

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF GAINSBORO UTILITIES, INC.,)
FOR THE AUTHORITY TO ACQUIRE THE ASSETS)
OF NETTLECREEK TREATMENT PLANT, INC.,)
IN JEFFERSON COUNTY, KENTUCKY: AUTHORITY) CASE NO. 9470
TO BORROW THE NECESSARY FUNDS TO FINANCE)
PURCHASE AND A PETITION FOR AN ADJUSTMENT)
OF THE RATES CHARGED CUSTOMERS)

O R D E R

On April 2, 1986, the Consumer Advocacy Groups ("CAG"), an intervenor, filed a Motion to Dismiss the application and a Motion for Subpoena Duces Tecum. The Motion to Dismiss alleges that Gainsboro Utilities, Inc. ("Gainsboro") had violated a procedural date established by the Commission for filing responses to supplemental information requests, resulting in prejudice to CAG's ability to fully prepare for the hearing scheduled on April 9, 1986. CAG's Motion for Subpoena Duces Tecum seeks to compel the attendance of a witness from the Louisville-Jefferson County Board of Health to testify on the biological calculations of sewage treatment effluent and to produce all records relating to: (1) the assessment of an annual regulation fee for Gainsboro and all other sewage treatment facilities under the same ownership; and (2) the criminal complaints resulting in convictions and fines levied against Gainsboro and all other sewage treatment facilities under the same ownership.

On April 4, 1986, Gainsboro filed responses to each of the CAG's motions. Gainsboro argues that the Motion to Dismiss should be denied because it acted in good faith in requesting an extension of time within which to file responses to information requests but inadvertently did not discover that the Commission granted an extension shorter than had been requested. In response to the Motion for Subpoena Duces Tecum, Gainsboro states that it has no objection to the presentation of any testimony and documents which specifically relate to Gainsboro but does strenuously object to the introduction of any documents or testimony relating to other sewage treatment plants.

Based on the motions and the responses thereto, the Commission is of the opinion and hereby finds that Gainsboro has made a good faith effort to comply with the procedural schedule established by the Commission and Gainsboro's failure to timely file responses to supplemental data requests does not justify dismissing this proceeding. If, at the time of the scheduled hearing, the CAG remains of the opinion that it has been prejudiced in preparing its case by untimely responses to data requests, the CAG may request the scheduling of a supplemental hearing.

The Commission further finds that a Subpoena Duces Tecum should be issued to compel the attendance of a witness from the Louisville-Jefferson County Board of Health and for that witness to bring copies of all documents related to: (1) The assessment of an annual regulation fee for Gainsboro and its predecessor in name; and (2) Complaints, fines and convictions relating to

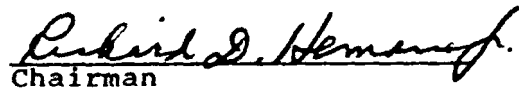
Gainsboro and its predecessor in name. This finding is based on Gainsboro's lack of objection to the production of documents relating to Gainsboro and the CAG's failure to present any reason to support the issuance of a subpoena for public documents relating to sewer facilities other than Gainsboro.

IT IS THEREFORE ORDERED that:

1. The CAG's Motion to Dismiss be and it hereby is denied.
2. The CAG's Motion for Subpoena Duces Tecum be and it hereby is partially granted to the extent that only those documents relating to Gainsboro shall be produced.

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

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary