

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF ENVIRO)
UTILITIES, INC., FOR AN)
ADJUSTMENT OF RATES PURSUANT) CASE NO. 9101
TO THE ALTERNATIVE RATE FILING)
PROCEDURE FOR SMALL UTILITIES)

O R D E R

On January 31, 1985, the Commission issued an Order in this proceeding wherein it granted Enviro Utilities, Inc., ("Enviro") a rate increase in the amount of \$1,640. On February 21, 1985, Enviro filed a petition for rehearing on three of the issues discussed in the Commission's Order.

The first issue raised by Enviro concerned the Commission's decision to allow, for rate-making purposes, the average interest expense over the life of a 13-year lease agreement. This decision was consistent with the Commission's treatment of this issue in Enviro's last rate case. Enviro requested, in this proceeding, that the Commission reconsider the issue and limit the averaging of the interest expense to a maximum of 3 years. However, no further evidence was presented by Enviro as to why the interest expense on long-term debt should not be treated in the same manner as it was in the last case. Since this case was filed under the Alternative Rate Adjustment Procedure for Small Utilities ("ARF") and no hearing was held, the Commission will schedule a hearing to

afford Enviro the opportunity to present any evidence deemed appropriate as to why this issue should be treated in a different manner.

The second issue raised by Enviro concerned the Commission's decision to disallow, for rate-making purposes, interest expense on short-term debt to associated companies and service charges on late payments to various suppliers, including Andriot-Davidson Company, Inc., ("Andriot-Davidson") which is owned by Mr. Carroll Cogan, who is also the owner of Enviro. Enviro stated that the proceeds of the loans from associated companies were used to pay current obligations. The Commission found that to allow either the interest expense or service charges would constitute retroactive rate-making, a finding consistent with the treatment of this issue in Enviro's last rate case. However, although Enviro presented no new information on this issue, the Commission will allow a hearing to be held on this issue for the reasons stated in the preceding paragraph.

The third issue raised by Enviro involved its contract plant operating fee or routine maintenance fee. Enviro reported a test-period routine monthly maintenance fee of \$775. No adjustment was proposed by Enviro. In Enviro's last rate Order of January 3, 1984, the Commission allowed a monthly fee of \$650. Since Mr. Cogan owns both Enviro and the vendor performing the routine maintenance service, 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,

Enviro's responses to these requests were incomplete and Enviro 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 Enviro a hearing on this issue since this case was filed under the ARF procedure and no hearing was conducted in the original proceedings. However, the Commission hereby notifies Enviro that it will not alter its position on the affiliated company transactions with mere discussions of general business practices in the sewage industry. Enviro must provide documented evidence that the transactions with Andriot-Davidson are reasonable in comparison to transactions of Andriot-Davidson with non-affiliated companies, that the prices paid by Enviro for materials and services acquired from affiliated companies are at market or less, and that although these materials and services are acquired from affiliated companies, they are obtained at the lowest possible cost. Furthermore, Enviro must show that there are no economically viable alternatives to the acquisition of routine maintenance from Andriot-Davidson. Again, the Commission 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, Enviro must show, through verifiable and documented evidence, that:

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

(2) The contract of Enviro 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 provided to Enviro 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 Enviro 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 Enviro is reasonable in comparison to 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 will not consider evidence presented in other cases involving utilities owned by Carroll Cogan on this issue, and expects Enviro to present its case with the knowledge that, to this date, its evidence on this issue has been unacceptable. If Enviro chooses to submit evidence it considers to be confidential, the Commission has a procedure whereby such information can be given such treatment.

Enviro should be given 30 days in which to file testimony and present other proof on the issues involved in this petition.

SUMMARY

Based on the issues presented in the 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 of all issues raised by Enviro in its petition.

IT IS THEREFORE ORDERED that Enviro is granted rehearing on all issues raised by its petition and that Enviro shall file

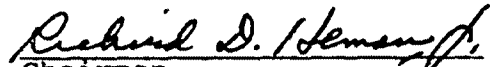
testimony and additional proof on all issues within 30 days from the date of this Order.

IT IS FURTHER ORDERED that this case be and it hereby is scheduled for hearing on the 15th day of May, 1985, at 9:00 a.m., Eastern Daylight Time, in the Commission's offices, Frankfort, Kentucky.

IT IS FURTHER ORDERED that Enviro shall give notice of the hearing in accordance with the provisions of 807 KAR 5:011, Section 8.

Done at Frankfort, Kentucky, this 13th day of March, 1985.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary