

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION FOR TRANSFER OF)
OWNERSHIP FROM ODF PROPERTIES TO) CASE NO. 9398
BOONE AIRE HOMEOWNER'S ASSOCIATION, INC.)

O R D E R

By letter/application dated July 8, 1985, Boone Aire Homeowner's Association, Inc., ("Homeowners") and ODF Properties, Inc. ("ODF"), jointly requested authority to transfer ownership of a sewage treatment plant serving Lots 1 through 14, inclusive, of the Boone Aire Country Club and Estates, Covington, Kentucky, from ODF to Homeowners. This Commission has the authority and duty to pass upon the propriety of transfers of sewer utility systems under its jurisdiction. PSC v. Cities of Southgate, Ky., 268 S.W.2d 19 (1954). The application and supporting documentation reveal that the operation of the plant by ODF falls within PSC jurisdiction. KRS 278.010 et seq.

The Engineering Division conducted a field investigation on July 25, 1985, "in order to establish the operating condition of the sewage treatment system." By report dated August 12, 1985, the division reported that a 70,000 gallons per day capacity plant, was providing sewer utility service to 29 condominium apartments and/or homes, and recommended certain repairs.

At a Commission hearing on January 30, 1986, it developed that the plant, originally constructed in 1974 or 1975 by

developer, Gunpowder Creek Development Company, had been designed to serve seven condominium buildings of 24 units each, plus additional individual residential units planned for the area, for a total of approximately 205 customers. The plant presently serves only 29 customers, 24 of whom are residents of the one condominium building, (now completed), and 5 other occupants of single-family residences adjoining. The original development tract has been rezoned as single family residential.

Due to "financial trouble" experienced by the developer, ODF acquired the sewage treatment facilities at a mortgage foreclosure in February, 1979. Since acquiring the property, ODF has operated the system through an informal working arrangement with Boone Aire Condominium Association ("Condominium Association", not "Homeowners") and one of its members, who is a trained operator. Each customer pays a flat \$14 a month to the Condominium Association for his sewer service. The balance of the sewer facility's monthly operational expenses is "contributed" by ODF.

According to ODF's witness, ODF approached Boone County Sewer and Water District ("Boone County") and attempted to negotiate a take-over by the latter entity, but was unwilling to accede to Boone County's terms, which included a tap-on fee of \$400 for each additional hookup, and a starting rate of \$15.75 per month per customer.

Apparently under the impression that operation of the plant by a non-profit homeowners association form of organization would, in and of itself, remove this system from PSC jurisdiction, ODF and Homeowners have made this application.

It was contemplated (and Homeowner's Articles provide) that the original members of the Association will be composed of the 24 condominium owners and 24 other single family residence owners of homes to be constructed on the original Gunpowder tract. Additional members will be admitted from the area, by vote of the members, as new customers are hooked up.

Evidence offered at the hearing and documentation furnished by the joint applicants tend to show adequate financial resources in Boone Aire Condominium Association. Members of the Boone Aire Condominium Association are also members of the newly-formed non-profit corporation, new owner of the sewer facility.

The joint application, testimony and evidence offered at the hearing disclose that sewer service is currently being provided for a monthly rate of compensation and the new owners contemplate the addition of new customers in the undeveloped area around the plant in order to utilize the excess capacity of the plant and reduce unit costs. This constitutes an offering for "treatment of sewage for the public" within the meaning of KRS 278.010(3)(f), and subjects the plant and its new owners to the jurisdiction of this Commission.

There may be circumstances of closely held facilities where the statutory definition of a regulated utility under KRS 278.010(3)(f) does not apply, such as a person who treats only his own sewage, not "for the public" nor "for compensation", or a narrowly defined existing group of owners who share expenses only, not serving outsiders. However, where the size and nature of the plant requires the recruitment and participation of additional

"users" who may build on adjoining property, the original group becomes an offeror of utility service to the public.

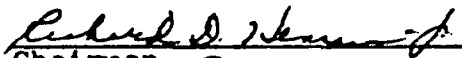
Further, Homeowners appears ready, willing and able to continue operation of the sewer plant, based on the financial condition and common membership in Boone Aire Condominium Association, contemplated addition of new customers in surrounding undeveloped areas, and availability of a trained operator.

IT IS THEREFORE ORDERED that:

1. ODF is authorized to transfer to Homeowners the sewer facilities herein described.
2. Upon completion of the transfer Homeowners will be a public utility within the meaning of KRS 278.010(3)(f).
3. Homeowners is ready, willing and able to continue operation of the sewer service.
4. Within 30 days of the completion of the transfer, Homeowners shall file an application with the Commission for the purpose of determining the fair, just and reasonable rates to be charged.

Done at Frankfort, Kentucky, this 8th day of July, 1986.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary