

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF PARADISE)
CAMP, INC. AND PARADISE CONDOMINIUM)
COMPANY FOR A CERTIFICATE OF PUBLIC) CASE NO. 8471
CONVENIENCE AND NECESSITY AND)
APPROVAL OF INITIAL RATES)

O R D E R

An application for a certificate of convenience and necessity and approval of rates was filed with this Commission on February 26, 1982. The application seeks approval of the establishment of a sewerage treatment facility to be owned and operated by Paradise Condominium Company ("Company"). Paradise Camp, Inc., is the developing and building corporation with the responsibility of constructing the treatment plant.

The application and exhibits indicate that the treatment plant is to serve only members of the Paradise Condominium Company. Membership in the Company is restricted to owners of "units" within the development. Each owner of a unit is a member of the Company.

Members of the Company are assessed a maintenance fee to defray the cost of administration and upkeep of commonly owned property of which the treatment plant is part. The fee is based on the proportionate share of ownership of each member of the Company.

For the Company to be subject to the jurisdiction of the Public Service Commission, it must provide sewerage treatment services "to the public." KRS 278.010. It is the opinion of this Commission that the Company does not meet this requirement.

The treatment plant serves the members of the Company. The only members of the Company are property owners of the condominium development. Each member is entitled to the percentage of ownership in the common property of the Company as is allocated to his/her "unit."

It, therefore, appears that the Company is not offering to provide sewerage treatment facilities to the public, but limits its service to its members.

Although there is no Kentucky law governing this situation, the generally accepted view is stated in 64 Am Jur 2d, Public Utilities § 5:

...In the absence of statute, the most important test used in determining whether a...group is in fact a public utility...is the...serving or willingness to serve the entire public within the area in which the facilities of the organization are located. If it confines its service to its own stockholders or to members of its own group and does not serve or hold itself out as willing to serve the public, it is not ordinarily considered a public utility. (Emphasis added)

Of course, if the circumstances of the Company change and treatment services are provided to other than members or if some other existing factor should change, the Commission retains the authority to review the operation of the facility and to assert jurisdiction should there be a modification of the present situation.

Based on a review of all of the information provided, IT IS ORDERED that the Paradise Condominium Company and Paradise Camp, Inc., are not subject to the jurisdiction of the Public Service Commission as furnishing sewerage treatment facilities to the public; and

That the hearing scheduled for Wednesday, May 26, 1982 is cancelled.

Done at Frankfort, Kentucky this the 25th day of May, 1982.

PUBLIC SERVICE COMMISSION

Marlin M. Johnson
Chairman

Katharine Randall
Vice Chairman

Gene Carver
Commissioner

ATTEST:

Secretary