

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION FOR THE TRANSFER OF)
OWNERSHIP OF A & B SANITATION COMPANY,)
INC., AND FOR A RATE ADJUSTMENT PURSUANT) CASE NO. 10391
TO THE ALTERNATIVE RATE FILING PROCEDURE)
FOR SMALL UTILITIES)

ORDER ON REHEARING

On September 7, 1989, the Commission issued its Order in this proceeding authorizing A & B Sanitation Company, Inc., now doing business as M.A.V.I.S.S. ("MAVISS"),¹ to charge new rates for service. On September 25, 1989, the Attorney General ("AG"), through his Utility Rate and Intervention Division, petitioned for rehearing. The Commission granted the AG's petition on the issues of office rental expense and MAVISS' ownership. As none of the parties have requested a hearing on these issues, the Commission now renders its decision based on the existing record and information submitted by MAVISS following the granting of the AG's petition.

During the test period, the 1987 calendar year, MAVISS incurred office and utility expenses of \$2,814. In its application, MAVISS proposed to reduce this expense to \$1,710.

¹ On October 10, 1989, A & B Sanitation Company, Inc. filed Articles of Amendment with the Kentucky Secretary of State changing its name to M.A.V.I.S.S. In recognition of this change, the Commission will refer to the utility under its current name.

The proposed reduction reflected the relocation of MAVISS' offices. In February 1988, Darrell Angle, MAVISS' sole stockholder, sold his interest in the sewer utility to Bil Darby. Prior to this transaction, MAVISS' office was located in the office of Mr. Angle's development company. Following the stock transfer, MAVISS' office moved to Mr. Darby's home.² At the time of its application, MAVISS intended its office to remain at that location.

During the course of this proceeding, MAVISS announced its intention to acquire commercial office space. At the second hearing in this matter, Mr. Darby testified that MAVISS had selected an office site and would be locating there shortly.³ He

² Transcript of Evidence (T.E.), Hearing of August 7, 1989, at 46.

³ Q: Do you have any--have you obtained an office yet?

A: I have not.

Q: When do you plan on obtaining it?

A: Well, as soon as I can move in. And I decided to take Unit G here on the Tom Harper, it's the cheaper of the two. In fact, it's really two small offices, but it is the cheaper of the two and he pays part of the--you notice the utilities on this is cheaper than the others. He pays part of the utilities. It is some kind of arrangement that he has. But that will be the cheaper office to move in and I'd take that one.

Q: So, you are planning on moving into Unit G?

A: Yes.

Id. at 115-116.

also presented several written estimates to support a larger office rental expense. Based on Mr. Darby's testimony and the written estimates, the Commission included an office rental expense of \$3,114 in MAVISS' rates.

In his petition for rehearing, the AG argued that the "increased allowance for office rental is speculative."⁴ He asserted that MAVISS has yet to secure office space and, unless the Commission requires it to conclude a lease agreement, it would continue to delay finalizing a lease. MAVISS has confirmed that, as of January 22, 1990, it had yet to acquire commercial office space and was uncertain as to when such office space would be acquired.⁵

In establishing a utility's rates, only those expenses which are known and measurable may be considered. See, e.g., Southern New England Tel. Co. v. Pub. Util. Comm'n, 282 A.2d 915 (Conn. Super. 1970). In this instance, the office rental expense proposed by MAVISS and based on the acquisition of commercial office space is clearly speculative. As MAVISS has not acquired commercial office space and is uncertain when such will be acquired, the Commission finds that only an office rental expense of \$1,710 should be allowed. This level of expense, which more accurately reflects MAVISS' expenses now and at the time of its

⁴ AG's Petition for Rehearing at 3.

⁵ Letter from Bil Darby to Claude G. Rhorer (January 25, 1990) (responding to the Commission's Order of December 8, 1989).

application, results in a revised revenue requirement of \$33,227⁶ and a monthly service rate of \$13.36.⁷

On March 30, 1989, the Commission approved the transfer of all outstanding MAVISS stock from Mr. Angle to Mr. Darby. In his petition for rehearing, the AG requests that the Commission reopen its investigation of that transfer. He contends that MAVISS' 1988 federal income tax return conflicts with Mr. Darby's claims that he has purchased all of MAVISS' outstanding stock. These returns show Mr. Angle as holding 49 percent of MAVISS' outstanding stock during the 1988 calendar year.

The Commission finds no discrepancy between MAVISS' 1988 federal tax return and Mr. Darby's description of the stock transfer. MAVISS has elected to be taxed under Subchapter S of the Internal Revenue Code. As a result, items of income, loss, deduction, and credit are passed through to shareholders and included on the shareholders' returns, in the form received, paid or incurred by the corporation. An S Corporation's items of income, loss, deduction, and credit are allocated to shareholders

⁶	Previously Allowed Office Rental Expense	\$3,114	
	Revised Office Rental Expense	1,710	
	Reduction in Operating Expenses	<u>\$1,404</u>	
	Revised Operating Expense (\$30,257 - \$1,404)		\$28,853
	Provision for Income Taxes		<u>915</u>
			\$29,768
	Operating Ratio		<u>+ .88</u>
	Revenue Requirement		\$33,827

⁷ \$33,827 + 12 months + 211 customers = \$13.36.

on a per share, per day basis. An equal part of each item is assigned to each day of the taxable year, and the amount of an equal part is divided pro rata among the shares of stock outstanding on the day to which it is assigned. 26 U.S.C. §1377(a)(1).

During a portion of 1988, Mr. Angle owned all of MAVISS' outstanding stock. Under the allocation rules for S corporations, Mr. Angle's name must be listed on MAVISS' 1988 federal tax returns as a shareholder. The Commission finds nothing improper or unusual about Mr. Angle's designation as a shareholder. The Commission further finds that Mr. Darby has acted in good faith in this matter and that no reason exists to disturb the findings of its Order of March 30, 1989.

After review of the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. MAVISS' office rental expense should be reduced to \$1,710 to reflect its failure to acquire commercial office space.
2. The rate in Appendix A, attached hereto and incorporated herein, is the fair, just, and reasonable rate for MAVISS and will produce gross annual revenues of approximately \$33,827 based on adjusted test-year sales. This rate will allow MAVISS sufficient revenues to meet its operating expenses and provide for future equity growth.
3. Bil Darby is the sole shareholder of all outstanding MAVISS stock. The stock transfer previously described in the

Commission's Order of March 30, 1989 did occur and resulted in a change in the ownership and control of MAVISS.

IT IS THEREFORE ORDERED that:

1. The rate set forth in Appendix A is the rate which MAVISS is authorized to charge for service rendered on and after the date of this Order.

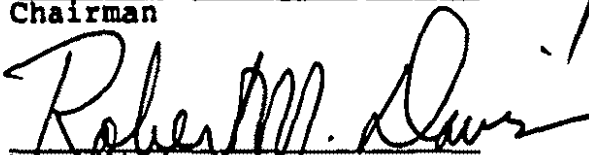
2. The Commission's Orders of March 30, 1989 and September 7, 1989 are hereby affirmed in all other respects.

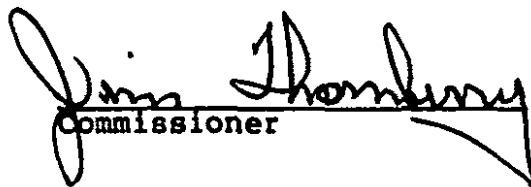
3. Within 20 days of the date of this Order, MAVISS shall file with the Commission its revised tariffs setting out the rates authorized herein.

Done at Frankfort, Kentucky, this 15th day of June, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice-Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 10391 DATED June 15, 1990

The following rates and charges are prescribed for the customers in the area served by MAVISS, Inc. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of this Commission prior to the effective date of this Order.

Flat Rate	\$13.36
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