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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AIRVIEW UTILITIES, LLC'S NOTICE OF
SURRENDER AND ABANDONMENT OF
UTILITY PROPERTY

CASE NO. 2016-00207

POST-HEARING BRIEF OF AIRVIEW UTILITIES, LLC

Comes Airview Utilities, LLC, by counsel, and for its Post-Hearing Brief, states as follows:

FACTS

Airview Utilities, LLC (hereinafter "Airview"), is a Kentucky limited liability company.¹ Airview owns and operates the Airview wastewater treatment plant ("WWTP"), and collection system which serves the Airview Estates neighborhood located in Hardin County, Kentucky. The area served by the Airview WWTP is bounded on three sides by the City of Elizabethtown.² The Airview WWTP and collection system is the only facility owned by this utility.

The Airview WWTP and collection system is currently over 40 years old.³ It was installed in approximately 1969,⁴ and this package treatment plant was intended to be a temporary solution for providing wastewater treatment to its customers.⁵ The WWTP needs significant upgrades, including but not limited to the following: a new chlorine contact tank at a cost of \$30,000; a new chemical feed system at an approximate cost of \$3,000; a new flow meter

¹ See Airview's Answer to the Attorney General's Data Request No. 1(a).

² See Airview's Answer to the Attorney General's Data Request No. 1(d).

³ See Airview's Answer to the Attorney General's Data Request No. 2(a).

⁴ Recording of Hearing ("ROH") 9:27:40.

⁵ See Airview's Answer to the Attorney General's Data Request No. 2(a) and ROH 9:27:50.

at an approximate cost of \$4,500 to \$5,000; and, the tertiary lagoon needs to be cleaned at an approximate cost of \$125,000.⁶

Eric Carrico, a licensed professional engineer, has inspected the Airview WWTP, and he issued a post-inspection evaluation of the WWTP. Mr. Carrico's evaluation indicated that the Airview WWTP has reached the end of its 40-year average life span,⁷ and he estimated the cost of a similar treatment system with a capacity of 55,000 gallons per day to be \$300,000, with an additional \$200,000 required to upgrade from secondary treatment to tertiary treatment if required by the Kentucky Division of Water.⁸

Airview provides sanitary sewage treatment services for approximately 203 residential customers.⁹ The Public Service Commission has approved a monthly rate of \$41.36 for this sanitary sewage treatment.¹⁰ Accordingly, Airview's possible maximum monthly revenue is approximately \$8,396.08 and its total possible maximum annual gross revenue is approximately \$100,752.96. Instead, Airview's actual average gross monthly revenue during 2016 is \$7,591.13.¹¹ Its average monthly expenses during that same timeframe is \$7,726.76, which results in a loss of \$135.63 per month. Accordingly, the cost to operate the Airview WWTP and collection system has exceeded its monthly revenue. Airview currently owes the following entities a total of \$90,213.10, which is broken down as follows: Brocklyn Utilities-4,950.00; Covered Bridge Utilities-39,950.56; Shawn Ford-12,950.00; Hazelrigg & Cox, LLP-3,485.28; Murphy Excavating-6,650.00; Coolbrook Utilities-4,115.00; Integrity Bookkeeping-11,400.00;

⁶ See Airview's Answer to the Attorney General's Data Request No. 2(f).

⁷ See Airview's Answer to the Attorney General's Data Request No. 2(a). See also Airview's Answers to Attorney General's Second Request for Information No. 3(b), Attachment B, stating, "Most package plants date to the 1970s and 1980s and have significantly exceeded their design life.

⁸ See Airview's Answer to the Public Service Commission's ("PSC") Data Request No. 1 and the attachment to same.

⁹ See ROH 9:26:20 and Airview's Answer to the PSC's Data Request No. 2.

¹⁰ See ROH 9:26:40.

¹¹ See Supplement to Airview's Answer to the Attorney General's Data Request No. 4(a)&(b).

Hornback Plumbing-476.00; Stites & Harbison, PLLC-3,536.60; Strothman & Co, CPA-2,400.00; and, Kentucky State Property Tax 299.66.¹²

As a privately-owned utility, Airview has suffered substantial difficulty in obtaining payment from its customers, and its inability to collect the amounts due it has resulted in Airview's inability to pay for the needed upgrades to the Airview WWTP and collection system, as well as its inability to pay its bills. The area served by Airview houses a very transient population, as many of the residences are rental properties.¹³ There are currently 23 accounts without billing addresses because the properties are vacant or Airview has been unable to get the tenant's name for billing purposes.¹⁴ The tenants in these residences frequently move without paying their bills. To improve its collection percentage, Airview requested the Hardin County Water District No. 2 ("Water District No. 2"), the utility that provides water service to this area, to perform monthly billing and collection services for it.¹⁵ However, Water District No. 2 refused to do so.¹⁶ "Airview also employed a collection firm, Credit Solutions, LLC, to collect its receivables, but it was unable to efficiently collect the amounts due Airview."¹⁷ As a result of the difficulty in collecting the amounts due from its delinquent customers, Airview has had to write off \$9,741.51 in uncollectible accounts in 2014 and \$4,992.77 in 2015.¹⁸ According to Airview's accounts receivables records, \$6,171.44 is currently due from uncollectible accounts so far in 2016.¹⁹

¹² See Airview's Answer to the Attorney General's Data Request No. 2(d).

¹³ See Airview's Answer to PSC Data Request No. 3.

¹⁴ See Airview's Answer to PSC Data Request No. 3.

¹⁵ See Airview's Answer to the Attorney General's Data Request No. 2(a).

¹⁶ See Airview's Answer to PSC Data Request No. 3.

¹⁷ See Airview's Answer to the Attorney General's Data Request No. 3(b).

¹⁸ See Airview's Answer to PSC Data Request No. 3.

¹⁹ See Airview's Answer to the Attorney General's Data Request No. 3(a).

Further exacerbating Airview's collection problems is the fact that many of the homes on the collection system have a joint connection to the main line.²⁰ Therefore, Airview cannot remove the delinquent connection from the main line, as that would result in the disconnection of the delinquent customer, as well as a non-delinquent customer. Additionally, the cost to disconnect a delinquent customer is significant, and Airview is unable to recover this cost if a delinquent tenant has moved out or left on deployment.²¹ A rate increase would not solve Airview's financial problems, as Airview would have the same difficulty collecting the amount owed.²²

Due to the problems experienced in operating the Airview WWTP, Airview has attempted to convey the WWTP and collection system to the City of Elizabethtown, Hardin County Water District No. 1 (hereinafter "Water District No. 1") and Water District No. 2.²³ Water District No. 1, which has a service line fairly close to the Airview system, conducted a study to determine whether it would economically benefit it to take over the Airview system, but ultimately declined to do so. Water District No. 2 has also declined to assume ownership of the Airview WWTP and collection system.²⁴

The City of Elizabethtown ("Elizabethtown") operates a sanitary sewer system, and its Pine Valley Drive manhole is approximately one (1) mile from the Airview sanitary sewer system. Accordingly, Airview has requested Elizabethtown to connect the Airview collection system to the Elizabethtown system. Elizabethtown is still considering this request, but has not yet decided whether to take over the Airview system.²⁵ Based on Mr. Carrico's above-

²⁰ See Airview's Answer to the PSC's Data Request No. 4.

²¹ See Airview's Answer to the Attorney General's Data Request No. 3(d).

²² See Airview's Answer to the PSC's Data Request No. 8.

²³ See Airview's Answer to the Attorney General's Data Request No. 5(a).

²⁴ See Airview's Answer to the Attorney General's Data Request No. 5(a).

²⁵ See Airview's Answer to the Attorney General's Data Request No. 5(a).

mentioned evaluation, Airview's position is that the most cost-effective way to provide sanitary sewer treatment to Airview Estates is for Elizabethtown to provide this sanitary sewer service.²⁶

Airview's abandonment was authorized by the unanimous vote of its members.²⁷ If Airview is allowed to abandon its WWTP and collection system, it has agreed to abandon all of its assets, including but not limited to the following: the Airview WWTP and related equipment, including aeration tank, effluent pump, settling tank, the chlorine contact tank and the de-chlorination equipment, the remote lift station, pumps and control panel, the collection system, cash on hand, and accounts receivable. Airview will also be abandoning its leasehold interest in the property upon which the Airview WWTP is located.²⁸

Airview has complied with all of the applicable statutory requirements in filing its Notice of Surrender and Abandonment of Utility Property with the Public Service Commission on June 16, 2016. On June 8, 2016, Airview provided written notice of its intention to file an application to abandon its utility property and surrender all of its property interests and rights in and to the property to the following entities: Mayor of the City of Elizabethtown, Kentucky, Department of Water and Wastewater of the City of Elizabethtown, Department of Planning and Development of the City of Elizabethtown, Hardin County Water District No. 2, Hardin County Water District No. 1, Hardin County Planning and Development Commission, Lincoln Trail District Health Department, Office of the Attorney General, Judge Executive of Hardin County, Kentucky, and the Kentucky Department of Environmental Protection, Division of Water.²⁹

²⁶ See Airview's Answer to the Attorney General's Data Request No. 2(h).

²⁷ See Airview's Answer to PSC Supplemental Request for Information No. 3.

²⁸ See Airview's Answer to Post-Hearing Data Request No. 3.

²⁹ See ROH 9:38:00 and Notice of Filing by Airview Utilities LLC of Notice of Compliance with KRS 278.020(11).

ARGUMENT

Pursuant to KRS 278.020, on June 8, 2016, Airview provided proper written notice of its intention to file with the Public Service Commission (“Commission”) an application to abandon its utility property and surrender all of its property interests and rights in and to the Commission. On June 16, 2016, pursuant to KRS 278.021, Airview filed its Notice of Surrender and Abandonment of Utility Property with the Public Service Commission, because it is unable to meet its financial obligations to its vendors, suppliers and service entities. It also informed the PSC that its WWTP is currently over forty (40) years old and needs significant upgrades (including but not limited to a new chlorine contact tank, dechlorination equipment, a new flow-meter and the tertiary lagoon needs to be cleaned), and that due to the cost of these upgrades, it appears economically prudent to dismantle the Airview WWTP and connect it to an existing sanitary sewer system instead of requiring Airview’s ratepayers to bear the cost of these upgrades. Finally, Airview informed the Commission that due to its current economic condition, it is unable to adequately serve its ratepayers and will be unable to protect the waters of the Commonwealth of Kentucky from degradation when its WWTP deteriorates.

As set forth in the above-referenced facts, Airview has established that it is unable to meet its financial obligations. Airview’s average monthly expenses exceed its average monthly receipts. In addition to the losses it experiences on a monthly basis, Airview is unable to pay its creditors the more than \$90,000 currently owed to them. Furthermore, the Airview WWTP has exceeded its anticipated life span, and the cost to make needed repairs to the WWTP and to clean the lagoon exceed \$150,000, while the cost to replace the worn out WWTP is estimated to be \$500,000. Mr. Carrico, the licensed professional engineer that inspected the Airview WWTP,

recommends that the Airview collection system be connected to another system rather than to rebuild or replace the WWTP.

KRS 278.021 states that:

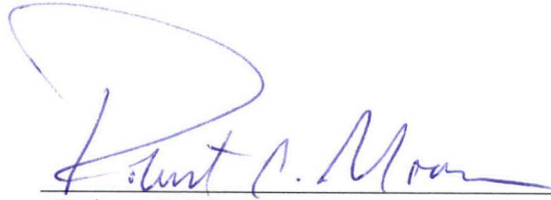
(2) For purposes of this section, a utility shall be considered abandoned if it:

(a) Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;

Airview has informed the Commission that it is surrendering all of its all property interests or all rights to its utility property. It has established that it is unable to meet its financial obligations to its vendors, suppliers and service entities. It also established that due to the age of its WWTP and the cost of needed repairs, it appears economically prudent to dismantle the Airview WWTP and connect it to an existing sanitary sewer system instead of requiring Airview's ratepayers to bear the cost of these upgrades. Finally, Airview established that due to its current economic condition, it is unable to adequately serve its ratepayers and will be unable to protect the waters of the Commonwealth of Kentucky from degradation when its WWTP deteriorates.

Airview hereby requests the Commission to enter an order approving Airview's abandonment of the Airview WWTP.

Respectfully submitted,

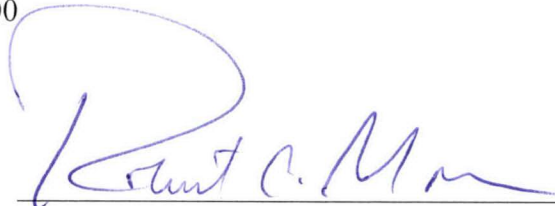


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief was served by electronic mail, on this 9th day of November, 2016 upon:

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