

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AMERICOAL CORPORATION)	
)	
COMPLAINANT)	CASE NO.
)	90-108
VS.)	
)	
BOONE COUNTY WATER AND SEWER DISTRICT)	
)	
DEFENDANT)	
)	
and)	
)	
AN INVESTIGATION OF BOONE COUNTY WATER AND SEWER DISTRICT)	
)	
_____)	CASE NO.
)	91-220
ALLEGED FAILURE TO COMPLY WITH)	
KRS 278.160(2))	

O R D E R

Americoal Corporation ("Americoal") having moved for an injunction¹ requiring Boone County Water and Sewer District ("Boone District") to provide water and sewer service for certain lots in the Old Lexington Pike Villas Subdivision and prohibiting Boone District from assessing a sewer tap-in fee as a condition

¹ KRS Chapter 278 does not confer injunctive powers upon the Commission. KRS 278.280, however, authorizes the Commission to order reasonable extensions of utility. KRS 278.040 empowers the Commission to regulate utilities and enforce the provisions of KRS Chapter 278. The Commission, therefore, will treat Americoal's motion as a motion for an order directing Boone District to extend service and to comply with the provisions of KRS Chapter 278.

for such service to those lots, and it appearing to the Commission as follows:

On September 30, 1991, Americoal's president, Edward Bessler, applied to Boone District for water service to 36 lots in Americoal's mobile home park in the Old Lexington Pike Villas Subdivision of Boone County, Kentucky. He tendered a check for \$10,800 to cover the cost of tap-in fees. On the face of the check appeared the notation "for water and sewer permits." The next day Boone District returned the check and advised Americoal that the Commission had prohibited acceptance of the check.²

On October 3, 1991, Bessler again applied for water service on Americoal's behalf. He again tendered a check for \$10,800³ and completed two documents. The first document was an application for water service identical to the application form found in Boone District's filed tariff.⁴ The second document was an acknowledgment that an applicant for water or sewer service would not connect to Boone District's sanitary sewer lines until its application for sanitary sewer service had been received, reviewed, and accepted. Americoal did not submit an application for sanitary sewer service. Bessler, testified that Americoal was

² Transcript of Evidence (November 20, 1991) ("T.E."), Americoal Exhibit 2.

³ This amount was apparently intended to cover water tapping fees. Boone District's filed tariff authorizes a tapping fee of \$300 for each 3/4 inch meter. \$300/meter x 36 meters = \$10,800.

⁴ Boone District Tariff (Water Service), Original Sheet No. 3.

not aware of such a requirement nor was it advised to file such application. Boone District's general manager, Paul Kroger, testified that Americoal did not request such application.

At the time of Americoal's applications for service, Boone District had no rate schedule offering sanitary sewer service to the area in question. Furthermore, on July 9, 1991, the Commission had ordered it to cease collecting all unpublished rates. Among these unpublished rates was a \$1,000 sewer capacity fee charged for each connection to Boone District's Southeast Collector Line. Following the Commission's action, Boone District refused to allow connections to that line until the Commission authorized the collection of its sewer capacity fee on an interim basis on October 22, 1991.⁵

As of November 20, 1991, the date of the evidentiary hearing in this matter, Boone District had yet to provide either water or sanitary sewer service to the lots in question. Americoal contends that Boone District is refusing to provide water service to force payment of its sewer capacity fee. Americoal further contends that it should receive sanitary sewer service for the lots in question without paying the sewer tap-in fee. To permit Boone District to assess the fee now, Americoal argues, would constitute retroactive rate-making.

⁵ Case No. 91-374, Proposed Tariff of Boone County Water and Sewer District for Sewer Capacity Fee, Order dated October 22, 1991.

Boone District attributes the delay in connection to Americoal's failure to notify it that the lots are developed and ready for service. Until such notification is received, Boone District contends it cannot schedule the installation of meters. Boone District further contends that until Americoal submits an application for sanitary sewer service, it may refuse service based upon Commission Regulation 807 KAR 5:006, Section 11. The application is needed "to provide for the orderly administration of its business."⁶

Boone District's filed rate schedules contain no provision requiring an applicant for water service to complete an application for sewer service. The application for water service found in Boone District's tariff, furthermore, makes no reference to sanitary sewer service. As KRS 278.160 prohibits Boone District from imposing a condition for service not listed in its filed rate schedule, Boone District may not require Americoal to complete an application for sanitary sewer service as a condition for water service. As Americoal has completed the requisite application for water service and paid its water tap fees, Boone District must provide water service.

As to Americoal's contention that it should not be required to pay the sewer capacity fee for the lots in question, the Commission finds that it is without merit. Assuming arguendo that

⁶ Boone District's Response to Americoal's Motion for Injunction at 3.

Americoal applied for sanitary sewer service on either September 29 or October 3, 1991, Boone District's filed tariff contained no offering for such service. Boone District, therefore, could not legally provide it. KRS 278.160; Pittsburgh & L.E.R. Co. v. South Shore R. Co., 107 A. 680 (Pa. 1919). When its tariff contains such offering, Boone District must provide that service at the rates set forth in its tariff.

IT IS THEREFORE ORDERED that:

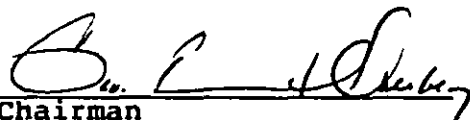
1. Americoal's motion is granted in part and denied in part.

2. Upon Americoal's request for water service to any of the lots in question and upon Americoal's satisfaction of all conditions of service set forth in Boone District's filed rate schedules, Boone District shall provide water service to the specified lot within a reasonable period but no later than 30 days from the date of the request for service.

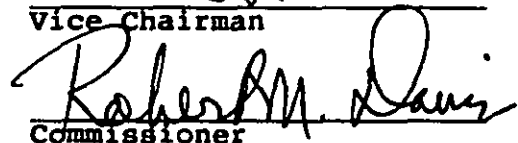
3. Upon the provision of sanitary sewer service to the lots in question, Americoal shall pay all fees and charges related to the provision of such service as set forth in Boone District's filed rate schedules, including any sewer capacity fee authorized by this Commission.

Done at Frankfort, Kentucky, this 16th day of January, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director