

**HAZELRIGG & COX, LLP**

ATTORNEYS AT LAW

415 WEST MAIN STREET, SUITE 1

P.O. BOX 676

FRANKFORT, KENTUCKY 40602-0676

JOHN B. BAUGHMAN  
ROBERT C. MOORE  
THOMAS J. HELLMANN

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

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

May 29, 2012

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MAY 29 2012

PUBLIC SERVICE  
COMMISSION

Via Facsimile - 502-564-3460

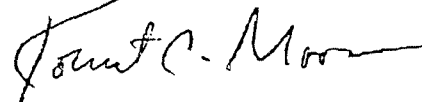
Mr. Jeff R. Derouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, Kentucky 40602-0615

Re: In the Matter of Alternative Rate Adjustment Filing of Coolbrook Utilities, LLC,  
("Coolbrook"); Case No. 2011-00433

Dear Executive Director Derouen:

Please find enclosed the Post Hearing Brief of Coolbrook Utilities, LLC. Please file this document marked with today's date and I will bring the original and copies out to the Public Service Commission tomorrow. Thank you.

Respectfully,



Robert C. Moore

RCM/neb  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALTERNATIVE RATE ADJUSTMENT FILING OF )  
COOLBROOK UTILITIES, LLC. ) CASE NO 2011-00433

**POST HEARING BRIEF OF COOLBROOK UTILITIES, LLC**

Comes Coolbrook Utilities, LLC ("Coolbrook"), by counsel, and for its Post Hearing Brief, states as follows:

On October 31, 2011, Coolbrook submitted its application pursuant to 807 KAR 5:076 to increase its rates for sewer service. Coolbrook used the calendar year ending December 31, 2010, as its test period. Coolbrook proposed to increase its current monthly sewer rate from \$31.15 to \$36.80. Coolbrook also requested authority to assess a monthly surcharge of \$6.75 for a 12 month period to fund the cost of an inflow and infiltration study to be performed on its collection system.

Coolbrook submits that its application supported a monthly rate of \$36.80. However, Commission Staff, after reviewing and analyzing Coolbrook's application, determined that a monthly rate of \$32.04 was justified by the test year expenses. As indicated in its Objections to Commission Staff's Report, Coolbrook disagreed with the Staff's reduction of its proposed owner/manager fee and Agency Collection Fee, but did not want to contest these reductions in this case. Coolbrook also objected to the Staff's proposal to disallow Coolbrook's proposed surcharge of \$6.75 to fund the Inflow and Infiltration Study mandated by the Kentucky Division of Water, and Coolbrook specifically contested this issue at the May 12, 2012, hearing held in this matter.

The evidence presented by Coolbrook at the May 12, 2012 hearing through the testimony of Lawrence W. Smither, Martin Cogan and Jack Kaninberg established the following with respect to the need for the surcharge:

- 1) Coolbrook's collection system was built approximately forty (40) years ago, and it currently suffers from inflow and infiltration ("I & I") when there is a rain event. This I & I can cause the wastewater treatment plant ("WWTP") to be overloaded and release partially treated effluent into the receiving stream;
- 2) Coolbrook inspected the WWTP and collection system prior to purchasing the system in 2008, but did not detect substantial problems in the collection system;
- 3) Since purchasing the Coolbrook system, Coolbrook has spent a substantial amount of money in making repairs to the WWTP, including repairing and replacing pumps, repairing and replacing electrical systems, replacing skimmers, air lines and diffusers. The substantial cost of these repairs has caused Coolbrook to suffer a negative cash flow;
- 4) On June 9, 2011, an Administrative Conference was held by the Department for Environmental Protection's Division of Enforcement to address Notices of Violations that had been issued to Coolbrook. The June 9, 2011 Post Conference letter issued by J. Greg Wilson, an Enforcement Specialist with the Division of Enforcement, required Coolbrook, by August 1, 2011, to "submit to the DENF for DOW review and acceptance; an Inflow/Infiltration Rehabilitation Project to identify and correct Inflow/Infiltration (I/I) within Coolbrooks's (SIC) sewage collection system." (See Exhibit 1, Paragraph L). The June 9, 2011 Post Conference letter also required Coolbrook to "identify all significant sources of I/I into the collection system." (See Exhibit 1, Paragraph L(1)) The June 9, 2011 Post Conference letter also stated "Coolbrook shall pay the Cabinet a civil penalty in the amount of twelve thousand dollars (\$12,000) to address the NOV's issued

to the facility.” Lawrence Smither testified that even though an Agreed Order has not yet been entered into with the Department for Environmental Protection, Coolbrook is still required to address the I & I issues;

- 5) Coolbrook obtained quotes of the cost to clean and inspect by video camera the collection system’s main sewer lines from Leak Eliminators, LLC, and Martin’s Pipeline Inspection in the amount of \$35,200.00 and \$38,400.00, respectively;
- 6) Coolbrook established that it does not have the funds to pay for the cost to clean and inspect by video camera the collection system’s main sewer lines, and that the cost of the I & I study is not in the expense sheet in the rate case. Coolbrook also established that it contacted a number of financial institutions, including Old National Bank, Bedford Loan and Deposit Bank and PNC Bank, to attempt to borrow the funds to pay for the cost to clean and inspect by video camera the collection system’s main sewer lines, and the financial institutions were unwilling to loan it the money to perform the I & I study;
- 7) Coolbrook established through the testimony of witnesses and Exhibits 3 and 4 that financial institutions, including Old National Bank and Bedford Loan and Deposit Bank, are unwilling to loan funds to wastewater treatment utilities for a number of reasons, including the difficulties caused by the economic downturn, the lack of cash flow to pay off the loan and the lack of collateral to secure the loan;
- 8) Coolbrook’s witnesses established that the requested surcharge is the most effective way to pay for the I & I study because the surcharge will be applied dollar for dollar to pay for the cost of the I & I study, with no profit return to the owners of Coolbrook.

Furthermore, the Commission has imposed significant reporting requirements where a surcharge has been approved to ensure that the funds are used only for the approved purpose. Finally, the Farmdale Water District, the entity performing Coolbrook’s billing

and collection, has not previously included surcharge funds in determining the cost of collection to be paid by a utility company, which is fifteen percent (15%) of the rate payments collected.

- 9) The testimony also established that the Commission has approved surcharges in situations like that faced by Coolbrook, ie surcharges have been approved for a utility that has a negative cash flow, operates an aging collection system that suffers from I & I, has been required by the Department of Environmental Protection to perform an I & I study, and is unable to borrow the money to do so. Jack Kaninberg testified that the Commission has approved surcharges for Farmdale Development Corporation, Airview Utilities, LLC and Ridgelea Investments, Inc;
- 10) Coolbrook also established that the approval of the surcharge would benefit its current customers, as it would reduce the cost of maintenance and repairs because the amount of flow treated by the WWTP would decrease. Furthermore, the improvements resulting from the I & I study would help to avoid environmental issues at the WWTP, which would undoubtedly help to maintain the value of the surrounding residences; and,
- 11) Coolbrook established that the surcharge of \$6.75 over a one year period is a reasonable surcharge amount and less than or comparable to the surcharges approved for Farmdale Development Corporation, Airview Utilities, LLC and Ridgelea Investments, Inc.

The above evidence was not rebutted by any other evidence submitted at the hearing. The Attorney General did not introduce any evidence that rebutted or refuted the testimony or documentary evidence introduced by Coolbrook. Nor did the Commission Staff introduce any evidence that rebutted or refuted Coolbrook's testimony or documentary evidence.

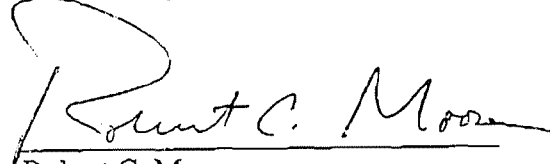
Finally, attached as Attachment A to Coolbrook's Post Hearing Brief are the invoices of Hazelrigg & Cox, LLP for the legal work performed on the subject rate case in the amount of

\$3,690.00. Additionally, the invoice of Kentucky Small Utility Consulting, LLC in the amount of \$425.00 for the appearing at the hearing on behalf of Coolbrook will be submitted upon its receipt. These are rate case costs which should be amortized over a three year period.

### CONCLUSION

In conclusion, the evidence introduced by Coolbrook at the May 12, 2012 hearing, as summarized above, established that the Commission should approve the monthly rate of \$32.04, the surcharge in the amount of \$6.75 to fund the required I & I study, and that the attorneys fees of Hazelrigg & Cox, LLP and the fees of Kentucky Small Utility Consulting, LLC should be amortized over a three year period. Coolbrook respectfully requests the Commission to enter an order at its earliest convenience, as this case was filed on October 31, 2011, and the issues to be addressed by the Commission are limited in scope.

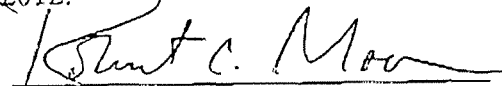
Respectfully submitted,



Robert C. Moore  
HAZELRIGG & COX, LLP  
415 West Main Street, 1<sup>st</sup> Floor  
P. O. Box 676  
Frankfort, Kentucky 40602-0676  
(502) 227-2271

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, Kentucky 40602 and David Edward Spenard and Jennifer Black Hans, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204, on this the 29<sup>th</sup> day of May, 2012.



Robert C. Moore

Hazelrigg & Cox, LLP  
 415 W. Main Street  
 P. O. Box 676  
 Frankfort, KY 40602

Invoice submitted to:  
 Marty Cogan  
 Coolbrook Utilities  
 P. O. Box 91588  
 Louisville, KY 40291  
 RCM

February 03, 2012

Invoice # 22961.

Professional Services

	<u>Hours</u>	<u>Amount</u>
1/17/2012 Review Commissions Order Draft Notice of Appearance of Counsel Correspondence to L. Smither and M. Cogan Calendar dates Draft Notice	0.50	75.00
1/24/2012 Review correspondence from M. Cogan and respond to same Review data requests	0.15	22.50
1/30/2012 Review correspondence from J. Kaninberg Review Order Draft Motion for Extension of Time	0.40	60.00
	1.05	\$157.50
For professional services rendered		

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Robert C. Moore	1.05	150.00	\$157.50

WE ACCEPT VISA AND MASTERCARD

**ATTACHMENT** A

Hazelrigg & Cox, LLP  
 415 W. Main Street  
 P. O. Box 676  
 Frankfort, KY 40602

Invoice submitted to:  
 Marty Cogan  
 Coolbrook Utilities  
 P. O. Box 91588  
 Louisville, KY 40291  
 RCM

March 06, 2012

Invoice # 23105

Professional Services

	<u>Hours</u>	<u>Amount</u>
2/1/2012 Draft Motion for extension of time to file Answers to Information Requests Correspondence to L. Smither and M. Cogan	0.25	37.50
2/7/2012 Correspondence to L. Smither and M. Cogan	0.10	15.00
2/10/2012 Telephone conference with L. Smither	0.40	60.00
2/13/2012 Telephone conferences with L. Smither Review Answers to Commission Staffs First Discovery Requests and revise same Correspondence to L. Smither	1.20	180.00
 For professional services rendered	 <u>1.95</u>	 <u>\$292.50</u>

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Robert C. Moore	1.95	150.00	\$292.50



Hazelrigg & Cox, LLP  
 415 W. Main Street  
 P. O. Box 676  
 Frankfort, KY 40602

Invoice submitted to:  
 Marty Cogan  
 Coolbrook Utilities  
 P. O. Box 91588  
 Louisville, KY 40291  
 RCM

April 12, 2012

Invoice # 23339

Professional Services

	<u>Hours</u>	<u>Amount</u>
3/6/2012 Review Commission Staffs Comments Correspondence to L. Smither re Commission Staffs Comments	0.50	75.00
3/8/2012 Review correspondence from L. Smither	0.05	7.50
3/9/2012 Telephone conference with L. Smither	0.25	37.50
3/14/2012 Correspondence to L. Smither Review correspondence from L. Smither and respond to same	0.10	15.00
3/16/2012 Review and revise response to Commission Staffs Report	0.80	120.00
3/19/2012 Finalize comments to Staff Report	0.15	22.50
3/21/2012 Telephone conference with L. Smither	0.20	30.00
3/23/2012 Telephone conference with J. Wuetcher Draft notice Correspondence to L. Smither, et al re formal hearing	0.60	90.00
3/26/2012 Telephone conference with L. Smither	0.20	30.00
3/27/2012 Review Order Telephone conference with J. Kaninberg Review files Correspondence to L. Smither Draft Witness List Telephone conference with L. Smither Draft Prefiled Testimony of L. Smither	2.85	427.50

Marty Cogan

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	<u>Hours</u>	<u>Amount</u>
3/28/2012 Prepare for hearing	0.90	135.00
Prepare for hearing	0.50	75.00
3/29/2012 Correspondence to J. Wuetcher re hearing	0.80	120.00
Correspondence to J. Wuetcher, et al re publication issue		
Telephone conference with J. Wuetcher		
Telephone conference with L. Smither		
Review correspondence from J. Wuetcher re schedule and respond to same		
For professional services rendered	7.90	\$1,185.00

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Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Robert C. Moore	7.40	150.00	\$1,110.00
Thomas J. Hellmann	0.50	150.00	\$75.00

WE ACCEPT VISA AND MASTERCARD

Hazelrigg & Cox, LLP  
 415 W. Main Street  
 P. O. Box 676  
 Frankfort, KY 40602

Invoice submitted to:  
 Marty Cogan  
 Coolbrook Utilities  
 P. O. Box 91588  
 Louisville, KY 40291  
 RCM

May 03, 2012

Invoice # 23366

Professional Services

	<u>Hours</u>	<u>Amount</u>
4/9/2012 Review Order Review correspondence from J. Derouen Correspondence to L. Smither and M. Cogan	0.20	30.00
4/20/2012 Review correspondence from J. Kaninberg and L. Smither	0.15	22.50
4/23/2012 Telephone conference with L. Smither Review correspondence from J. Kaninberg and respond to same	0.25	37.50
4/24/2012 Telephone conference with J. Wuetcher	0.15	22.50
4/25/2012 Telephone conference with L. Smither	0.10	15.00
4/27/2012 Review file Draft Motion to Identify Issues Correspondence to L. Smither, J. Kaninberg and M. Cogan	0.80	120.00
4/30/2012 Review comments from J. Kaninberg Correspondence to J. Derouen Finalize Motion for Identification of Issues Correspondence to J. Wuetcher and D. Spenard	0.45	67.50
For professional services rendered	<u>2.10</u>	<u>\$315.00</u>

Marty Cogan

Page 2

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Robert C. Moore	2.10	150.00	\$315.00

WE ACCEPT VISA AND MASTERCARD

Hazelrigg & Cox, LLP  
 415 W. Main Street  
 P. O. Box 676  
 Frankfort, KY 40602

Invoice submitted to:  
 Marty Cogan  
 Coolbrook Utilities  
 P. O. Box 91588  
 Louisville, KY 40291  
 RCM

May 29, 2012

Invoice # 23435

Professional Services

	<u>Hours</u>	<u>Amount</u>
5/4/2012 Telephone conference with L. Smither	0.10	15.00
5/7/2012 Review Attorney Generals response Correspondence to L. Smither	0.10	15.00
5/8/2012 Telephone conference with L. Smither	0.20	30.00
5/9/2012 Review Order Correspondence to L. Smither and M. Cogan re Order Review correspondence from J. Kaninberg and respond to same Telephone conference with L. Smither	0.60	90.00
5/10/2012 Prepare for and attend hearing at PSC re rate case Correspondence to L. Smither and M. Cogan	6.30	945.00
5/18/2012 Conference with L. Smither Review NOVs and correspondence to DOE Draft Answer to Post Hearing Information Requests	1.00	150.00
5/25/2012 Review file Draft Post Hearing Brief	1.30	195.00
5/28/2012 Draft Post Hearing Brief	2.00	300.00
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For professional services rendered	11.60	\$1,740.00