COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF VERNA HILLS, LTD., FOR AN EMERGENCY AND PERMANENT RATE INCREASE	)))	CASE NO. 9484

ORDER DENYING REHEARING

On May 27, 1986, Verna Hills, Ltd., ("Verna Hills") filed a motion with the Commission requesting reconsideration of the rate adjustment granted in its Order entered May 9, 1986. Verna Hills stated that the rate adjustment was far too low, unfair and unjust and requested a meeting with the Commission.

On May 29, 1986, the Attorney General, by and through its Utility and Rate Intervention Division, petitioned the Commission for rehearing contending that surcharges authorized in the May 9, 1986, Order were illegal as constituting retroactive rate-making and violating the prohibition against adjudicating service issues in a rate case.

Discussion

Verna Hills' petition for rehearing fails to present any specific allegation of fact or law to support its argument that the authorized rates were too low, unfair and unjust. Verna Hills has not challenged any specific finding of the Commission, only the rates. The Commission finds that Verna Hills has failed to raise any issue to warrant a rehearing and rehearing should be denied.

In its petition the Attorney General argues that the Commission lawfully established new rates and then "tacked-on" a surcharge to recover past losses. If there is anything in this case which can be agreed to by all parties it is that the operation and management of this utility has been considerably less than desirable for the past several years. This is clearly evident in the record, Verna Hills' brief and the show cause proceeding of the Commission in Case No. 9389.[1] Further, within the past year to year and a half, both the Commission and the Natural Resources and Environmental Protection Cabinet, Division of Water, have issued repeated citations for violations of state statutes with no remedy in sight.

There have been and continue to be numerous customer complaints about the odor and health hazards in this sewer system. Verna Hills filed on March 13, 1984, a petition under Chapter 11 of the United States Bankruptcy Act. The president and sole shareholder of Verna Hills has had a personal bankruptcy petition pending since 1980. Under these circumstances, the Commission firmly believes it took the only available alternative in this unusual case when it granted surcharges in its May 9, 1986, Order. The alternative of abandoning the sewer system was totally unacceptable since it would have forced the customers to abandon their homes. Alternative ownership for Verna Hills was impossible

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1 An Investigation of the Condition of Verna Hills Ltd.

based on the trustee in Bankruptcy's inability to secure any offers to acquire the utility.

The Attorney General cites KRS 278.030 as support for its claim that rates can be set only on a prospective basis. This is precisely what the Commission did in its Order issued May 9, 1986. Rates were set prospectively based on Verna Hills' current revenue requirement, not past revenue requirement.

In support of its argument the Attorney General cited South Central Bell v. URC, Ky., 637 S.W.2d 649 (1982) in which the Supreme Court held that the Commission cannot in a rate case penalize a utility for inadequate service. In this proceeding the Commission neither penalized nor rewarded Verna Hills for its inadequate service. The service matters were identified and examined in a prior separate proceeding, Case No. 9389. That case resulted in the Commission's Order entered November 8, 1985, finding that Verna Hills had serious operational and financial problems that needed immediate attention. Consequently, Verna Hills was ordered to file a request for rate relief sufficient to alleviate the existing deficiencies. The purpose of this rate case was not to reexamine the service issues investigated in Case No. 9389, but to provide sufficient revenues to correct the noted deficiencies. It cannot be overlooked that the existing rates had been in effect unchanged since prior to 1975, and were totally inadequate to cover the utility's operating expenses. Thus, service matters were not an issue in this case.

The Attorney General has failed to indicate the manner in which the authorized surcharges constitute retroactive

rate-making. The surcharges create no new liability on prior customers nor do they relate to prior services received by existing customers. The surcharges do not allow Verna Hills to recoup prior losses. The surcharges allow the utility to recover the expenses of existing accounts payable. Without customer revenues to pay these expenses, Verna Hills will be unable to provide sewer service and the customers will be unable to inhabit their homes.

In its consideration of this case, the Commission found ongoing revenue requirement of $37,942 and other revenue requirements of $51,540 to be fair, just and reasonable. In that some of the expenditures supporting these levels of revenue requirements were of limited term, the Commission in the best interest of both Verna Hills and customers determined that it would be inappropriate to recover these limited term expenditures during the first year of operation following the rate increase even though all could have been included in the base rates. If the Commission had not authorized the surcharges now challenged by the Attorney General, the monthly rate for Verna Hills' customers would have been $48.11, a $20.28 increase over the present rate.

The Commission in deciding this case was very aware of the unique circumstances surrounding this case and the pending bankruptcy. The Commission attempted to make the best of a bad situation by requiring monthly reporting of these limited term expenditures. These surcharges are prospective in nature and in the best interest of the customers. The Commission finds the

Attorney General's arguments lack merit and do not justify a rehearing.

IT IS THERFORE ORDERED that the petitions for rehearing filed by Verna Hills and the Attorney General be and they hereby are denied.

Done at Frankfort, Kentucky, this 16th day of June, 1986.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary