

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF RATES OF ERI-GEK)
SEWER TREATMENT PLANT AND FOR)
AUTHORITY TO ACQUIRE COLLECTION) CASE NO. 7899
SYSTEM AND TO EXECUTE DOCUMENTS)
NECESSARY FOR THAT PURPOSE)

O R D E R

On June 27, 1980, ERI-GEK Sewer Treatment Plant ("ERI-GEK"), a partnership owned by Eden Roc, Inc., and George E. Koppel, Sr., filed an application for an adjustment in its rates charged for sewer service. ERI-GEK filed an amended application on January 15, 1981, requesting authority to acquire collection lines from the individual partners of ERI-GEK at no cost. Public hearings on the rate application were held on December 16, 1980, and March 18, 1981, with the Attorney General's Division of Consumer Intervention ("AG"), Half Moon Apartments Partnership ("Half Moon") and Brookside Apartments ("Brookside") being present and intervening in this matter. The Commission issued its order prescribing the fair, just and reasonable rates to be charged on April 27, 1981, but, specifically deferred consideration of ERI-GEK's request to acquire the collection lines. A further hearing on that issue was held on October 1, 1981.

OWNERSHIP OF LINES

Half Moon and Brookside favored the sewerage utility's proposal to acquire all the collection lines in use by the system. However, these parties contended that the lines running along or through their property belonged to them and therefore, they could not be contributed by the individual partners to ERI-GEK unless Half Moon and Brookside were fairly compensated.

ERI-GEK furnished deeds and records evidencing transfers to Brookside and Half Moon. According to these records, the transfers were subject to existing easements and restrictions. The sewerage collection lines in question were contained in utility easements which were excepted from the conveyances. Neither Brookside nor Half Moon produced evidence to the contrary and Half Moon did not even appear at the October 1, 1981, hearing.

FEEES CHARGED BY THE INDIVIDUAL PARTNERS

At the initial hearing held December 16, 1980, ERI-GEK's witnesses testified that the partners, Eden Roc, Inc., had the right to use two-thirds of the sewerage plant's capacity and that the other partner, George E. Koppel, had the right to use the remaining one-third. These partners were involved in other interests besides the ownership of ERI-GEK, particularly land development. ERI-GEK's witnesses testified that the owners charged capacity fees to

purchasers of lots on the basis of the number of gallons of sewage those lots would need to have treated per day. For example, Care Homes, Inc., was charged \$18,400 by Eden Roc, Inc., for 9,200 gallons of capacity. The only other fees charged after 1975, the year in which the Commission was first empowered to regulate sewerage utilities, were to a YMCA and an environmental group.

Later exhibits and testimony provided by ERI-GEK indicated that the term "capacity fee" was a misnomer since the fee was really intended to recover the costs of constructing the collection lines incurred by the partners as part of their land development activity. Since these fees were designed to recover land development costs, ERI-GEK contended that the fees were properly imposed.

SUMMARY

The Commission, after consideration of all the evidence of record and being advised, is of the opinion and finds that:

1. Neither Half Moon nor Brookside owns the sewerage collection lines running along or through their property since these lines were contained in utility easements which were excepted from the transfers.
2. The capacity fee paid by Care Homes, Inc., to Eden Roc, Inc., represented a recovery of land development costs.
3. The acquisition of all the sewerage collection

lines which are a part of the ERI-GEK system at zero cost is in the public interest and should be approved since the donation of these lines will insure that the land developers, who are also the owners of ERI-GEK, will only recover their costs of constructing the lines once as no depreciation or return is allowed by the Commission on contributed property.

4. Since ERI-GEK is receiving the collection lines at zero cost no capacity fees should be charged in the future.

IT IS THEREFORE ORDERED that the acquisition of the collection lines by ERI-GEK at zero cost is hereby approved.

IT IS FURTHER ORDERED that ERI-GEK shall not charge its customers any capacity fee, tap-on fee or any other fee not specifically authorized by tariffs approved by this Commission.

Done this 29th day of January, 1982, at Frankfort, Kentucky.

PUBLIC SERVICE COMMISSION

Marlin M. Vohy
Chairman

Did Not Participate
Vice Chairman

Ann Carson
Commissioner

ATTEST:

Secretary