

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO ALLEGED)
UNAUTHORIZED CHARGES OF HIGHVIEW) CASE NO. 91-317
SEWER DISTRICT, INC.)

O R D E R

Highview Sewer District, Inc. ("Highview") is a sewer district formed pursuant to the provisions of KRS Chapter 67. Highview is engaged in the treatment of sewage for compensation and is subject to the regulatory jurisdiction of this Commission pursuant to KRS 278.040.

By Orders dated September 18, 1991 and November 7, 1991, the Commission requested Highview to provide certain information concerning issues raised during the course of this investigation. Highview's responses were received on October 8, 1991 and January 28, 1992.

According to the responses, Highview has transferred by contract all of its excess capacity to a developer, John Treitz and Sons, Inc. ("JTS"); and that Highview requires potential customers to obtain a release of capacity from JTS as a condition for service. Highview's shareholders are John G. Treitz and Elizabeth Treitz (John G. Treitz's sister-in-law) who each own 50 percent of Highview's stock. JTS's sole shareholder is John G. Treitz who is president of both Highview and JTS.

KRS 278.030 provides:

(1) Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.

(2) Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.

(3) Every utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates. The classifications may, in any proper case, take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.

The evidence establishes a prima facie showing of a violation of 278.030(2) because Highview has an unreasonable condition under which it will render service.

KRS 278.170 states:

(1) No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

Highview transferred all of its excess capacity to JTS. Accordingly, no other customer may reserve excess capacity. Thus, the evidence establishes a prima facie showing that Highview is giving an unreasonable advantage to JTS in violation of KRS 278.170. The evidence also establishes a prima facie showing that Highview is subjecting its other customers to an unreasonable

disadvantage since Highview's other customers should not bear the full cost of providing facilities to meet the needs of JTS.

KRS 278.160 provides:

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

Additionally, Commission Regulation 807 KAR 5:006, Sections 5(1) and 5(2), provide:

Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) A customer who has complied with the rules of the commission shall not be denied service for failure to comply with the rules of the utility which have not been made effective in the manner prescribed by the commission.

Highview's tariff does not contain as a condition for service that an applicant must obtain a release of capacity from JTS. Thus, the evidence establishes a prima facie showing of a violation of KRS 278.160(1) and 807 KAR 5:006, Section 5(2).


Furthermore, JTS has reserved service by contract at no charge. Other customers would be required to pay for service. Highview cannot contract for a lesser rate than those published and filed with the Commission. This evidence establishes a prima facie showing of a violation of KRS 278.160(2).

Additionally, the evidence establishes a prima facie showing of a violation of KRS 278.160 by Highview's admission in its responses that it assessed the Highview Meat Market a \$1,000 charge. Highview's tariff authorizes the charge for customers located in an area referred to as the "Prater Addition." However, the Market is not in the Prater Addition. Although it discovered the mistake, Highview did not refund the charge.

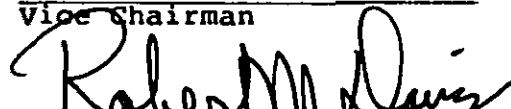
IT IS THEREFORE ORDERED that Highview shall appear at a hearing scheduled for April 14, 1992, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, and be prepared to show cause why it should not be penalized pursuant to KRS 278.990 for its probable violation of KRS 278.160, KRS 278.030, and KRS 278.170; and 807 KAR 5:006, Section 5(1) and Section 5(2).

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

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director