

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF DELAPLAIN DISPOSAL)	
COMPANY TO CONSTRUCT ADDITIONAL LINES)	CASE NO.
INTO THE MOONLAKE ESTATES SUBDIVISION IN)	90-056
SCOTT COUNTY)	

O R D E R

On March 9, 1990, Moon Lake Properties, Inc. ("Developer"), a Kentucky corporation engaged in real estate development, and Delaplain Disposal Company ("Delaplain") filed a joint application with the Commission for a Certificate of Public Convenience and Necessity to construct additional sewer lines into the Moonlake Estates Subdivision in Scott County, Kentucky. In the application, the Developer stated that it would assume all costs of construction for the extension, estimated to be \$113,653. After construction is completed and the extension connected to Delaplain's existing lines, the new lines, pump stations, man holes, and other incidental materials and easements would become the property of Delaplain, which would assume all maintenance responsibilities. No construction costs would be assumed by Delaplain and no rate increase was requested by Delaplain.

The proposed extension will serve approximately 17 lots which the Developer owns in Moonlake Subdivision. Approximately 31 existing homeowners who do not have sewer service presently

available to them will be able to connect once the proposed extension is built. The Developer plans to include the cost of construction in the selling price of its 17 lots and, in addition, to seek a pro rata contribution of \$2,500 from the owners of the 31 existing homes who connect to the system. The existing homeowners would also be required to pay Delaplain's \$500 tap-on fee.

Existing homeowners in the area who are now served by septic tanks are experiencing problems with the tanks, resulting in pollution. In fact, the local health department no longer allows construction of septic systems in the subdivision. Thus, the Developer believes that in building the mile extension it is providing a valuable public service to the area. The Developer also stated that the pro rata contribution of \$2,500 from the existing homeowners is equitable in that the value of the property of the homeowners will increase due to connection to the sewer line, and that the existing homeowners will receive a windfall if they do not pay the pro rata share. Therefore, in addition to granting a Certificate of Public Convenience and Necessity, the applicants also request the Commission to permit Delaplain to refuse to connect the existing homeowners absent proof that they have paid the \$2,500 to the Developer.

Delaplain is the successor utility to Triport Disposal Company, Inc. ("Triport"), having purchased all right, title, and

interest in the Triport facilities in April of 1986. That transfer was approved by the Commission in February of 1987¹ and in May of 1987 Delaplain filed an Adoption Notice with the Commission adopting all rates, rules, and regulations of Triport then in effect.

The Commission has dealt with the issue of requiring contributions to construction by residents of Moonlake Subdivision on two previous occasions. In October of 1980, Triport was ordered by the Commission to appear at a hearing to show cause why it should not be held in contempt for violation of numerous Commission regulations and to respond to the complaints of certain residents of Moonlake Subdivision.² At that time, Triport was collecting unauthorized tap-on fees of \$500 from residential customers in Moonlake. In addition, it was requiring prospective customers to contract with Daugherty Engineers for construction of the sewer line extension to the customer's property at a cost of \$2,200. One resident of Moonlake complained that he was refused service until both the \$500 tap fee and the \$2,200 construction fee were paid.

¹ Case No. 9532, The Application of Triport Disposal Company, Inc. for an Order Approving the Transfer of its Assets, Including all Operating Permits, to Georgetown Disposal Company.

² Case No. 7979, Complaint of Mr. Ray Parks Against Triport Disposal Company and Mr. William Daugherty as to the Provision of Sewage Services to the Moon Lake Subdivision, Georgetown, Kentucky.

Subsequent to the hearing in that case, the Commission issued an Order finding that the \$500 tap-on fee should be approved and that Triport should furnish service to any customer upon payment of the approved tap fee. The Commission also ordered Triport to file a comprehensive plan for the provision of sewer service to the entire Moonlake Subdivision.

On May 17, 1982, Triport filed an application with the Commission seeking approval of several charges, among them construction charges.³ Triport proposed to recover the cost of constructing lines in Moonlake Subdivision through contributions from customers requesting sewage service. Customers who could receive service by connecting an individual line to an existing main line would be charged \$2,837, including a tap-on fee. Where extension of the main line was necessary before any individual service lines could be installed, the customer requesting service would be required to deposit the total cost of the extension and pay a contribution of \$1,152, including a tap-on fee. Relying in part on findings made in Case No. 7979, the Commission in its final Order in Case No. 8506 made the following findings:

(3) The contributions in aid of construction proposed by Triport in excess of the present \$500 tap-on fee

³ Case No. 8506, The Application of Triport Disposal Company, for a Certificate of Public Convenience and Necessity Authorizing and Confirming said Company's Construction of its Sanitary Sewage Facilities Treatment and Disposal System Located in Moon Lake Subdivision and Portions Adjacent Thereto in Scott County, Kentucky as well as an Application for Approval of a Rate Increase for Tariffs.

should be denied and sewage services should be provided to its customers in Moon Lake in accordance with the following procedure:

Normal Extension of Sewer

The Commission finds that an extension of 25 feet or less per applicant shall be made by Triport to an existing sewer line without charge to the applicant for sewage service provided that the applicant agrees to take such service for 1 year or more.

Other Extensions

To accommodate one or more applicants for service from the same extension in those instances where the total length of the extension exceeds 25 feet per applicant, Triport may require a deposit from each applicant that will cover the cost of the extension that exceeds 25 feet per applicant. The amount of the deposit will be based on the average cost per foot of the sewer extension work, including manholes. Applicants shall agree to use the service provided by the extension for 1 year or more.

Refunds to Customers

Each customer who has paid Triport for extending a sewer line more than 25 feet will be reimbursed under the following plan: At the end of each year of the 10-year period following completion of the sewer extension, Triport will, for each new customer connected to the sewer extension during that year, refund to those customers who paid their part of the extension cost, an equal share of the cost of 25 feet of the original cost of the sewer extension. In no case will the accumulated refunds made by Triport exceed the amount deposited with Triport to pay for the extension. No refunds will be made after expiration of the 10-year refund period.

Extensions to Serve a Proposed Real Estate Development

An applicant for sewer extensions to serve a proposed real estate development may be required to pay all of the costs of the extension. The refund plan defined under "Other Extensions" is also applicable to this type of extension.

Extensions Under Other Arrangements

Triport may make extensions under other arrangements that have not been defined herein provided such arrangements have been approved by the Commission.

Thus, the Commission made a clear finding that Delaplain's extension of service should be accomplished in the manner set

forth above and, indeed, Delaplain's tariff currently on file with the Commission recites the policy verbatim.

Delaplain has in place a procedure to reimburse a developer who is required to pay all of the costs of an extension. As each of the 31 customers connect to the extension paid for by the Developer, Delaplain will refund to the Developer the cost of 25 feet of the sewer extension. Thus, the Developer will receive at least some compensation for providing the extension and Delaplain will adhere to a refund policy explicitly found by the Commission to be fair and equitable to Delaplain.⁴

In addition, Delaplain's current tariff provides that it will furnish service to any applicant upon payment of a \$500 tap fee and compliance with its rules and regulations. The Commission is without authority to permit Delaplain to refuse service to applicants because of a collateral matter or independent transaction, when the applicants otherwise meet its requirements for service.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Drawings and specifications for the proposed sewer extension prepared by Girdler Associates, Inc. of Frankfort,

⁴ On rehearing in Case No. 8506, the Commission found that Triport was unable to provide tangible evidence that the method of refunding such extensions would adversely affect it, and stated that Triport in its petition had admitted that the Commission's decision was fair.

Kentucky ("Engineer"), have been approved by the Division of Water of the Natural Resources and Environmental Protection Cabinet.

2. Public convenience and necessity require that the construction proposed in the application be performed and that a Certificate of Public Convenience and Necessity be granted.

3. The proposed construction includes approximately .75 miles of 8- and 4-inch sewer main, one pumping station, and miscellaneous appurtenances.

4. Any deviations from the construction herein approved which could adversely affect service to any customers should be done only with the prior approval of the Commission.

5. The applicants should obtain approval from the Commission prior to performing any additional construction not expressly certificated by this Order.

6. The applicants should furnish duly verified documentation of the total cost of this project including the cost of construction and all other capitalized costs (engineering, legal, administrative, etc.) within 60 days of the date that construction is substantially completed. Said construction costs should be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for Sewage Utilities prescribed by the Commission.

7. The Developer's contract with the Engineer should require the provision of full-time resident inspection under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering to ensure that the construction work is done in accordance with the contract plans

and specifications and in conformance with the best practices of the construction trades involved in the project.

8. The applicants should require the engineer to furnish a copy of the "as-built" drawings and a signed statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the date of substantial completion of this construction.

9. The sewer extension policy contained in Delaplain's tariff currently on file with the Commission, which was mandated by the Commission in its Order in Case No. 8506, is fair and equitable.

10. In accordance with said sewer extension policy, the Developer should pay for the total cost of construction of the applied-for extension. In the event that any of the 31 existing homeowners tap into the extension paid for by the Developer, the Developer should be reimbursed by Delaplain in the manner prescribed in its sewer extension policy.

IT IS THEREFORE ORDERED that:

1. The applicants be and hereby are granted a Certificate of Public Convenience and Necessity to proceed with the proposed construction as set forth in the plans and specifications of record herein.

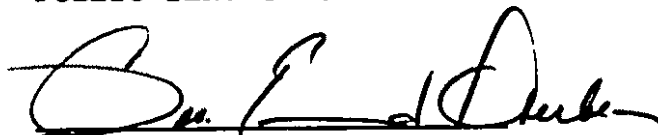
2. The applicants shall comply with all directives set out in findings 4 through 10 as if individually so ordered.

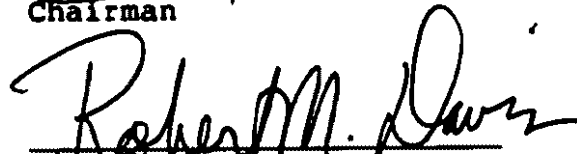
3. That portion of the Developer's and Delaplain's joint application which requests that Developer be permitted to obtain a pro rata contribution from existing homeowners for construction

costs of the extension as a condition of service shall be treated as a request for a deviation from the sewer extension policy mandated for Delaplain in Case No. 8506 and is hereby denied.

Done at Frankfort, Kentucky, this 22nd day of June, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director