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April 30, 2010

PARTIES OF RECORD

Re: Case No. 2009-00403

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 M. Todd Osterloh at 502/564-3940, Extension 439.

Sincerely,

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

Jeff Derouen
Executive Director

TO/ew

Attachment

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File
FROM: Todd Osterloh, Staff Attorney MTO
DATE: April 30, 2010
RE: Case No. 2009-00403
Conference of April 27, 2010

On April 27, 2010, Commission Staff held an informal conference at the request of Evergreen Sewage Disposal, LLC ("Evergreen") to discuss the Staff Report that was issued on March 16, 2010. The following individuals participated in the informal conference:

Clarice Howard	Evergreen Sewage Disposal, LLC
Sam Bryant	PSC Staff
Jason Green	PSC Staff
Dennis Jones	PSC Staff
Todd Osterloh	PSC Staff
Sam Reid	PSC Staff

Beginning the conference, Commission Staff stated that it would prepare minutes of the conference for the case record, that a copy of the minutes would be provided to all parties, and that all parties would be given an opportunity to submit written comments upon those minutes. Staff also noted that its statements and opinions are not necessarily binding on the Commission.

Commission Staff stated that a representative of the Attorney General ("AG") informed Staff that the AG would not be participating in the informal conference. The AG's representative asked that it be noted that the AG does not have any objections to the Staff Report.

Ms. Howard asked for further clarification about why Commission Staff recommended certain adjustments in its Staff Report. Staff provided additional details about the adjustments, and the parties discussed various expenses.

Regarding the owner/manager fee listed in the Staff Report, Ms. Howard explained that Evergreen had been paying \$5,100 to a certified operator for several years and it requested a \$200 increase in that amount for a future increase. Commission Staff explained that the \$200 increase could only be recovered in rates if

those expenses were actually increased, and that Evergreen would have to provide a contractual agreement or other documentation reflecting the increased expense in order to recover it in rates. Staff also determined that the \$5,100 expense should not be listed as an owner/manager fee but, instead, as an operating expense.

Ms. Howard stated that Evergreen did not previously have an owner/manager fee. The Commission has previously allowed private sewer utilities to recover up to \$3,600 for an owner/manager fee. Staff stated that Evergreen could request that Staff amend its Staff Report to include an owner/manager fee.

The expenses identified as "Collection System" were funds paid to a private contractor to conduct sampling of the plant's effluent, as required by the Division of Water. Ms. Howard stated that those expenses have increased since the test period. If Evergreen can provide evidence that those expenses have increased, it may be able to demonstrate that the increased expense should be included in base rates.

Ms. Howard also explained that no bookkeeping fees were included within the expenses provided in Attachment A of the Staff Report. Those expenses amount to approximately \$300-400 per year.

During the meeting, Evergreen requested that the Staff Report be amended to include those increased expenses. Commission Staff stated that Evergreen would have to provide all written documentation of those expenses if Staff were to consider amending its Staff Report. Evergreen stated that it would file materials supporting those expenses within seven to 10 days.

Commission Staff and Evergreen also discussed whether Evergreen should be considered a utility and, therefore, under the Commission's jurisdiction. Evergreen is a corporation whose members are exclusively comprised of homeowners to whom the utility provides service. Mr. Osterloh explained that to be considered a utility—and therefore under Commission jurisdiction—the person or entity must be providing a service identified in KRS 278.010 to the public and for compensation. Evergreen clearly provides sewer service for compensation, but it is unclear whether it provides service "to the public" as contemplated by the statute. The Commission has previously held that a homeowners association's water distribution system was not a utility if it provided water service only to the association's members. Although Evergreen was incorporated 30 years ago with all of the homeowners that received sewer service through its facilities as members of the corporation, it is unclear how property sales would have affected the corporate makeup. In addition, service provided to tenants may dictate that Evergreen is providing sewer service to the public.

Commission Staff stated that Evergreen could request a staff opinion letter as to whether Evergreen should continue to be considered a utility and under Commission jurisdiction. Staff recommended that Evergreen continue to proceed with the rate case while it considered whether it would seek a staff opinion on whether it should be considered a utility.

The conference then adjourned.