

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TONY HERRINGTON D/B/A )  
HERRINGTON HAVEN SEWER SYSTEM )  
 )  
\_\_\_\_\_ ) CASE NO. 93-051  
 )  
ALLEGED FAILURE TO COMPLY WITH )  
KRS 278.230(3) )

O R D E R

On February 12, 1993, the Commission ordered Tony Herrington, doing business as Herrington Haven Sewer System, to show cause why he should not be penalized for failing to comply with KRS 278.230(3). A hearing in this matter was held on April 14, 1993. Neither Herrington nor his representatives appeared.

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

1. Tony Herrington owns, controls, operates, and manages facilities in Garrard County, Kentucky, which are used for and in connection with the treatment of sewage to and for the public for compensation. He is therefore a utility subject to Commission jurisdiction. KRS 278.010(3)(f).

2. KRS 278.230(3) directs every utility, when required by the Commission, to file with it any report or other information that the Commission reasonably requires.

3. Commission Regulation 807 KAR 5:006, Section 3(1), requires every utility to file with the Commission on or before March 31 of each year a financial and statistical report of its

utility operations for the preceding calendar year on forms furnished by the Commission.

4. On or about January 2, 1993, the Commission mailed to Tony Herrington two copies of its standard forms for the annual financial and statistical report with a letter of instruction to complete the forms for his 1991 calendar year operations.

5. Tony Herrington did not file an annual financial and statistical report for his 1991 calendar year operations nor did he request an extension of time in which to make such filing.

6. On April 16, 1993, the Commission mailed a letter to Tony Herrington which advised him that the required report was past due.

7. Commission Staff subsequently contacted Tony Herrington by telephone and advised him that the required reports were past due.

8. As of the date of this Order, Tony Herrington has not filed the annual financial and statistical report for his 1991 calendar year operations.

9. On February 16, 1993, Tony Herrington was served with a copy of the Commission's Order of February 12, 1993 by certified mail.

10. Where the act which a utility is required to do is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance. See Re Dyke Water Company, 55 PUR3d 342 (Cal. P.U.C. 1964).

11. Tony Herrington has willfully failed to submit reports required by Commission Regulation 807 KAR 5:006, Section 3(1).

12. Tony Herrington has willfully failed to comply with KRS 278.230(3).

13. Tony Herrington should be assessed a penalty of \$500 for his willful failure to comply with KRS 278.230(3).

IT IS THEREFORE ORDERED that:

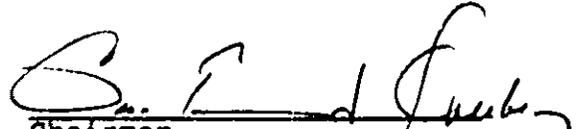
1. Tony Herrington is assessed a penalty of \$500 for his willful violation of KRS 278.230(3).

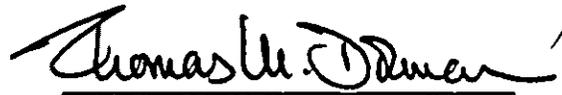
2. Tony Herrington shall pay the assessed penalty within 20 days of the date of this Order. Payment shall be made by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

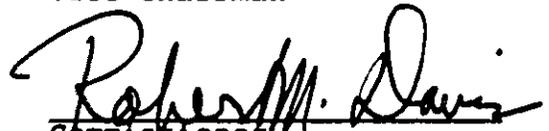
3. Within 20 days of the date of this Order, Tony Herrington shall file a completed annual report for the 1991 calendar year with the Commission.

Done at Frankfort, Kentucky, this 24th day of May, 1993.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director