

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MALLARD POINT	)	
DISPOSAL SYSTEMS, INC. TO	)	CASE NO. 2006-00331
REVISE NON-RECURRING CHARGES	)	

O R D E R

On June 30, 2006, Mallard Point Disposal Systems, Inc. ("Mallard Point") filed with the Commission its application to revise non-recurring charges. By letter dated July 11, 2006, the Commission advised Mallard Point that its application was rejected for failing to comply with two filing requirements. The filing deficiencies noted were: (1) failure to attach a copy of the Articles of Incorporation of the utility as required by 807 KAR 5:001, Section 8(3); and (2) failure to notify customers by direct mailing as required by 807 KAR 5:011, Section 8, and KRS 278.185.

The Commission received a letter on July 21, 2006 from Mark S. Smith, President of Mallard Point, addressing these filing defects. To satisfy the first filing defect, Mr. Smith listed two prior proceedings<sup>1</sup> in which Mallard Point filed its Articles of Incorporation. In addressing the second defect, Mr. Smith stated that a Commission

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<sup>1</sup> Case No. 2005-00235, Application of Mallard Point Disposal Systems, Inc. For an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure For Small Utilities; Case No. 2003-00284, Application of Mallard Point Disposal Systems, Inc. For an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure For Small Utilities.

Staff member advised him that publishing the customer notice in the local newspaper for 3 consecutive weeks fulfilled the notice requirements.

The Commission finds that Mallard Point has corrected the first filing defect by referring to the prior cases in which its Articles of Incorporation had been filed. However, we find the second defect still exists. The representations of Commission Staff members are not binding upon the Commission.<sup>2</sup> Commission Staff's actions do not substitute for an Order of this Commission.<sup>3</sup> The applicable statute and regulation<sup>4</sup> clearly require sewer utilities to notify their customers by mail and not by publication in a local paper and a deviation from this requirement is not possible.

IT IS THEREFORE ORDERED that:

1. Mallard Point's application is in compliance with the filing requirement contained in 807 KAR 5:001, Section 8(3).
2. Mallard Point's application shall remain rejected for filing until it files with the Commission proof that proper notice, as required by 807 KAR 5:011, Section 8, and KRS 278.185, has been given.

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<sup>2</sup> See Union Light, Heat and Power Co. v. Public Service Commn, 271 S.W.2d 361, 365 (Ky.1954) ("the commission, like a court, acts and speaks only through its written orders").

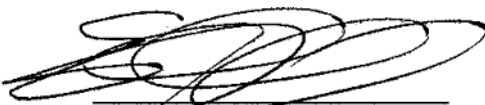
<sup>3</sup> Bee's Old Reliable Shows, Inc. v. Kentucky Power Co., 334 S.W.2d 765 (Ky. 1960).

<sup>4</sup> 807 KAR5:011, Section 8, states, in pertinent part, "Except for sewer utilities which must give a notice by mail to all of their customers pursuant to KRS 278.185. . . ." KRS 278.185(2) states: "Notification to customers of the rate change shall be in writing."

Done at Frankfort, Kentucky, this 31<sup>st</sup> day of July, 2006.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director