

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF LEVEE ROAD WATER
ASSOCIATION, INC.

ALLEGED VIOLATION OF KRS CHAPTER 278

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CASE NO. 91-236

O R D E R

On July 18, 1991, the Commission initiated this investigation to determine whether Levee Road Water Association, Inc. ("Levee Road") was charging rates in excess of its tariffed rates and making certain nonrecurring charges which were not authorized by the Commission. Levee Road was directed to appear at a hearing to show cause why it should not be penalized pursuant to KRS 278.990 for its alleged failure to comply with KRS 278.160. On September 26, 1991, a conference call took place between Levee Road and Commission Staff to negotiate a proposed settlement resolving the issues in this case. The proposed Settlement Agreement, attached hereto and incorporated herein as Appendix A, was filed into the record on February 25, 1992. The settlement expresses Staff and Levee Road's agreement on a mutually satisfactory resolution of all the issues in this case.

In determining whether the results of the Settlement Agreement are in the public interest and are reasonable, the Commission has taken into consideration the admissions made by

Levee Road in the Settlement Agreement and the steps taken by Levee Road to remediate and cure the outstanding violations. A review of the provisions of the Settlement Agreement reflects that no charges for reconnections or customer deposits or late payment penalties will be assessed until these charges are specifically approved by the Commission.

Although Levee Road admits charging rates in excess of its authorized tariff rates, an affidavit provided by Brenda Murphy, Secretary of the Association, indicates the excess revenues were collected in good faith based upon Levee Road's belief that automatic pass-throughs required no special action from this Commission. The Commission notes that the rates charged by Levee Road at the time this action was instituted generated only one-half the revenues which would have been collected had purchased water adjustment filings been made by Levee Road in a timely fashion. The Commission also notes that a recent financial audit of Levee Road conducted by Commission Staff reveals that Levee Road has operated at a net loss of \$25,449.00 for 1990 and has, pursuant to the Settlement Agreement, filed a request for a rate increase.¹

In an effort to bring itself into compliance with KRS 278.160, Levee Road has requested and received Staff assistance in revising its tariffs in the course of this proceeding. The tariff revisions include establishing non-recurring charges including a

¹ Case No. 92-007, The Application of Levee Road Water Association, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities.

late payment penalty, flat rate deposit and a reconnection charge. Levee Road has also revised its tariff to reflect the rates charged for its bulk loading station. All charges are adequately supported by cost justification and the charges are reasonable.

After consideration of the proposed Settlement Agreement, Levee Road's tariff, and being otherwise sufficiently advised, the Commission finds that:

1. The proposed Settlement Agreement is in accordance with the law and does not violate any regulatory principle, is the product of serious arms-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of this case.

2. The proposed tariff sheets reflecting a late payment penalty, a bulk sales rate, a flat rate deposit for all new customers, the current rates being charged, and a reconnection charge supported by cost justification, are fair, just, and reasonable and should be approved.

IT IS THEREFORE ORDERED that:

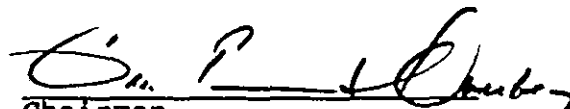
1. The Settlement Agreement is hereby adopted and approved in its entirety as a reasonable resolution to the issues in this case. Levee Road shall adhere to and comply with all provisions of the Settlement Agreement the same as if individually ordered herein.

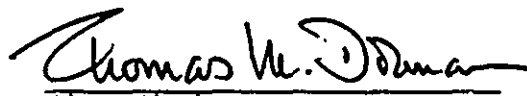
2. Levee Road's tariff issued February 10, 1992 is hereby approved effective with service rendered on and after the date of this Order.

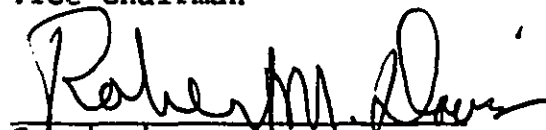
3. Within 20 days from the date of this Order, Levee Road shall refile four copies of its approved tariff sheets with the Commission.

Done at Frankfort, Kentucky, this 24th day of March, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. 91-236 DATED MARCH 24, 1992

RECEIVED

COMMONWEALTH OF KENTUCKY

FEB 25 1992

BEFORE THE PUBLIC SERVICE COMMISSION
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In the Matter of:

AN INVESTIGATION OF LEVEE ROAD WATER
ASSOCIATION, INC.

CASE NO. 91-236

ALLEGED VIOLATION OF KRS CHAPTER 278

SETTLEMENT AGREEMENT

WHEREAS, Levee Road Water Association, Inc., by Order of the Commission dated July 18, 1991, was directed to appear at a hearing scheduled August 28, 1991 in order to show cause why Levee Road Water Association, Inc. should not be penalized pursuant to KRS 278.990 for its alleged violation of KRS 278.160 by the charging of unauthorized rates; and

WHEREAS, Levee Road Water Association, Inc. has provided information indicating that past rate increases were made by the Association in good faith; and

WHEREAS, counsel for Levee Road Water Association, Inc. and counsel for the Commission have met and agreed to the following in order to resolve all outstanding issues in this proceeding;

NOW, THEREFORE, be it resolved that:

1. Levee Road Water Association, Inc. agrees to make no charges for reconnections or customer deposits or late payment penalties until such time as those charges are specifically approved by the Commission.

2. The parties hereto agree that in the past Levee Road Water Association, Inc. has never collected the 5% late payment penalty and has charged the reconnection charge only once in 1984 or 1985. The customer to whom that charge was assessed moved from the Association's water service area shortly thereafter and has since died, such facts being confirmed by the affidavit of Brenda Murphy, secretary of the Levee Road Water Association, Inc., attached hereto and incorporated herein as Exhibit A.

3. Levee Road Water Association, Inc. agrees that it reflects a 5% late payment penalty charge on its bill and that the charge is not included in its tariff. Although the penalty has never been applied, Levee Road Water Association, Inc. has agreed to include that particular charge in its proposed tariff and seeks to implement this charge immediately upon approval of this Settlement Agreement.

4. Levee Road Water Association, Inc. acknowledges that it charges a \$40 flat deposit to renters only. Levee Road Water Association, Inc. agrees that a flat rate deposit could be based on average usage that is calculated from sales information and should specify that those charges will be assessed against all new customers and not just renters. Levee Road Water Association, Inc. agrees to include language in its tariff setting forth

standard criteria regarding credit worthiness and stating that new customers would be required to pay the deposit if a need for a guarantee is determined based upon that criteria. Levee Road Water Association, Inc. seeks approval from the Commission to implement this charge immediately upon approval of this Settlement Agreement.

5. Levee Road Water Association, Inc. acknowledges that it currently charges \$3.00 per 1,000 gallons for bulk sales/truck rate. Levee Road Water Association, Inc. further acknowledges that it has had only one customer to which this rate applies and this customer was charged \$2.91 because a 3% utility tax is assessed against the purchase which results in a total cost of \$3.00 per 1,000 gallons. Levee Road Water Association, Inc. acknowledges that the \$3.00 truck rate does not appear in its tariff and has agreed to include a bulk sales rate in the tariff filing made in this proceeding.

6. Commission Staff recognizes that the current rates being charged in excess of the authorized tariff rates for Levee Road Water Association, Inc. appear to generate revenues approximately equal to the rates Levee Road Water Association, Inc. would have charged had purchased water adjustment filings been made in a timely fashion. Commission Staff agrees based upon its calculations that the rates are reasonable in light of the suppliers increases received by Levee Road Water Association, Inc. since 1986.

7. Commission Staff agrees to use its best efforts to recommend approval of the tariff filing made in this proceeding at

the same time the Settlement Agreement is presented to the Commission.

8. It is agreed that the proposed Settlement Agreement is submitted for purposes of this case only and is not deemed binding upon the parties hereto in any other proceeding, nor is it to be offered or relied upon in any other proceeding involving Levee Road Water Association, Inc. or any other utility.

9. It is agreed that if the Commission issues an order adopting this proposed Settlement Agreement in its entirety, Levee Road Water Association, Inc. shall file neither an application for rehearing with the Commission, nor an appeal to the Franklin County Circuit Court from such order.

10. It is agreed between the parties that Levee Road Water Association, Inc. shall prepare and file within 60 days of the date the Commission approves this Settlement Agreement, a rate case pursuant to the Commission's alternative rate filing procedure for small utilities, 807 KAR 5:076.

11. It is agreed that if this proposed Settlement Agreement is not adopted in its entirety, Levee Road Water Association, Inc. reserves the right to withdraw from it and require that hearings go forward upon all or any matters involved herein, and that in such event this settlement shall not be deemed binding upon the signatories hereto, nor shall same be admitted into evidence or referred to or relied on in any manner by any signatory hereto.

12. All of the signatories hereto agree that the foregoing Settlement Agreement is reasonable and in the best interest of all concerned, and urge that the Commission adopt this settlement in its entirety.

AGREED TO BY:

Brenda Murphy, Secretary
Levee Road Water Association, Inc.

1-28-92
Date

Rebecca Goodman
Hon. Rebecca Goodman on behalf
of Commission Staff

February 25, 1992
Date

AFFIDAVIT

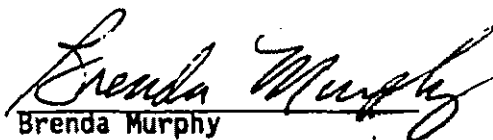
Comes the affiant Brenda Murphy and states as follow:

1. I attended a seminar held by the Kentucky Rural Water Association in Morehead, Kentucky. Your representative, Phyllis Fannin explained that pass through increase required little formality, and I interpreted this information to mean that no special action was required when an increase was forced upon us by a supplier.

2. The Levee Water Association acted under a good faith belief when they increased user rates to match supplier costs.

3. During the course of business of The Levee Road Water Association, a one time only charge of \$20.00 reconnection fee was charged to a Mr. Willie Ginter. The reason behind this fee charge was a continuing defacing of meter property of the association by MR. Ginter. The second time the meter had to be put in, the water association charged Mr. Ginter for the reconnection. Since this time, Mr. Ginter moved from our district water service and also has died. The \$20.00 has been retained by the Association.

Further the affiant sayeth not.


Brenda Murphy

STATE OF KENTUCKY)

COUNTY OF MONTGOMERY)

The foregoing Affidavit was acknowledged and sworn to before me by Brenda Murphy on this the 2nd day of October, 1991.

My Commission expires: 8-27-91


NOTARY PUBLIC, KENTUCKY, STATE-AT-LARGE