

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF APPALACHIAN WASTE)	
CONTROL, INC., FOR AUTHORITY TO ACQUIRE)	
AND OPERATE THE SEWAGE TREATMENT PLANT)	CASE NO.
LOCATED AT THE RICHMOND HILLS ESTATE)	10141
SUBDIVISION, JOHNSON COUNTY, KENTUCKY)	
AND FOR APPROVAL OF RATES THEREFOR)	

O R D E R

On January 25, 1988, Appalachian Waste Control, Inc. ("Appalachian") applied for a Certificate of Public Convenience and Necessity to operate the Richmond Hills Estate Subdivision Sewage Treatment Plant ("Richmond Hills"), for approval of the transfer of ownership of that plant from First Commonwealth Bank of Prestonsburg, and for approval of initial rates for service.

Richmond Hills is a facility located in Johnson County, Kentucky which serves approximately 18 customers. Eastern Kentucky Homes, Inc. and/or F. Ray Payne built the Richmond Hills plant prior to 1984. Neither a Certificate of Public Convenience and Necessity nor a Kentucky Pollutant Discharge Elimination System permit was obtained for the plant prior to its construction or operation. Richmond Hills was operated briefly prior to 1984. It then ceased operations and fell into disrepair. On June 11, 1984, First Commonwealth Bank obtained legal title to the sewage plant and the land upon which it is located through a forced sale to satisfy a judgment against Eastern Kentucky Homes, Inc.

On June 6, 1988, First Commonwealth Bank filed a motion to intervene in this proceeding and an application proposing to transfer legal title of the Richmond Hills plant to Appalachian. First Commonwealth Bank was granted leave to intervene by Commission Order dated June 16, 1988. On February 1, 1989, First Commonwealth Bank, Appalachian, and Commission Staff entered into an agreement whereby First Commonwealth Bank agreed to expend the monies necessary to restore the sewage treatment facility to operating condition and to bring it into compliance with applicable state laws and regulations. In the agreement, Commission Staff agreed that, when the sewage treatment facility had been restored to operating condition and was in compliance with state laws and regulations, Staff would advise the Commission that Appalachian had the requisite abilities to provide reasonable service and recommend that the transfer of ownership to Appalachian be approved.

Inspections of the Richmond Hills plant in June and August of 1990 by both Commission Staff and personnel from the Natural Resources and Environmental Protection Cabinet ("Cabinet") reported the facility to be well maintained and in compliance with state regulations. Staff then complied with the agreement and recommended to the Commission that the transfer of ownership to Appalachian be approved. However, the Commission, by Order of January 2, 1991, disagreed with Staff's recommendation and denied Appalachian's application to acquire the Richmond Hills plant. The Commission based its decision to deny the application despite Staff's recommendation on the fact that the corporate charter of

Appalachian had been administratively dissolved by the Kentucky Secretary of State for failure to file its annual report, and on the fact that the Commission currently had a pending show cause proceeding against Appalachian as a result of problems with plant maintenance at another plant owned and operated by Appalachian, the Paradise Valley Sewage Treatment Plant.¹ The Commission, in its January 2, 1991 Order, found that Appalachian did not have the managerial ability to provide reasonable service at that time, and that dissolution of the corporate charter made the transfer to the corporation impossible.

On January 22, 1991, First Commonwealth Bank filed a petition for rehearing. In that petition, and in documents filed subsequent to the petition, First Commonwealth Bank provided evidence that Appalachian's corporate charter had been reinstated by the Secretary of State. In addition, a reinspection by Commission Staff of the Paradise Valley Sewage Treatment Plant on January 8, 1991, revealed that Appalachian had brought the Paradise Valley plant into compliance with Commission regulations. Consequently, the Commission, by Order of February 11, 1991, found sufficient grounds to grant First Commonwealth Bank's petition for rehearing and so ordered. The Commission dismissed its pending show cause proceeding against Appalachian with respect to the Paradise Valley plant.

¹ Case No. 90-392, Investigation of Appalachian Waste Control, Inc.; Keith Fairchild: Alleged Violation of KRS Chapter 278.

On February 5, 1991, Appalachian filed a proposed tariff with the Commission. The tariff contained the proposed rules and regulations of Appalachian with respect to the Richmond Hills plant, and proposed a flat monthly fee of \$77.94 per single family residential customer. On February 15, 1991, Appalachian filed an affidavit confirming that it had provided notice of the proposed rate to its customers in compliance with KRS 278.185 and 807 KAR 5:011, Section 8. Petitions to intervene were filed by customers of the Richmond Hills plant, and by Orders of March 12 and March 15, 1991, the Commission granted limited intervention to all petitioners. Sharon Cornette and Frank K. Belhasen were appointed spokespersons for the group; however, Mr. Belhasen later requested that he be relieved of his duties as spokesperson, which request was granted by the Commission.

Appalachian had filed documentation with the Commission on January 15, 1991 which reflected the actual cost of operating Richmond Hills. On March 18, 1991, the Commission issued an Order requesting further information from Appalachian concerning its operating expenses. Appalachian responded to the Commission's information request on March 29, 1991. Based upon Staff's review of the documentation filed by Appalachian, Staff issued its report on April 8, 1991. In the Staff Report, Staff determined Richmond Hills' revenue requirement to be \$7,513, and recommended that Appalachian be authorized to institute a monthly rate of \$36.82.

The response of the intervenors to the Staff Report of April 8, 1991 was filed with the Commission on April 17, 1991. The intervenors objected to certain findings of the Staff Report with

respect to the operating costs of the Richmond Hills plant, and proposed a revised revenue requirement. The intervenors also requested that an informal conference be held to enable them to voice their concerns. The informal conference was held in the Commission's offices on May 6, 1991. At the conference, the intervenors again objected to the allowance of certain operating expenses and submitted evidence that there are actually 18 residences served by the Richmond Hills plant, rather than the 17 upon which Staff's recommended rates were calculated. It was agreed among the parties at the conference that 18 was the correct figure. On May 8, 1991, Staff issued an Amendment to Staff Report which revised its original report with respect to the number of customers served by the Richmond Hills plant. Calculating rates based on 18 rather than 17 customers, Staff recommended in its Amendment to Staff Report that a rate of \$34.78 be prescribed for the customers of Richmond Hills. Staff did not amend its original report in any other respect. On May 15, 1991, a motion for a hearing was filed with the Commission by Mark A. Ross, an intervenor in the proceeding, and a hearing was scheduled for June 10, 1991. On June 4, 1991, Appalachian notified the Commission and all parties of the witnesses it would present at the hearing on June 10, 1991. Appalachian also notified all parties that it would introduce at the hearing evidence of rate case expenses associated with this proceeding, and attached a copy of said expenses to its notice.

The hearing was held at the Commission on June 10, 1991. Although an intervenor had requested the hearing, no intervenors

attended the hearing or presented testimony. Representatives of Appalachian and First Commonwealth Bank were present at the hearing. Appalachian presented witnesses whose testimony confirmed the figures previously supplied to the Commission to establish a basis for initial rates. Appalachian also presented testimony regarding rate case expense and services performed. Staff presented as witnesses the staff members who authored the Staff Report, whose testimony adopted the findings and recommendations of the Staff Report as amended on May 8, 1991. Staff also requested Appalachian to file a more detailed itemization of rate case expense within 10 days of the hearing. That itemization has been filed with the Commission, documenting rate case expense of \$1,075. As a result, the Commission has recalculated Richmond Hills' revenue requirement to be \$7,931 as shown below:

Operating Expenses (per Staff Report)	\$ 6,447
Rate Case Expenses (amortized over 3 years)	358
	<u>\$ 6,805</u>
Operating Ratio	+ .88
Required Operating Revenue before Income Taxes	<u>\$ 7,733</u>
Less: Operating Expenses (excluding Income Taxes)	6,805
Income Subject to Income Taxes	<u>\$ 928</u>
Gross-Up Factor	x 1.21286
Required Revenue	<u>\$ 1,126</u>
Add: Operating Expenses	6,805
Total Revenue Requirement	<u><u>\$ 7,931</u></u>

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds:

1. First Commonwealth Bank has agreed to sell and Appalachian has agreed to purchase the Richmond Hills sewage treatment facility.

2. Keith Fairchild, who will operate the Richmond Hills plant, is certified as a wastewater system operator by the Kentucky Board of Certification of Wastewater System Operators.

3. Appalachian has the financial, technical, and managerial abilities to provide reasonable utility service to the customers served by the Richmond Hills plant.

4. Inspections conducted of the Richmond Hills sewage treatment plant in June and August of 1990 reported no violations of Commission or Cabinet statutes or regulations. Therefore, pursuant to the agreement filed with the Commission on February 1, 1989, Staff has recommended to the Commission that the transfer of ownership be approved.

5. An inspection of the Paradise Valley treatment plant conducted in January of 1991 reported no violations of Commission regulations, and the Commission dismissed its show cause proceeding against Appalachian by Order of January 31, 1991.

6. Appalachian's corporate charter has been reinstated by the Secretary of State.

7. Appalachian requested in its application that it be granted a Certificate of Public Convenience and Necessity to operate the Richmond Hills plant. However, as no utility facilities are being constructed, such a certificate is inapplicable to this proceeding. Therefore, Appalachian's request for same should be denied.

8. Appalachian's total revenue requirement is \$7,931. With a customer level of 18, a rate of \$36.72 per month is necessary to produce sufficient operating revenues.

9. The rates in Appendix A, attached hereto and incorporated herein, are the fair, just, and reasonable rates for sewer service provided by Appalachian.

10. The rates proposed by Appalachian in its tariff filed on February 5, 1991 would produce revenue increases which are unreasonable and thus inconsistent with KRS 278.030.

11. Section B entitled "Other Connections" on Sheet No. 3 of Appalachian's tariff filed on February 5, 1991 is inconsistent with Commission statutes and regulations in that it allows Appalachian to negotiate and charge a sewage connection fee without the prior approval of the Commission. Any charge for a sewer connection, whether or not it affects the regular monthly rates of customers, is subject to the approval of the Commission.

IT IS THEREFORE ORDERED that:

1. The proposed transfer be and it hereby is approved.

2. Appalachian shall maintain its books of account in accordance with the Uniform System of Accounts for Sewer Utilities prescribed by the Commission.

3. Appalachian's request for a Certificate of Public Convenience and Necessity is not applicable within the context of this proceeding, and is hereby denied.

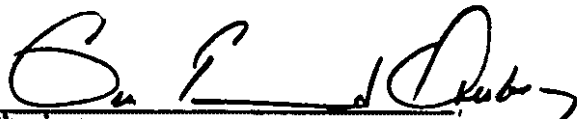
4. The rates proposed by Appalachian in its tariff filed on February 5, 1991 are hereby denied.

5. The rates contained in Appendix A are approved for service rendered by Appalachian on and after the date of this Order.

6. Within 30 days of the date of this Order, Appalachian shall file with the Commission its revised tariff setting out the rates approved herein; amending its effective date to be no sooner than the date of this Order; and amending Section B on Sheet No. 3 to bring it into compliance with Commission statutes and regulations.

Done at Frankfort, Kentucky, this 9th day of July, 1991.

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. 10141 DATED JULY 9, 1991**

**The following rate is prescribed for the customers served by
the Richmond Hills Sewage Treatment Facility.**

Monthly Rate

\$36.72