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Charles R. Borders
Commissioner

November 17, 2009

PARTIES OF RECORD

Re: Case No. 2009-00336

Attached is a copy of the 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 informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact James R. Goff at 502/564-3940, Extension 261.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director


JG/ew

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File

FROM: J. R. Goff
Staff Attorney 

DATE: November 17, 2009

RE: Case No. 2009-00336
Application of Louisville and Jefferson County
Metropolitan Sewer District for approval of
Transfer and Control of Shadowwood Wastewater
Treatment Plant and collection system.

On November 10, 2009, a telephonic informal conference was held pursuant to the notice of Commission Staff. Names of those present at the informal conference appear on the attached sign-in sheet. The Louisville and Jefferson County Metropolitan Sewer District ("MSD") participated by telephone. Shadow Wood was given notice but chose not to participate.

The informal conference was held in regard to the application filed by MSD for approval of the transfer of the assets of Shadow Wood Wastewater Treatment Plant and collection system.

Commission Staff informed MSD that Staff was preparing to recommend to the Commission that an order be entered acknowledging that the transfer had taken place but that, due to the violation of KRS 278.020(5), the Commission could not retroactively approve the transfer date of September 19, 2008. As had been done in prior cases involving this issue, the Commission could approve the transfer as of the date of the order but not as of a date preceding the order. Staff also informed MSD that Staff would recommend to the Commission that, as a condition for approval of the transfer, MSD would be required to refund the excess rates it collected over the rates contained in the Shadow Wood tariff. This refund would apply from the date MSD imposed its tariff rate up to and including the date of the Commission's order.

MSD expressed its concern that Shadow Wood is the entity that should have applied for the transfer, that MSD is regulated by the Division of Water, and that MSD should not be required to make any refund. Commission Staff explained that MSD is considered a person under KRS 278.020(5); that, while Shadow Wood is also responsible, this case is not an enforcement action but is confined to MSD's application. MSD responded that it was concerned about the transfer being void and about the investment it had made in the utility facilities.

It was determined that there was some confusion about the interpretation of the term "final date" as stated in MSD responses to Staff's Data Request. The term does not mean that, as of the date of the transfer of assets, the Shadow Wood facility had been removed from service. The reference to "final date" was meant to refer to the date when MSD would eventually take the Shadow Wood facility out of service. At the present time, these facilities are to be retained for a period of years. MSD stated that "final date" as used here referred to the date the effluent was diverted to MSD control.

Options that were considered were based upon the statutory deadline as contained in KRS 278.020(5). Option 1 was a withdrawal of the application followed by a refiling of an application with additional information. Option 2 was scheduling the matter for a hearing before December 4 in order that MSD could present all its information to the Commission. MSD requested time to consider the options and indicated it would contact Staff later that day.

The meeting was then adjourned. Later that day, MSD called and indicated it would request recall of the application and would thereafter refile with additional information.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CASE NO. 2009-00336

APPLICATION OF THE LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT FOR AN ORDER APPROVING A
TRANSFER OF OWNERSHIP AND CONTROL

SIGN IN

November 10, 2009

PERSON	REPRESENTING
Mark Froot	PSC Staff
George W. Wakim	" "
JAMES RICE	" "
Eddie Beavers	" "
J. R. Goff	" "
Marion Gee	MSD Staff
Scott Porter	" "
Brian Bingham	" "