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April 23, 2009

**VIA FACSIMILE: 502-564-3460  
& FEDERAL EXPRESS**

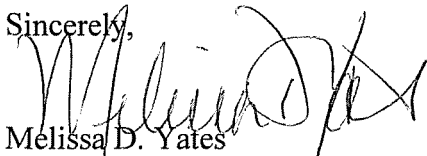
JEFF DEROUEN  
EXECUTIVE DIRECTOR  
PUBLIC SERVICE COMMISSION OF KENTUCKY  
211 SOWER BOULEVARD  
FRANKFORT KY 40602

**Re: *Purchase Public Service Corporation  
Case No. 2008-00346***

Dear Mr. DeRouen:

Please find enclosed a Notice of Entry of Appearance in the above referenced matter. Additionally, you will also find enclosed an original and eleven (11) copies of a Response to The Commission's Show Cause Order. Please date-stamp the additional copy of the Notice and Response and return to me in the envelope provided. Thank you for your consideration of this matter.

Sincerely,



Melissa D. Yates

Attorney for Purchase Public Service Corporation ("PPSC")

Enclosures

dh: 111884

**RECEIVED**

APR 24 2009

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 24 2009

PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

APPLICATION OF PURCHASE PUBLIC )  
SERVICE CORPORATION FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY -- WASTEWATER )  
TREATMENT AND LAGOON )  
)

CASE NO. 2008-00346

**NOTICE OF ENTRY OF APPEARANCE**

The undersigned, Melissa D. Yates and the law firm of Denton & Keuler, LLP, hereby enters their appearance as counsel for the Purchase Public Service Corporation, Don Elias, Kevin Murphy, Richard Nash, Richard Burnley, Melissa Rowland, Kevin Leonard, Greg Pruitt and Gary Carlton in this proceeding.

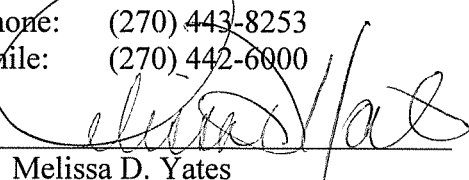
Copies of all motions, orders, correspondence, and all other documents filed in this proceeding should be served upon those persons listed on the service list and upon Melissa D. Yates at the address shown below.

This 23<sup>rd</sup> day of April, 2009.

Respectfully submitted,

DENTON & KEULER  
P. O. BOX 929  
PADUCAH KY 42002-0929  
Telephone: (270) 443-8253  
Facsimile: (270) 442-6000

By:



Melissa D. Yates

ATTORNEYS FOR PURCHASE PUBLIC  
SERVICE CORPORATION

I hereby certify that the foregoing has  
been served via facsimile to 502-564-3460  
and original via Federal Express:

JEFF DEROUEN  
EXECUTIVE DIRECTOR  
KENTUCKY PUBLIC SERVICE COMMISSION  
211 SOWER BLVD.  
FRANKFORT KY 40602

on this 23<sup>RD</sup> day of April, 2009.

By:

  
Melissa D. Yates

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

APR 24 2009

PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

APPLICATION OF PURCHASE PUBLIC )  
SERVICE CORPORATION FOR A ) Case No. 2008-00346  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY -- WASTEWATER )  
TREATMENT AND LAGOON )

**RESPONSE TO COMMISSION'S SHOW CAUSE ORDER**

COME Purchase Public Service Corporation, Don Elias, Kevin Murphy, Richard Nash, Richard Burnley, Melissa Rowland, Kevin Leonard, Greg Pruitt, and Gary Carlton, by and through counsel, and tender their Response to the Public Service Commission's April 3, 2009 Show Cause Order. Because the facts and defenses for Purchase Public Service Corporation and the named individuals are the same for each, all parties submit and join in this single response.

**INTRODUCTION**

Under KRS 278.990(1), a person may be subject to penalties if the person "willfully violates" a statute or regulation of the Public Service Commission (hereinafter the "Commission"). Purchase Public Service Corporation and its officials (hereinafter collectively referred to simply as "PPSC") did not willfully violate any statute or Commission regulation. Rather, a unique set of circumstances, including PPSC's dire financial situation and its inexperience and lack of understanding of the effect of the relevant statutes and regulations, created an unfortunate circumstance resulting in the Commission's Show Cause Order. Accordingly, PPSC and its officials should not be subject to penalties under KRS 278.990(1).

## FACTS

PPSC is a public, not-for-profit corporation created pursuant to KRS 273.161, et.seq., for the purpose of providing proper operation, maintenance, expansion, and construction of infrastructure facilities throughout the eight county Purchase Area. More specifically, PPSC operates two facilities in McCracken County, three facilities in Graves County, and one facility in Marshall County. But for PPSC assuming control over those operations, all would have likely been abandoned facilities.

The facility at issue in this matter is the Holifield Heights wastewater treatment plant (hereinafter "Holifield Heights") which serves the Holifield Heights subdivision. PPSC acquired Holifield Heights by virtue of a Franklin Circuit Court action brought against Cardinal Utilities in 1991. Due to the small customer base (ten residential units), PPSC's expenses have exceeded revenue each year since this system was acquired. A rate increase is not feasible for that area due to the fact that collections in the area are problematic due to the financial constraints of many of the residents.

On June 21, 2007, an uninsured vehicle crashed into the Holifield Heights wastewater treatment plant. The accident destroyed all of the treatment equipment utilized in that facility. Suit was brought by PPSC's insurer against the owner and operator of the vehicle in an attempt to recover damages, but neither the owner nor the operator had any assets with which to satisfy the judgment. Accordingly, PPSC received a one-time payment from its insurer to cover some of its damages, which payment totaled approximately \$40,520.

Due to the extensive damage, and while it determined what options were available to get this system back online, PPSC had no choice but to have the waste collected and hauled on a weekly basis. The cost for that hauling averaged \$3,742.50 per month. All amounts received

from the insurance company were applied to that cost, but it was still not enough to cover the total cost of hauling the waste. Because PPSC runs on an extremely limited budget, the costs associated with the hauling were a large financial burden and continued to be so until the Holifield Heights plant was replaced. In fact, it was forecasted that the expense of hauling the waste would bankrupt PPSC by January of 2009. Accordingly, time was of the essence.

At the time PPSC began evaluating its options for the lagoon, it was unaware that any application with the Commission would be necessary. Even after numerous conversations with Commission staff in the months following the accident, PPSC believed the only approval which would be necessary was that of the local health department. The first of those conversations held with commission staff occurred on February 21, 2008, when PPSC's Executive Director, Mark Davis, held a conversation with Gerald Weutcher. Mark Davis does not recall any mention of the necessity of a formal application during that conversation. Mark Davis discussed this matter again with Brian Rice on March 6, 2008, during an inspection at Holifield Heights. That discussion centered on the plan to construct the lagoon, but again a formal application was not mentioned. In fact, the necessity of a formal application was not mentioned to Mark Davis until August 6, 2008, in a casual conversation, which occurred during a chance meeting between Mr. Rice and Mark Davis at a gas station in Beaver Dam. If that conversation had never occurred, no application would have likely ever been filed because PPSC simply was unaware of the requirement to do so. Accordingly, Mark Davis sent a letter dated August 7, 2008, to the Commission requesting information about what steps would be necessary to receive approval.

Because of its limited budget and the low amount of the insurance payment, PPSC did not even have the funds available to construct the new lagoon facility. Accordingly, the Graves County Fiscal Court requested and received approval from the General Assembly for \$75,000 to

construct the new lagoon to serve the Holifield Heights area. While that request was approved, those funds are not actually available until after July 2009. Because the construction could begin without the funds, the Purchase Area Development District loaned the funds to PPSC until said time as the money is actually received by the Graves Fiscal Court.

On August 7, 2008, Mark Davis submitted a letter to the Commission's previous Executive Director, Stephanie Stumbo, requesting guidance on this matter. In response, Mark Davis was contacted by staff attorney, Todd Osterloh. As a result of that conversation, PPSC submitted its first application for a Certificate of Public Convenience and Necessity on August 18, 2008. Said filing was rejected for various filing deficiencies and was resubmitted on September 17, 2008, which filing was approved and deemed submitted on that date. In the interim, PPSC had submitted a letter to the Commission pleading for assistance in expediting its approval because of the dire financial circumstances faced by PPSC.

After PPSC's filing, the urgency of the situation was dramatically increased when the contractor informed PPSC that the construction season was coming to a close and if construction was put off any longer, it could not begin until spring 2009, by which time PPSC would have most certainly been bankrupt. It is important to note that a bankruptcy would have had a negative effect on not only Holifield Heights, but every system operated by PPSC. Accordingly, a decision was made to begin construction.

Within days of the completion of construction, almost two months after the application was deemed filed with the Commission, PPSC informed the Commission that the plant had been constructed and was operational. As a result, the Commission issued its Show Cause Order dated April 3, 2009.

## **THE ACTIONS OF PPSC WERE NOT “WILLFUL” VIOLATIONS OF STATUTES OR COMMISSION REGULATIONS**

The term “willfully”, as used in KRS 278.990, is not defined. However, the construction of the word in other statutes reveals that the standard which determines whether an action is willful is high. See, e.g., *Lebow v. Cameron*, 394 S.W.2d 773 (Ky. 1965) (“Willful” trespasser knows he is wrong in trespassing); *Turner v. Commonwealth*, 328 S.W.2d 536 (Ky. 1959) (“Willfully” burning a building means intentionally and according to a purpose, as distinguished from accidentally or involuntarily.) The Kentucky Open Records Act (KRS 61.870, et seq.) also employs use of the word “willful”. In reference to that Act, it has also been determined that even though a violation of the Act might have actually occurred, it is not necessarily a willful violation. In other words, a technical violation of the Act is not enough; the existence of bad faith is required. *Weiland v. Bd. of Tr. of Ky. Ret. Sys.*, 25 S.W.3d 88, 92 (Ky. 2000); *Lawson v. Loid*, 896 S.W.2d 1, 3, (Ky. 1995). The actions of PPSC do not meet this standard.

The actions of PPSC were not intended to deceive the Commission or to disregard the Commission’s authority. While its application was pending and immediately prior to the time construction of the plant began, PPSC, because of the urgency of its situation, really had no good options available to it. PPSC’s dire financial situation, which was made known to the Commission in a letter dated September 2, 2008, was continuing to decline. Essentially, the options were either to wait on construction and likely go bankrupt or proceed with construction and hope for the best.

While PPSC may have fallen short of the statutory requirements, its failure to do so was not intended as a slight to the Commission nor was it the product of any desire to avoid regulatory burdens. If that had been PPSC’s intention, it would not have been in contact with Commission staff for the months preceding its application, it would never have filed its



Application for the Certificate of Convenience and Necessity, and it certainly would not have notified the Commission that it had completed construction of the project by sending the letter dated November 6, 2008. Quite frankly, if PPSC had intended to deceive the Commission, it could have completed construction and then simply waited on the Commission to issue the certificate, knowing that the facility had been completed and was fully operational. However, PPSC chose to do the right thing and notify the Commission of the completed construction project.

PPSC only has the intention of providing wastewater treatment to an area that desperately needs said service, to customers which no other utility is willing to serve. PPSC runs on an extremely limited budget as many of its customers have limited means to pay. PPSC acted quickly to ensure that the continued viability of PPSC was not threatened by the costs incurred in hauling sewage from the damaged plant. If PPSC would have become insolvent, then all of the treatment facilities would have been negatively affected.

Part of the difficulty for PPSC has been learning its responsibilities under Commission rules and regulations. PPSC endeavors to be a model utility and its goal is to provide wastewater treatment facilities to all its customers in a manner that fully complies with all applicable laws and regulations. However, PPSC was unaware of the necessity and of the potential benefits of being represented by counsel in this matter. It is extremely likely that if PPSC had been represented by Counsel at the time its application was filed, Counsel could have assisted with expediting the approval process. Unfortunately, this was not the case.

Because of the serious nature of the allegations against PPSC, the parties respectfully request an expeditious informal conference in this matter. Counsel for the named parties is

available on May 11, 12, and 13, 2009, for an informal conference or, if those dates are not convenient for Commission staff, counsel is available telephonically to schedule the same.

**CONCLUSION**

For these reasons, Purchase Public Service Corporation, Dan Elias, Kevin Murphy, Richard Nash, Richard Burnley, Melissa Rowland, Kevin Leonard, and Greg Pruitt, respectfully request that they not be held to be in violation of KRS 278.020(1) and not be subject to any penalties under KRS 278.990.

Respectfully submitted,

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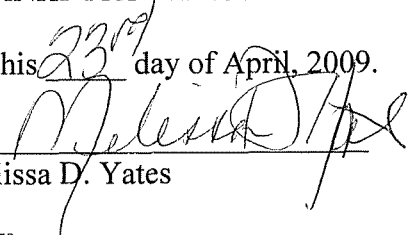
Melissa D. Yates

ATTORNEYS FOR PURCHASE PUBLIC  
SERVICE CORPORATION

I hereby certify that the foregoing has been served via facsimile 502-564-3460 and mailing original and 10 copies via Federal Express to:

EXECUTIVE DIRECTOR  
KENTUCKY PUBLIC SERVICE COMMISSION  
211 SOWER BLVD.  
FRANKFORT KY 40602

on this 23<sup>rd</sup> day of April, 2009.

  
Melissa D. Yates

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