COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GARRARD COUNTY WATER ASSOCIATION, INC.) CASE NO. 89-187

O R D E R

On April 6, 1990, subsequent to a hearing held on January 9, 1990, the Commission issued an Order in this show cause proceeding finding that Garrard County Water Association, Inc. ("Garrard County") charged and collected impact fees[1] which were not prescribed in its filed tariff and which had not been approved by the Commission, in violation of KRS 278.160. The Commission ordered Garrard County to refund to the developers involved the impact fees collected in cash and, in addition, to refund to James Laughlin the amount spent by him on construction of a pressure-reducing station, and to Donald Hensley an amount equal to the difference between the material cost of the 6-inch pipe he installed versus the 4-inch pipe which would have been adequate.

On April 26, 1990, Garrard County filed a petition for rehearing with respect to the Order of the Commission that James

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1 Garrard County describes "impact fees" as one-time non-refundable charges assessed against developers to offset the cost of future improvements to the system which are made necessary by the new development's increased demand on the system.

Laughlin and Donald Hensley be refunded the cost of their improvements, amounts totalling $3,453 and $9,625 respectively. By Order issued on May 16, 1990, the Commission granted Garrard County's petition for rehearing and ordered James Laughlin and Donald Hensley to be made parties to the proceeding.[2]

The rehearing in this proceeding was held on June 19, 1990, and post-hearing memoranda were filed by Garrard County and Donald Hensley. Witnesses at the rehearing included Harold C. Ward, President and Executive Director of Garrard County; Ronald Gastineau, Consulting Engineer for Garrard County; and Donald Hensley. The bulk of the testimony concerned the circumstances surrounding the decision to use 6-inch rather than 4-inch pipe in Hensley's extension, and the benefit of Hensley's 6-inch pipe and Laughlin's pressure-reducing station to Garrard County's system as a whole, versus their development-specific nature.

JAMES LAUGHLIN EXTENSION

James Laughlin did not appear at the rehearing. Garrard County relies on the testimony of its witnesses to contend that, although Laughlin was credited for the cost of the pressure-reducing station against his calculated impact fee, the association would not have approved his project unless either the pressure-reducing station was built or class 200 PVC pipe was

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2 In its Order of May 16, 1990, the Commission also clarified its Order of April 6, 1990, to direct that the refunds of cash impact fees should include interest accrued on the principal amounts from the date of payment to the date of refund. As of the date of this Order, all cash impact fees have been refunded by Garrard County with interest.

installed. Thus, since the pressure-reducing station was an engineering requirement for his extension, Garrard County argues that it should be considered as a development-specific construction cost and not an impact fee. However, the testimony of Mr. Ward and Mr. Gastineau does not support this. Mr. Ward and Mr. Gastineau only speculated that the project may not have been approved absent one or the other improvement.[3] In fact, Mr. Ward testified repeatedly that Laughlin was given credit against his impact fee for the cost of building the pressure-reducing station because it "gave general benefit to more than just his immediate development."[4] Above all, in Laughlin's contract with Garrard County,[5] Garrard County acknowledged the benefit to the system as a whole by agreeing to credit the cost of the pressure-reducing station to Laughlin's calculated impact fee.

DONALD HENSLEY EXTENSION

In his contract with Garrard County,[6] Hensley was assessed two impact fees, an impact fee on the existing distribution system and one on the storage of the existing distribution system. The contract states that the distribution system impact fee (which was not given a monetary value) is satisfied by Hensley installing 6-inch line along High Bridge Road parallel to existing 2 and

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3 Transcript of Evidence ("T.E."), pp. 84-85 and pp. 128-129.

4 T.E., pp. 82-85 and p. 103.

5 January 9, 1990 Hearing, Commission Exhibit 3.

6 January 9, 1990 Hearing, Commission Exhibit 5.

3-inch line. The contract goes on to state that the storage impact fee (approximately $9,625) is satisfied by the installation by Hensley of 6-inch line along High Bridge Road for approximately 8300 feet, the cost of construction of which equals the amount of the calculated storage impact fee.

At the rehearing, Mr. Ward testified that the existing 2 and 3-inch pipe was not adequate to meet the demands of Hensley's proposed project, and hence Mr. Hensley was responsible for the cost of installing parallel pipe to provide service to his development.[7] This testimony was not refuted by Mr. Hensley. Although Mr. Hensley's contract refers to the imposition of an impact fee on the existing distribution system and its satisfaction by installation of the parallel line, this was actually an engineering requirement for construction of the development. Therefore, it should have been classified as a development-specific construction cost, and not an impact fee. For this reason, the Commission does not believe an illegal impact fee was assessed on the existing distribution system, and no refund is required to be made by Garrard County.

The second impact fee assessed Mr. Hensley, described as a storage impact fee in his contract, is a different matter. There was a great deal of testimony at the rehearing concerning whether Mr. Hensley voluntarily and knowingly used 6-inch pipe in his extension when 4-inch would have been adequate. No clear picture

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7 T.E., p. 41.

emerges from the testimony of either party to the proceeding. However, whether or not Mr. Hensley voluntarily used 6-inch rather than 4-inch line for the 8300 feet along High Bridge Road is not pivotal. Mr. Hensley's contract with Garrard County clearly states that construction of the 6-inch line satisfies his calculated impact fee. Mr. Ward testified at the rehearing that if Mr. Hensley had installed 4-inch rather than 6-inch line, Garrard County would have collected the $9,625 impact fee in cash from Mr. Hensley before construction was begun.[8] Although Garrard County in its Post-Hearing Memorandum contends that the 6-inch line has only potential, speculative benefit to Garrard County, Mr. Ward repeatedly testified that Garrard County took into consideration its potential benefit in deciding to waive the impact fee.[9] Garrard County clearly considered this improvement to be in the nature of an impact fee. As further evidence of this, Mr. Ward testified that the $9,625 calculated to satisfy Mr. Hensley's impact fee was included by error in that portion of his costs subject to refund; that, like an impact fee, it was not intended to be subject to refund.[10]

CONCLUSION

In short, Garrard County referred to the monies expended by Laughlin and Hensley for their improvements as impact fees, they

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8 T.E., p. 42.

9 T.E., pp. 28-29, p. 44, and p. 46.

10 T.E., p. 60.

were treated as impact fees (i.e. not subject to refund) rather than as construction costs, and they indeed had the intended effect of impact fees, i.e. to benefit the system as a whole, rather than just the specific development. The Commission is not persuaded by the testimony offered at the rehearing in this matter that the monies expended by Laughlin and Hensley for these improvements did not constitute impact fees.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the monies expended by Laughlin for construction of a pressure-reducing station, and Hensley for installation of 6-inch rather than 4-inch pipe, indeed constitute impact fees which Garrard County charged and collected in violation of KRS 278.160. This finding reiterates and affirms the findings of the Commission's Order herein of April 6, 1990.

IT IS THEREFORE ORDERED that:

1. Within 30 days of the date of entry of this Order, Garrard County shall refund to James Laughlin the amount of $3,453, his cost of constructing the pressure-reducing station, plus interest at the rate of 7 percent per annum from the date construction of the pressure-reducing station was completed until the date Garrard County actually refunds his principal amount.

2. Within 30 days of the date of entry of this Order, Garrard County shall refund to Donald Hensley the amount of $9,625, an amount equal to the cost of installing 6-inch rather than 4-inch pipe for 8300 feet along High Bridge Road, plus

interest at the rate of 7 percent per annum from the date construction of the 6-inch pipe was completed until the date Garrard County actually refunds his principal amount.

3. Proof that the refunds have been made shall be forwarded by Garrard County to the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, within 10 days of the date of refund. Proof of payment may be demonstrated by copies of cancelled checks or by any other means deemed sufficient by the Commission.

Done at Frankfort, Kentucky, this 24th day of September, 1990.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director