with a transfer because they were unwilling to disclose financial information. R.A. Williams called

numerous licensed WWTP operators from lists provided by the Kentucky Division of Water and hired one of the operators as a short term solution, but this operator quit. R. A. Williams is now attempting to transfer the WWTP to Cedarbrook because any other individuals or entities contacted prior to Cedarbrook have been unable or uninterested in taking over the WWTP. . . .

(See Answers to Commission Staff's Second Data Request, No. 1(c)). Because R.A. Williams was attempting to transfer the WWTP, it did not believe it was in its customers or its own best interests to expend the time, effort and expense of filing a rate case.

For a number of years, R.A. Williams has operated the subject WWTP at a loss and has had to infuse revenue generated by its primary business, construction, in order to make up the difference. Even though it was losing money in operating the WWTP, R.A. Williams has insured that the WWTP has operated properly. For example, in 2004, R.A. Williams contracted with Larry Smither to operate the subject WWTP and contracted with Covered Bridge Utilities to manage the subject WWTP, resulting in the proper operation and management of the WWTP. Of course, because the rate was not increased, the residents have benefitted from the infusion of revenues from R.A. Williams Construction operations and the decision to defer the filing of a rate case while attempting to locate a third party willing and able to accept the WWTP. Furthermore, there is no evidence that R.A. Williams' delay in filing a rate case has caused the deterioration of the plant or the collection system.

2) The needed repairs to the collection system are not result of the operation of the WWTP.

The Commission has been advised that the Cedarbrook collection system needs substantial repair, and the estimated cost to complete these repairs is between \$126,342 to \$175,166. (See Answer to Data Request 11(d)). This collection system has been in the ground since the Cedarbrook Subdivision was built in 1973. The Article titled "Good Old Days Long Gone" appearing in the April 2007 edition of the Water & Waste Digest mentions that plants, pump stations and lines have finite lives and must eventually be replaced and that wastewater facilities in many parts of the country are old

and in need of replacement or upgrading. (See Attachment A). The deterioration of Cedarbrook's collection system simply does not reflect any poor operating practices on the part of R.A. Williams. Instead, it is due to the age of the system.

Additionally, if the AG's position is that R.A. Williams should have created a fund to pay for capital repairs to the collection system, the Commission has stated that it cannot authorize the establishment of such a sinking fund. The above-mentioned article states that utility consultants recommend the creation of a 3-R reserve account to pay for future repairs, replacement and rehabilitation of equipment and lines. Accordingly, despite the recommendation of utility consultants, such a reserve account could not be created by R.A. Williams as the Commission would not authorize same.

3. The long term phased construction project proposed by the applicants is the most feasible option to make the repairs to the collection system.

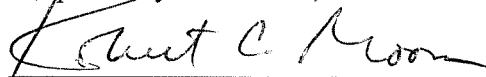
As set forth in Section 1, R.A. Williams and Cedarbrook have proposed that the repairs to the collection system be implemented through a long term construction project addressing the defects in the system on a worst-first basis. During the above mentioned Informal Conference, it was suggested that repairs with a cost of approximately \$10,000 per year could be implemented. This approach would enable the collection system to be repaired at a reasonable cost and a reasonable burden upon the ratepayers.

CONCLUSION

The AG's suggestion that R.A. Williams should be required to infuse capital into the utility in order to eliminate the alleged adverse effects of its management is without merit. R. A. Williams has already infused substantial capital from its construction operations into the Cedarbrook WWTP to ensure the proper operation and maintenance of the WWTP. Furthermore, there is no evidence that its action has caused the deterioration of the aging collection system. Therefore, the Commission should

not require R.A. Williams to infuse substantial additional capital into the utility and instead should allow Cedarbrook to make the necessary repairs to the collection system using the proposed long term, phased construction plan. The transfer of the Cedarbrook WWTP to Cedarbrook Utilities, an entity that has the technical, managerial and financial ability to properly operate the WWTP, is in the public interest.


Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed by hand delivery on Stephanie Stumbo, Executive Director, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602, and Todd Osterloh, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602, and by first class mail on David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Ky., 40601-8204, on this the 13th day of June, 2008.


Robert C. Moore

ATTACHMENT A

April 2007

A SCRANTON GILLETTE PUBLICATION

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WATER & WASTES DIGEST

The Product News Source of the Water/Wastewater Field

In this Issue

Utility Crisis Prepar

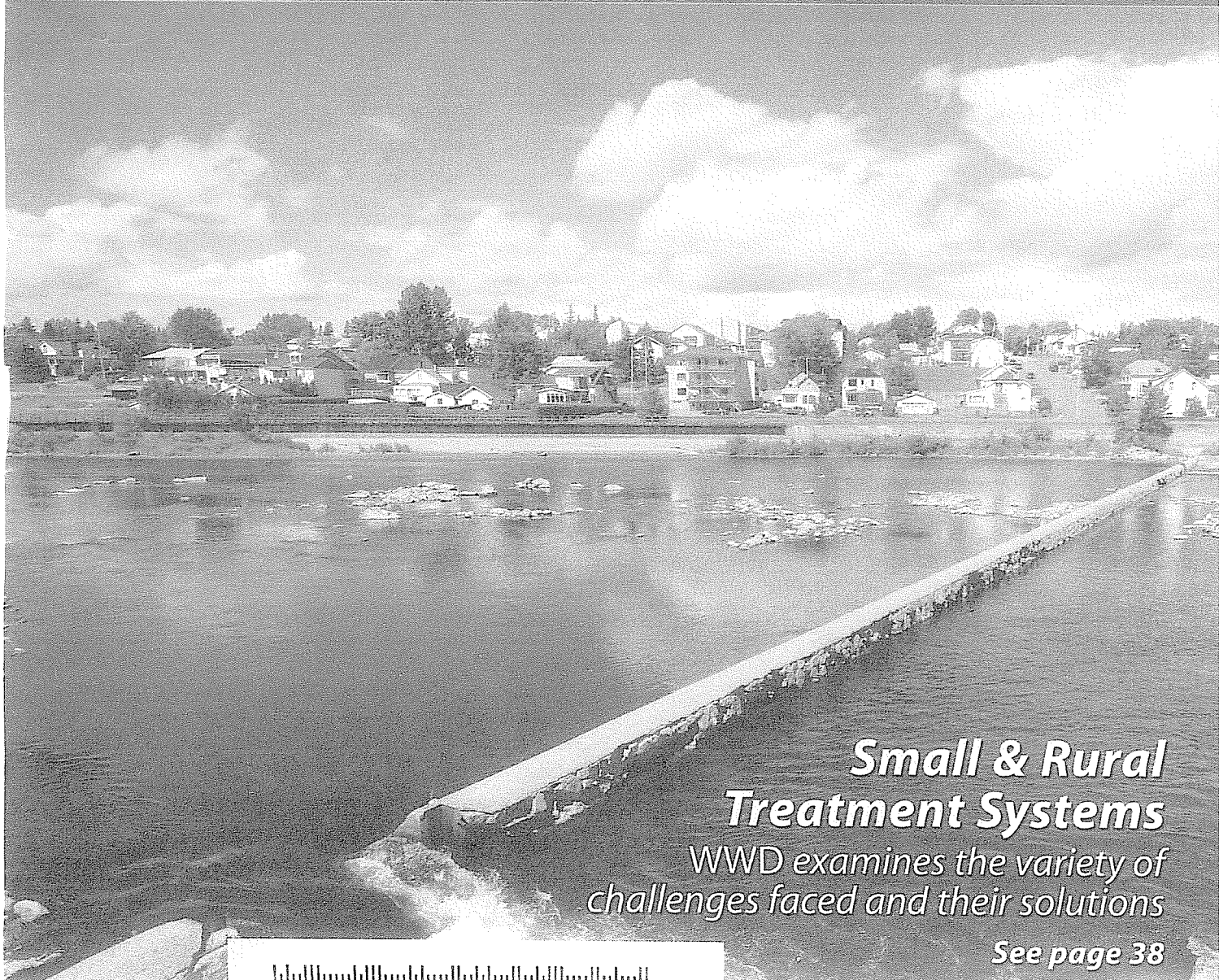
Pump-Related Case

Fine-Tuning Treatm

Filtering in New Tec

Plant Houses MBR T

AWWA ACE07 Previc



Small & Rural Treatment Systems

*WWD examines the variety of
challenges faced and their solutions*

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It's cold. It's dark. The smell of raw sewage fills the air. "Who you gonna call? Ghostbusters!"

Actually you wouldn't call Bill Murray, Dan Aykroyd or Harold Ramis of *Ghostbusters* fame, but rather your local water and wastewater magician. Neither rain, snow nor sleet—or the need for sleep—will keep this professional from answering the call to repair yet another aged wastewater line whose replacement has languished for years.

Water and wastewater utilities will be facing a myriad of challenges in the years ahead. The "good old days" when the infrastructure was new, the regulations were few and utility managers sported dark hair are long gone.

Today's water and wastewater utilities must nurse aged water and wastewater infrastructure, which by now should be earning Social Security. At the same time, today's utility managers must cope with increasingly stringent regulations, competition for raw water and ever-increasing customer service demands.

These challenges bring premature aging to utility managers accompanied by increasing hair loss, insomnia and occasional "mad moments."

However, the complexity and the breadth of the challenges are what attract capable leaders to the utility business. The allure of the utility business is clearly the opportunity to serve fellow citizens and the excitement of juggling armfuls of conflicting priorities and

still making meaningful progress. Said simply, what a great job!

In this article, we will examine some of the most significant challenges facing water and wastewater utilities and identify some best practices, which will help utilities continue to provide safe and reliable drinking water and wastewater services to their customers.

Aging infrastructure

In many parts of the country, especially in the older industrialized areas, water and wastewater facilities are aged and in need of replacement or upgrading. The last major drink of federal and state grant funds was in the 1970s and the prospects for a new major influx of federal or state grant funds are dim, at best.

Utility consultants rightfully recommend as a best practice the creation and funding of a "3-R reserve account" (repair, replacement and rehabilitation) due to the fact that plants, pump stations and lines have finite lives and must eventually be replaced. There is no dispute that every utility should create and fund a 3-R reserve account.

Unfortunately for many utilities, political pressure has kept utility rates low or the area economy is weak and the customer base is barely surviving on fixed incomes. These utilities—and there are many of them across the U.S.—are simply unable to significantly fund a 3-R reserve account. Because the cost of construction continues to escalate significantly and other priorities can take up

focus of federal and state regulators shift increasingly to community water and wastewater utilities.

This is not to criticize dedicated federal and state regulators or to characterize them to resemble Walter Peck, the loveable legal representative of the Environmental Protection Agency in "Ghostbusters."

The increased focus on the utility industry is caused by several factors. First, water and wastewater utilities have recently been plagued by front-page news articles on sanitary sewer overflows, nutrient enrichment of bays and estuaries and violations of permit requirements. The release of raw sewage during heavy rains or the failure of aged infrastructure has become a major concern of regulators and local citizens.

Second, wastewater discharges from communities meeting their historical permit requirements are now being found to cause water quality problems; thus municipal dischargers are increasingly finding themselves the subject of demanding total maximum daily loads.

For example, sanitary waste discharges that travel to tributaries in the Chesapeake Bay, one of our nation's most precious natural resources, must be upgraded to resolve water quality problems in the bay.

Third, gone are the days when a municipal drinking water provider had virtually unlimited access to area water resources. Today, science has demonstrated that water is a scarce resource

Good Old Days Long Gone

challenges of today's small and mid wastewater utility business

funds, even the utilities that can fund a 3-R reserve account may find themselves short on needed funds.

Environmental issues

Water and wastewater utilities have historically and rightfully been regarded as champions of the environment and responsible environmental stewards.

that must be fairly allocated between competing uses. For example, minimum in-stream flow must be maintained under all weather conditions to protect and assure a balanced aquatic ecosystem. This generally means that drinking water suppliers will, at times, be limited in the quantity of stream flow they can use for their drinking

Strategic planning

It is a best practice that all utilities develop a strategic plan to guide the utility and ensure that it effectively addresses key strategic challenges.

Some utilities create “feel good” strategic plans that are little more than “dust catchers.” These utilities celebrate the creation of their strategic plans but they fail to drive it into the culture and daily activities of the utility. While the strategic plan plays an important role at utility “show and tell” events, it does not transform the utility or move the utility forward to aggressively address its key strategic needs.

A strategic planning best practice is to involve all levels of the utility organization, including its governing board or commission, in the strategic planning process. Experience has illustrated that some of the best ideas and most practical implementation advice will come from plant operators, members of the line maintenance crews and the administrative staff. If a utility does not actively involve these individuals in the strategic planning process, it will lose valuable input and will not ultimately achieve employee acceptance.

Once the strategic plan is drafted, it is best for the utility to make it available to its customers and members of the public. Experience indicates that the

wider the utility throws the net, the better the strategic plan.

It is also a best practice for utility management to carefully explain the strategic objectives to employees and describe how each of them plays a key role in ensuring the long-term success of the enterprise.

The single most important factor of the strategic planning process is the steps utility leadership takes once the plan has been created. Utility officials should thoughtfully cascade the strategic plan objectives throughout the organization and use the strategic objectives to create performance objectives for the utility managers and staff.

This accomplishes a lot for the utility and its employees because it places the key strategic objectives into the hands of the employees who will be responsible for accomplishing the objective. It also gives each strategic objective a champion to lead the charge within the organization. Most importantly, it ensures employees remain involved in the process and it helps ensure organizational alignment with the key strategic objectives.

Capital Investment Plan

The creation of a capital investment plan (CIP) is a best practice for all water and wastewater utilities. It is

best to develop a CIP with at least a ten-year planning horizon. The traditional creation of a one- to five-year CIP is simply not adequate in today’s fast-paced utility world.

In order to bring a capital project to fruition, the project must be carefully planned, environmental permits must be obtained and long-lead equipment must be procured. In addition, projects and related schedules must reflect the reality that construction times have become extended. It is not uncommon to need five years or longer to plan and construct major new facilities. As such, utilities must start early on their capital planning and recognize that it will take time to bring new facilities into operation.


Final analysis

Utility leaders face many challenges in providing safe and reliable water and wastewater services to their customers. They must increasingly rely upon these best practices and they must not suffer in silence when utility rates must increase to address aged infrastructure and new environmental needs.

Utilities need to invest in education to establish a community-wide understanding of the need and benefits of raising utility rates. Community education is not an activity that can be

undertaken the week before the utility rate hearing; rather it is best to conduct year-round community education. A properly educated community will understand the need to increase utility rates in order to address aging infrastructure and new environmental needs.

Utility managers must develop strategic plans and then cascade the key strategic objectives throughout the organization. Strategic plans should not be ornaments or dust catchers that do not add value for utility customers.

Communities are truly fortunate that we have a cadre of dedicated utility managers who work tirelessly on behalf of their customers and communities. We are fortunate that they are there for us and we do not have to call Ghostbusters! 

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