

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN ADJUSTMENT OF RATES OF                    )  
TREE-LINE UTILITIES, INC. D/B/A            )  
TREE-LINE ESTATES SEWAGE                    )  
TREATMENT PLANT                            )     CASE NO. 9100

O R D E R

On April 26, 1985, the Commission issued an Order in this proceeding wherein it granted Tree-Line Utilities, Inc., d/b/a Tree-Line Estates Sewage Treatment Plant, ("Tree-Line") a rate increase in the amount of \$15,135. On May 15, 1985, Tree-Line filed a petition for rehearing on three of the issues discussed in the Commission's Order.

The first issue raised by Tree-Line involved its contract plant operating fee or routine maintenance fee. Tree-Line reported a test-period routine yearly maintenance fee of \$4,800. No adjustment was proposed by Tree-Line. In Tree-Line's last rate Order in Case No. 7500<sup>1</sup> issued on November 13, 1979, the Commission allowed a yearly fee of \$1,200. Since Mr. Carroll Cogan owns both Tree-Line and the vendor performing the routine maintenance service, Andriot-Davidson Service Co., Inc.,

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<sup>1</sup> The Application for a Certificate of Convenience and Necessity and the Establishment of Sanitary Sewer Rates for the Tree-Line Estates Subdivision Project (Formerly Pirouette Manor) Jefferson County, Kentucky.

("Andriot-Davidson") the transaction is at less than arms-length. In the course of this proceeding, information was requested to assist in the determination of whether the proposed fee is fair, just and reasonable. However, Tree-Line's responses to these requests were incomplete and Tree-Line failed to offer any additional evidence that the routine maintenance fee is reasonable.

The Commission maintains its position that transactions between affiliated companies cannot be accepted without substantive evidence that the services rendered are adequate and the price for those services is reasonable. The Commission has expressed this position in numerous Orders involving sewer utilities owned by Mr. Cogan, and has denied adjustments to increase the routine maintenance fee because the evidence did not support a finding that the affiliated company transactions are reasonable. The Commission in this instance will allow Tree-Line a hearing on this issue since this case was filed under the Alternative Rate Adjustment Procedure for Small Utilities ("ARF") and no hearing was conducted in the original proceedings. However, the Commission hereby notifies Tree-Line that it will not alter its position on the affiliated company transactions with mere discussions of general business practices in the sewage industry. The Commission emphasizes that it will not accept the type of evidence offered on this issue in the past. More specifically, in order to meet its burden of proof on this issue, Tree-Line must show, through verifiable and documented evidence, that:

(1) The level of service received by Tree-Line from Andriot-Davidson is comparable to the level of service provided by Andriot-Davidson to non-affiliated companies.

(2) The contract of Tree-Line for routine maintenance is comparable to the contracts of Andriot-Davidson with non-affiliated companies and the prices for routine maintenance to affiliated and non-affiliated companies are comparable for comparable contracts.

(3) The determination of the cost of materials and services to Tree-Line is comparable to the determination of the cost of materials and services to non-affiliated companies.

(4) The return to Andriot-Davidson for materials and services provided to Tree-Line is comparable to the return received for materials and services provided to non-affiliated companies.

(5) The rate of return of Andriot-Davidson on materials and services provided to Tree-Line is reasonable in comparison with the returns of similar sewage treatment plant service companies or other related businesses.

(6) There is no subsidization among affiliated companies or non-affiliated and affiliated companies through the pricing mechanisms used by Andriot-Davidson to determine the costs of materials and services.

(7) The prices paid for materials and services are at market prices or below based on bids from non-affiliated vendors with complete details of the materials or services offered by non-affiliated vendors and evidence that the bids are for comparable materials and services.

(8) No economically viable alternative to the acquisition of materials and services from affiliated companies exists.

(9) Without the benefit of some independent control over materials and services acquired from affiliated companies, the customers of the utility are afforded service at the lowest possible cost.

For the purposes of this proceeding, the Commission may consider evidence presented in other cases involving utilities owned by Carroll Cogan on this issue, and expects Tree-Line to present its case with the knowledge that, to this date, its evidence on this issue has been unacceptable. If Tree-Line chooses to submit evidence it considers to be confidential, the Commission has a procedure whereby such information can be given such treatment and still be a part of the record in this case.

The second issue raised by Tree-Line concerned the Commission's decision to disallow, for rate-making purposes, \$4,941 for repairs included in the maintenance of treatment and disposal plant expense which were non-recurring in nature. These items were considered to benefit more than one economic period and were therefore capital items. The Commission therefore allowed depreciation in the amount of \$596, resulting in a net adjustment of \$4,355. Since this case was filed under the ARP and no hearing was held, the Commission will schedule a hearing to afford Tree-Line the opportunity to present any evidence deemed appropriate as to why this issue should be treated in a different manner.

The third issue raised by Tree-Line in its petition is its request for approval of a lease agreement with Citizens Fidelity Bank which was entered into during October 1981. Tree-Line originally filed under the ARF procedure which, "provides a simplified and less expensive procedure for small utilities in applying to the Commission for rate increases,"<sup>2</sup> and was not specifically designed for financing. Therefore, the Commission is of the opinion that this should not be an issue on rehearing and advises Tree-Line that it should file an application for the approval of financing that is consistent with the Commission's regulations.

#### SUMMARY

Based on the issues presented in this petition for rehearing and the evidence of record and being advised, the Commission is of the opinion and finds that a hearing should be granted for the purpose of reconsideration on issues of the routine maintenance service fee and maintenance expense allowed in the Commission's Order of April 26, 1985.

IT IS THEREFORE ORDERED that Tree-Line is granted a rehearing on the issues of routine maintenance and maintenance expense raised by its petition and that Tree-Line shall file testimony and additional proof on these issues within 30 days from the date of this Order.


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<sup>2</sup> 807 KAR 5:076. Alternative rate adjustment procedure for small utilities. (Emphasis added.)

IT IS FURTHER ORDERED that Tree-Line's petition for rehearing on the issue of its request for approval of its lease agreement with Citizens Fidelity Bank be and it is hereby denied.

Done at Frankfort, Kentucky, this 4th day of June, 1985.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary