

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF RATES OF THE GOSHEN) CASE NO.
UTILITIES, INC., SEWER DIVISION) 89-081

O R D E R

On January 16, 1990, Goshen Utilities, Inc. ("Goshen") moved for the Commission to enter an Order based on the recommendation contained in the Commission Staff Reports of October 24, 1989 and January 8, 1990, and a supplemental filing to be made by Goshen for expenses incurred in prosecuting this case. Goshen requested that the hearing scheduled in this matter be cancelled.

The Attorney General ("AG"), through his Utility and Rate Intervention Division, has filed an objection to Goshen's motion. The AG contends that the motion, if granted, will deprive the intervenors in this proceeding of their right to due process. The Commission "may not lawfully enter an order which simply adopts the rates set forth in the Staff Reports in this matter when there has been a challenge to the reports and an assertion of due process rights to a hearing."

After review of the matters of record and being otherwise sufficiently advised, the Commission finds as follows:

Goshen contends that it is willing to accept the findings contained in the amended Commission Staff Report. The AG, on the other hand, contends that the report is untested, is to be

supplemented by "some expenses as yet not even fully known by Staff" and cannot as yet suffice as evidence upon which to base a decision. The AG further contends that due process requires the parties be given the opportunity to cross examine the authors of the Commission Staff Reports.

The procedures followed in this proceeding are designed to obtain the maximum participation of all parties, to ensure full protection of all parties' rights, and to minimize the need for formal hearings. A Commission Staff review and report assists in identifying and documenting contested issues. Informal conferences after the issuance of such reports allow all interested parties to question and confront other parties, to resolve misunderstandings and to frame unresolved issues to be addressed at formal hearings.

The Commission notes that the AG has been afforded every opportunity to participate in these proceedings. On November 2, 1989, he submitted written comments on the original Staff Report raising only 2 issues of contention--the salary of Goshen's president and the consulting fees paid to James F. Stone. The AG's representative participated in an informal conference held on November 27, 1989. After that conference, he submitted additional written comments which essentially reiterated his prior position. He raised no new objections. After a supplemental Staff Report was issued, the AG representative on January 16, 1990 participated in yet another informal conference.

The Commission agrees that due process requires that all parties to an administrative proceeding be afforded a meaningful

opportunity to present testimony and to conduct cross examination. Where a party fails to avail himself of these rights, however, he waives them. In this instance, the AG was twice afforded the opportunity to dispute the findings and recommendations of the initial Staff Report. His second opportunity followed an informal conference in which he was permitted to question both the authors of a Staff Report and Goshen's representatives. The AG raised only 2 objections to the initial Staff Report and the Commission finds that the AG's right to due process as it relates to the right to comment and contest the findings of the initial Commission Staff Report has been adequately observed. We further find that the AG, by failing to preserve his right to contest such findings, has waived his right to contest these issues at hearing.

Accordingly, the scope of the scheduled hearing should be limited to those issues in the initial Staff Report which were disputed by both parties and in the comments to the initial Staff Report, i.e. consulting fees, fringe benefits relating to the consulting fees, aerator repairs, interest expense, depreciation, and the salary of Goshen's president.

IT IS THEREFORE ORDERED that:

1. Goshen's motion is denied.
2. The hearing scheduled in this matter for January 22, 1990 shall proceed. Further, this hearing shall be limited to the issues delineated above.

Done at Frankfort, Kentucky, this 19th day of January, 1990.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director