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Vice Chairman

J. Roger Thomas  
Commissioner

December 17, 2015

Parties of Record

RE: Case No. 2015-00351

Attached is a copy of a memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the memorandum, please do so within five days of receipt of this letter.

Any questions regarding this memorandum should be directed to David Spenard, Commission Staff Attorney, at (502) 782-2580.

Sincerely,



Jeff Derouen

DS/ph

Attachments

**INTRA-AGENCY MEMORANDUM**

**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** Case File No. 2015-00351  
**FROM:** David Spenard, Staff Attorney  
**DATE:** December 17, 2015  
**RE:** Informal Conference of December 14, 2015

Pursuant to the Commission Staff's December 11, 2015 notice, as amended on December 14, 2015, an informal conference was held in this matter on December 14, 2015 to discuss the status of and issues in this case. Attending the conference were:

Attending in person:

David Spenard	-	Commission Staff
John Park	-	Commission Staff
Jennifer Fell	-	Commission Staff
Jonathan Beyers	-	Commission Staff
Mark Frost	-	Commission Staff
Ariel Turnbull	-	Commission Staff
Sam Reid	-	Commission Staff

Attending by telephone:

Roger Hall	-	Counsel for Big Sandy Water District
Paul Thomas	-	Big Sandy Water District
Jimmy Blanton	-	Big Sandy Water District
Jimmy Taylor	-	Overland Development, Inc.

At the start of the informal conference, Mr. Spenard stated that Commission Staff ("Staff") would prepare minutes of the conference for the case record, that a copy of the minutes would be entered into the record, and that the Joint Applicants would have an opportunity to submit written comments upon the minutes. Mr. Spenard stated that the views of Staff are not binding on the Commission.

Staff asked whether the water lines of Overland Development, Inc. ("Overland") are within the territorial boundary of Big Sandy Water District ("Big Sandy"). Big Sandy stated that the lines are within Big Sandy's territorial boundary.

Staff stated that the agreement of the parties includes a provision through which Big Sandy will pay Overland \$100,000. Big Sandy proposes to make an initial payment of \$50,000 with the remaining \$50,000 paid in equal installments of \$853.33 over 60 months. Staff noted that, pursuant to KRS 278.300, the proposal for Big Sandy to pay the \$50,000 balance over 60 months requires Commission approval. Big Sandy stated that the terms of the agreement did not include a stated rate of interest on the outstanding balance owed to Overland. Staff stated that the Commission has imputed interest in a similar situation in which it was asked to approve financing. During the conference, Staff stated that the \$853.33 monthly amount may be a typographical error in that it corresponds to payments totaling approximately \$51,200 rather than \$50,000.

Staff stated that Big Sandy could file an application for approval of financing and request that the application be consolidated with this proceeding. Staff stated that Big Sandy could, alternatively, seek approval of financing through amending the joint application for an approval of the transfer; however, an amendment of the joint application would restart the Commission's review period. Staff stated that a filing requirements checklist for applications for the approval of financing was available on the Commission's website.

Staff discussed the \$100,000 transaction amount with the joint applicants. Staff noted that Big Sandy would be required to record the Overland assets at their net book value which is approximately \$25,000. Staff stated that treatment of the remaining balance of approximately \$75,000 needed to be addressed. Staff stated that the agreement contemplates that a portion of the \$100,000 corresponds to pre-paid consulting services. The Joint Applicants stated that \$50,000 of the transaction amount is for consulting. Jimmy Taylor, the current owner of Overland, stated that he wanted to be available, following a transfer, to answer questions concerning the Overland system.

Staff noted that the amount of the purchase price paid for the assets in excess of the net book value of those assets is an acquisition premium. In this instance, the acquisition premium would be approximately \$25,000. Staff stated that in Case No. 2014-00289, *Application of Hardin County Water District No. 2 for Authority to Executive a Promissory Note in the Principal Amount of \$8,000,000 Pursuant to the Provisions of KRS 278.300 and 807 KAR 5:001*, the Commission evaluated the reasonableness of the amount of an estimated acquisition adjustment for ratemaking purposes in considering Hardin County Water District No. 2's application for approval of financing to purchase the city of Elizabethtown's water system. Staff stated that the test utilized for this purpose is known as the "Delta Test."<sup>1</sup>

Mr. Hall stated that the \$100,000 amount for the transaction is the result of the parties' negotiations and that the Big Sandy board of commissioners had determined that the purchase of the assets for the price of \$100,000 was in the best interest of Big

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<sup>1</sup> Note: The Delta Test was first developed and applied in Commission Case No. 0959, *An Adjustment of Rates of Delta Natural Gas Company, Inc.* (Ky PSC Sept. 11, 1985).

Sandy. Mr. Hall stated that it is not unusual for a party to pay an amount in excess of the book value of the assets and that Big Sandy believes it is acquiring the assets at a fair price. Mr. Hall stated that utilities should not be discouraged from acquiring assets at a fair price. Staff stated that the acquisition of assets at a fair price is not discouraged; however, it is necessary for the joint applicants to supply evidence to demonstrate that the acquisition amount is a fair price.

The parties also discussed the practicality of Big Sandy assessing a single rate for all of its customers post-transfer versus maintaining a separate rate for Overland's customers. Overland also confirmed that it does not currently hold any customer deposits.

Staff stated that it anticipated the issuance of a request for information that would include questions regarding the topics discussed at the informal conference.

Finally, during the discussions, Mr. Hall stated that he represented Big Sandy. Staff noted that Overland is a corporation and that Mr. Taylor, unless he is an attorney, cannot represent Overland. Staff stated that Overland's need for representation by counsel was an issue.

There being no further business, the informal conference adjourned.

Attachment

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF BIG SANDY WATER )  
DISTRICT AND OVERLAND DEVELOPMENT )  
INC. FOR APPROVAL OF TRANSFER OF THE ) CASE NO.  
OVERLAND WATER SYSTEM INCLUDING ) 2015-00351  
WATER LINES AND MAINS TO BIG SANDY )  
WATER DISTRICT )

SIGN IN

December 14, 2015

PERSON

REPRESENTING

David Edward Spenser	PSC staff
John Park	PSC Legal
Jennifer Fell	PSC Legal
Jonathan Byer	PSC
Mark Frost	PSC staff
Ariel Turnbull	PSC STAFF
Sam Reid	PSC staff
Roger Hill (by telephone)	Counsel for Big Sandy Water District
Paul Thomas	Big Sandy Water District
Jimmy Blanton	Big Sandy Water District
Jimmy Taylor	Overland Development, Inc.

\*Big Sandy Water District  
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