

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF FERN CREEK            )  
SEWER COMPANY, INC., FOR AN            ) CASE NO. 9137  
ADJUSTMENT OF RATES                    )

O R D E R

On March 12, 1985, the Commission issued an Order in this proceeding wherein it granted Fern Creek Sewer Company, Inc., ("Fern Creek") a rate increase in the amount of \$7,184. On March 21, 1985, Fern Creek filed a petition requesting a hearing on all matters in this case. Within that very broad request Fern Creek specifically mentioned the issues of its monthly operating fee and its yearly repairs and maintenance expense as issues it would request be heard.

The first issue raised by Fern Creek was its monthly plant operating fee or routine maintenance fee. In its Order of March 12, 1985, the Commission indicated it would consider a motion for a hearing on this matter. Since Mr. Carroll Cogan owns both Fern Creek and the vendor performing the routine maintenance service, Andriot-Davidson Company, Inc., ("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, Fern Creek's responses to these requests were incomplete and Fern Creek 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 Fern Creek 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 Fern Creek 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, Fern Creek must show, through verifiable and documented evidence, that:

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

(2) The contract of Fern Creek 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 Fern Creek 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 Fern Creek 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 Fern Creek 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 will not consider evidence presented in other cases involving utilities owned by Carroll Cogan on this issue, and expects Fern Creek to present its case with the knowledge that, to this date, its evidence on this issue has been unacceptable. If Fern Creek 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 mentioned by Fern Creek was its yearly system repairs and maintenance expense. Inasmuch as Fern Creek offered no discussion of this matter in its petition, the Commission would generally deny the request for a hearing. However, since this case was filed under the ARF procedure and no hearing was held, the Commission will hear this matter to afford Fern Creek the opportunity to present any evidence it deems appropriate. Any evidence or proof on this issue shall be filed together with the evidence on the monthly operating fee.

Fern Creek should be given 30 days in which to file testimony and present other proof on the issues discussed in this Order.

#### SUMMARY

Based on the fact that a hearing has not been held in this matter and being advised, the Commission is of the opinion and

finds that a hearing should be granted for the purpose of reconsideration of the issues of the monthly operating fee and yearly repairs and maintenance expense raised by Fern Creek in its petition.

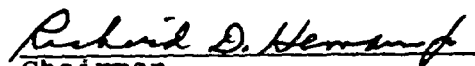
IT IS THEREFORE ORDERED that Fern Creek is granted rehearing on the two specific issues raised by its petition and that Fern Creek shall file testimony and additional proof on both issues within 30 days from the date of this Order.

IT IS FURTHER ORDERED that this case be and it hereby is scheduled for hearing on the 29th day of May, 1985, at 9:00 a.m., Eastern Daylight Time, in the Commission's offices, Frankfort, Kentucky.


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

Done at Frankfort, Kentucky, this 10th day of April, 1985.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary