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PUBLIC SERVICE
COMMISSION

Commonwealth of Kentucky

Before the Public Service Commission

In the Matter of:

The Petition of Mountain Water District)	Case No. 2009-00
For Disclaimer of Jurisdiction or Approval)	
of Tariff)	

2009-00405

**PETITION FOR DISCLAIMER OF JURISDICTION
OR APPROVAL OF TARIFF**

Mountain Water District, by counsel, petitions for an order declaring that certain contracts for the maintenance and operation of septic sewer systems and aerator sewage systems are not subject to Commission jurisdiction. In the alternative, Mountain requests approval of the proposed tariff for rates and service to the affected customers.

In 2005 Sidney Coal Company as part of an agreement to settle certain claims arising from allegations of environmental damages agreed to pay to Mountain Water District \$225,000 to improve environmental quality in the area of Big Creek in Pike County. To supplement that money, in November of 2005, Mountain applied for a PRIDE grant of \$396,495 to eliminate forty four failed septic systems and thirty seven straight pipes. The PRIDE application included a provision that Mountain Water District would maintain and operate the sewage facilities.

It was anticipated that all of the replacement systems would include aerators. The Kentucky Division of Water regulations require that such facilities

must be operated by a certified Class I operator. Such operations could be by contract. Mountain entered into agreements with the homeowners for maintenance and operation of the replacement systems. Mountain does not own any of the facilities.

As a result of a number of circumstances, only nine aerator systems were installed. However, fifty-four septic systems were installed. All sixty three customers signed the same maintenance agreement with Mountain, exhibit 1. Consequently, Mountain now has an agreement with these customers to maintain and operate their sewage disposal systems.

KRS 74.407 allows a water district to own and operate a sewage disposal system.

74.407 Operation of sewage disposal systems.

In addition to the other authority which water districts presently have under this chapter, water districts are hereby authorized to acquire, develop, maintain and operate sewage disposal systems within the confines of their respective districts except that such sewer systems shall not include territory within the boundaries of existing municipal corporations having the authority to provide such sewer services without the consent of such municipal corporations. In the event of annexation of territory within a water district by another municipal corporation authorized to provide sewer systems and services, the water district may continue to provide and charge for sewer services within such newly annexed areas until such annexing municipal corporation makes adequate payment, by negotiation or condemnation, for such sewage disposal facilities owned and operated by the water district. The water district commissioners shall have all of the powers and authority, as regards sewer systems that are conferred upon them for the purpose of furnishing a water supply under KRS 74.010 to 74.415.

Sewage disposal system is not defined in Chapter 74, but is defined in several regulatory agency regulations. For example,

**902 KAR 10:085 Kentucky on-site sewage disposal systems.
TITLE 902 CABINET FOR HEALTH AND FAMILY SERVICES DEPARTMENT FOR PUBLIC HEALTH
Chapter 10 Sanitation**

(25) "On-site sewage disposal system" or "on-site sewage system" or "on-site system" means a system installed on a parcel of land, under the control or ownership of a person, which accepts sewage for treatment and ultimate disposal under the surface of the ground, including:

(a) A conventional system consisting of a sewage pretreatment unit, distribution devices and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallow trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil treatment and dispersal system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) A cluster system; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal system, or connection to a municipal sewer.

**15 KAR 20:010 Definitions.
TITLE 815 PUBLIC PROTECTION AND REGULATION CABINET DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION
Chapter 20 Plumbing**

103) "Individual sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank, cesspool or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.

Nothing in these regulations or in Chapter 74 limit "sewage disposal systems" to regulated systems, such as those defined in KRS 278.010:

(3) "Utility" means any person except, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

The systems involved in these contracts do not connect to Mountain's sewage treatment facilities. The waste from these facilities is not collected or transported through any facilities owned by Mountain, which connect to its treatment facilities and Mountain does not treat any of the waste from any of these facilities. The operation and maintenance of the facilities by Mountain does not fall within the definition of sewage facilities regulated by the Commission.

Because the Commission can only regulate those services included in its statutes, the contract service provided by Mountain to the sewage disposal system customers appears to be outside the scope of Commission regulation.

For example, in Boone County Water and Sewer District v. Public Service Commission, Ky., 949 S.W.2d 588 (1997), the Commission attempted to regulate a service that is not referenced in Chapter 278. The PSC has general jurisdiction over sewage treatment, which is defined in KRS 278.010. However, the PSC attempted to regulate sewage collection, which is not mentioned anywhere in Chapter 278. The Court said on page 591 that the PSC's effort to extend sewage treatment jurisdiction over sewer collection lines exceeded its legislative grant of power:

The PSC is a creature of statute and has only such powers as have been granted to it by the General Assembly.

As an agency of limited authority, the PSC cannot add to its enumerated powers. The PSC's powers have been narrowly defined and limited by statute. Public Service Commission v. Jackson County Rural Electric Co-op, Inc., Ky. App., 590 S.W.3rd 764, 767 (2001); Cincinnati Bell Tele. Co. v. Kentucky Public Service Commission, Ky. App., 223 S.W.3rd 829, 836 (2007). If the asserted authority is not specified in the statutes, the PSC cannot add to its enumerated powers and there is no legal basis for PSC actions.

Based on the facts associated with these contracts and the limited definition of regulated sewage facility, Mountain's activities related to the Big Creek sewage disposal facilities are not included within the limited jurisdiction of the Commission.

In Case No. 2001-361, "Application of Mountain Water District for a Certificate of Convenience and Necessity to Construct a Waste Water Project",

Order of November 19, 2001, the Commission reviewed a contract among Mountain and the city of Williamson, WV. Although the Commission held that the contract was not subject to its jurisdiction because Williamson is not located in Kentucky, it held that the contract could be reviewed if its terms adversely affected the rates and service of Mountain or if the agreement was determined to be imprudent or resulted in unreasonable costs to the District's customers.

Mountain believes that the contracts under consideration will have no adverse impact on its customers and are not imprudent. By combining the money received from the coal company with PRIDE funds, a significant improvement to the water quality in the area has been accomplished. The contracts to provide for the installation and operation of these facilities represent a legitimate service recognized by Chapter 74. It is not imprudent to engage in a statutorily authorized activity, particularly when that activity directly improves the quality of the environment in the District's service area.

The rate the District will charge for the service will ultimately recover all maintenance and capital costs. The agreements provide that the customers will pay the fees imposed by the District, however, no fee is specified in the agreements. Based on representations made during the installation of these systems, customers have been charged \$14.00 per month, plus the cost of water usage as reflected in Mountain's currently approved sewer tariff. This fee was charged for only one month. Pending Commission review of this application, the District has suspended all fees and is not charging the customers any fee for the service. Upon approval of this petition by the Commission, the District will notify

the affected customers of the rate to be charged and any other terms of service consistent with the contracts. Because the rate will recover all costs associated with the service, there is no unreasonable impact on the financial condition of the District.

Mountain seeks an order from the Commission asserting that the activities associated with the contractual operation and maintenance of these facilities is not regulated and that Mountain needs no approval, certificate or authorization from the Commission to enter into and enforce the terms of the agreements and that any rates, charges, fees, penalties or terms of service related to the sewage disposal systems are not subject to Commission review or any other Commission approval.

II. Tariff Approval

Should the Commission determine that it has jurisdiction over these contracts, Mountain seeks approval of the proposed tariff to allow it to enter into the agreements, operate and maintain the facilities, and to charge a rate for the service.

Based on Mountain's estimated cost of operations, the \$14.00 originally suggested for the monthly contract fee results in an economic loss on the operations of these facilities. However, the District proposes to continue to charge that fee for the first twelve months of service subsequent to the Commission's approval of the tariff based on prior representations to the customers. At the end of that initial twelve months, the fee will increase to \$33.45 per month.

Attached are three schedules showing the cost of operating the septic and aerator systems and the rate needed to compensate it for the service provided. The \$33.45 rate will allow Mountain to recover its annual operating and maintenance expenses and the capital cost of replacing the facilities.

For these reasons, Mountain requests an order that exempts it from regulation of existing and future septic and aerator disposal system contracts and rates and conditions of service or an order that approves the attached tariff for rates and service to those customers.

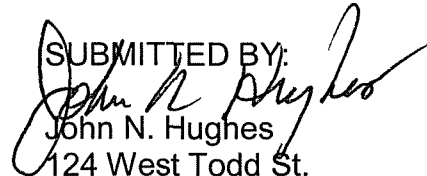
SUBMITTED BY:

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502 227 7270
Attorney for Mountain
Water District

EXHIBIT 1

SEWER USER AGREEMENT
FOR AERATOR SEWER SYSTEMS

PHONE NUMBER: 606-353- [REDACTED]

This agreement entered into between [REDACTED] whose address is [REDACTED] hereinafter called "user", and the Mountain Water District, hereinafter called the "District."

WHEREAS, the user desires to use the sewer services of the District, and to enter into a sewer users agreement as required by the Bylaws of the District.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, it is hereby understood and agreed by the parties hereto as follows:

The District shall furnish, subject to limitations set by its Bylaws and Rules and Regulations now in force or as hereafter amended, an aerator sewer system in connection with user's occupancy of the following described property:

[REDACTED] P.O. Box [REDACTED]
Sidney Ky 41564

The user agrees to grant to the District, its successors and assigns, a perpetual easement in, over, through, under, and upon the above described land, with the right to erect, construct, install Aerator Sewer System, lines and appurtenant facilities, with the right to utilize adjoining lands belonging to the user for the purpose of ingress to and egress from the above described lands.

The user hereby grants the right to the District to have an aerator sewer system installed with no tap on fee to the user for the installation of above referenced aerator sewer system.

The user agrees to comply with and be bound by the Bylaws and Rules and Regulations of the District, now and in force, or as hereafter duly and legally supplemented, amended or changed. The user also agrees to pay sewer charges at such rates, time and place as shall be determined by the District, and agrees to the imposition of such penalties for noncompliance as are now set out in the District's Bylaws and Rules and Regulations, or which may be hereafter adopted and imposed by the District. The monthly rates will be reasonable and the user shall comply with all rates, rules and regulations of the District, which are approved by the Public Service Commission of Kentucky.

The District shall have final authority on any questions of location of any service line connection to the aerator sewer system. The user recognizes that a aerator is being installed and accordingly must be aware that foreign objects, which cannot be ground, must not be disposed into the sewer. The District is responsible for the installation and routine maintenance of the grinder pump; however, if after inspection of a problem, it is found that improper items were disposed in the sewer, the user shall be billed for necessary repairs.

User also agrees that the electric and telephone service for the grinder aerator shall be supplied by the user and will allow the District to connect to their service. The District shall install and maintain service connection lines to the aerator. Service line material and installation must be in accordance with the State Plumbing Code as administered by the Division of Plumbing, Department of Housing, Building and Construction. All and any work shall be inspected by an appropriate representative of the Pike County Health Department before the service line is backfilled. The user shall keep the service line and appurtenances in good working condition at all times and keep any infiltration from entering the service line. The user shall not deposit sewage in such a manner as to cause unusual fluctuations or disturbances to the aerator. The District will use reasonable diligence in supplying aerators, but shall not be liable for breach of contract in the event of injury, damage to persons or property, or for loss resulting from interruptions in service. The service connection supplied by the District for the user has a definite capacity, and no addition to the equipment or load connected thereto will be allowed except by consent of the District. Failure to give notice of additions or changes in load and to obtain the District's consent for the same shall render the user liable for any damages to the District's lines or equipment caused by any additional or changed installation.

The user shall commence to use the aerator on the date service is made available to the user by the District. Sewer user charges to the user shall commence on the date service is made available.

It is mutually understood and agreed that the failure to pay sewer service charges duly imposed shall result in the automatic imposition of the following penalties:

1. Non-payment by the due date will be subject to a penalty of (5%) percent of the delinquent amount.
2. Non-payment within thirty days from the due date will result in the eater being shut off from the user's property.
3. In the event it becomes necessary for the District to shut off water from the user's property, a fee of \$25.00 will be charged for the reconnection of the service. The user will also be required to pay all delinquent accounts in full, unless otherwise agreed in writing.

THE DISTRICT DOES NOT GUARANTEE SEWER SERVICE TO THE USER.

IN WITNESS WHEREOF, we have executed this agreement this the 15 day of April, 2008.

USER: [Redacted Signature]
BY: [Redacted Signature]
(For Mountain Water District)

EXHIBIT 2

**Mountain Water District
Big Creek Sewer Analysis
Traditional Septic Systems**

Cost Based On A \$14.00 Per Month Bill

Number of Customers	Annual Revenue Per Customer	Monthly Revenue at \$14.00/Month	Annual Revenue at \$14.00/Month	Average Annual Cost to Maintain System	Cost Per Year To Replace Tanks (30 Years)*	Profit/(Loss)
54	\$168.00	\$756.00	\$9,072.00	\$3,330.44	\$14,373.33	(\$8,631.77)

Cost Based On A Bill For The Average System Usage Of 4,500 Gallons (Currently \$29.00 Per Month)

Number of Customers	Annual Revenue Per Customer	Monthly Revenue at 4,500 Gallons/Month	Annual Revenue Based on 4,500 Gallons (Ave. Usage)		Cost Per Year To Replace Tanks (30 Years)*	Profit/(Loss)
			Annual Revenue Based on 4,500 Gallons (Ave. Usage)	Average Annual Cost to Maintain System		
54	\$348.00	\$1,566	\$18,792.00	\$3,330.44	\$14,373.33	\$1,088.23

The above information Does Not Include Adjustments For Inflation

*Replace Cost Based on Contract Price (\$7,700.00 For Tanks)

**Mountain Water District
Big Creek Sewer Analysis
Aerator System Cost**

Cost Based On A \$14.00 Per Month Bill

Number of Customers	Annual Revenue Per Customer	Monthly Revenue at \$14.00/Month	Annual Revenue at \$14.00/Month	Average Annual Cost to Maintain System	Cost to Replace Aerator Motor (Average Life 4 Years)**	Cost Per Year To Replace Aerator Systems (30 Years)*	Profit/(Loss)
9	\$168.00	\$126.00	\$1,512.00	\$2,502.08	\$1,912.50	\$3,170.00	(\$6,072.58)

Cost Based On A Bill For The Average System Usage Of 4,500 Gallons (Currently \$29.00 Per Month)							
Number of Customers	Annual Revenue Per Customer	Monthly Revenue at 4,500 Gallons/Month	Annual Revenue Based on 4,500 Gallons (Ave. Usage)	Average Annual Cost to Maintain System	Cost to Replace Aerator Motor (Average Life 4 Years)**	Cost Per Year To Replace Aerator Systems (30 Years)*	Profit/(Loss)
9	\$348.00	\$261	\$3,132.00	\$2,502.08	\$1,912.50	\$3,170.00	(\$4,452.58)

The above information Does Not Include Adjustments For Inflation

*Replace Cost Based on Contract Price (\$9,900.00 For Aerator)

**Cost to Replace Aerator Motors and Average Life based on information received from the Pike Co. Health Department and Busy Bee Septic Systems.

**Mountain Water District
Big Creek Sewer Project**

**Monthly Revenue Per Customer Needed to Meet Operating
and Maintenance Expenses**

Traditional Septic Systems (54 Customers)	\$29.00
Aerator Systems (9 Customers)	\$70.22
Combined Rate (63 Customers)	\$33.45

*The Above Information Does Not Include Adjustments For Inflation

** Based on an Average Usage of 4,500 Gallons

EXHIBIT 3

FOR Big Creek
Community, Town or City

P.S.C. KY. NO. 1 _____

_____ SHEET NO. _____

Mountain Water District
(Name of Utility)

CANCELLING P.S.C. KY. NO. _____

_____ SHEET NO. _____

RATES AND CHARGES

Aerator and Septic Disposal Facilities

Applicability: Applies only to contract customers with aerator or septic waste facilities.

Terms of Service: Terms of service in addition to those applicable to all customers shall be included in the Sewer User Agreement, which may be modified from time to time.

Rates: Monthly rate of \$14.00 for each aerator or septic disposal facility for twelve months subsequent to PSC approval of this tariff. A rate of \$33.45 will be charged for all customers after the initial twelve months.

Issued By: _____

Date of Issuance: October 6 , 2009

Date Effective: