

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FOREST HILLS DEVELOPERS, INC.)	
_____)	
ALLEGED VIOLATION OF KRS 278.160)	CASE NO. 93-182

O R D E R

This case is before the Commission upon remand by the Franklin Circuit Court by Order entered January 10, 1994. The case arises out of an Order of the Commission entered May 14, 1993, directing A. B. Schlatter, President of Forest Hills Developers, Inc. ("Forest Hills"), to appear before the Commission and show cause why Forest Hills should not be penalized pursuant to KRS 278.990 for failing to comply with KRS 278.160. The same Order directed Forest Hills not to charge or collect any rates not reflected in its tariff on file with the Commission. A hearing on the issues was held before the Commission on June 17, 1993, and June 23, 1993. A. B. Schlatter appeared on behalf of Forest Hills at the hearing but, upon the advice of counsel, refused to testify.

On November 9, 1993, the Commission entered an Order assessing a penalty against A. B. Schlatter for Forest Hills' failure to comply with KRS 278.160. The Order was appealed to the Franklin Circuit Court which remanded the matter to the Commission upon the Commission's request.

FINDINGS OF FACT

Forest Hills is a corporation whose principal offices are in Louisville, Kentucky. A. B. Schlatter is its president and managing officer. Forest Hills owns and operates facilities used in the treatment of sewage for the public for compensation and is a utility subject to the jurisdiction of this Commission. On February 21, 1977, A. B. Schlatter, in his capacity as president of Forest Hills, filed a schedule of Forest Hills' rates and conditions of service, otherwise known as its tariff. Since its filing the tariff has remained in full force and effect.

The Forest Hills' tariff provides for four classes of service, including a class for commercial businesses. While conducting a billing analysis of Forest Hills, Commission Staff was unable to reconcile the bills charged commercial customers with the rates authorized in the filed tariff.

The Forest Hills' tariff authorizes rates for commercial customers based upon their consumption of water. On March 18, 1993, Forest Hills' accountants were asked to provide Commission Staff the water usage of those customers whose bills are based on water consumption. Staff was informed by the accountants that all customers are charged a flat rate for the services they receive. According to the utility's records reviewed by the staff, the rate charged customers in the commercial business class is not the minimum rate reflected in Forest Hills' tariff, nor is it always clearly divisible by the minimum rate, but instead the rate varies from customer to customer.

CONCLUSIONS OF LAW

KRS 278.160(1) requires all utilities subject to the jurisdiction of the Commission to file with the Commission tariff schedules showing their rates and conditions of service. Subsection 2 of that section of the statute further requires utilities to charge for their service only in accordance with their filed tariffs. Charges for service which are greater or lesser than those permitted by the filed rate schedules are specifically prohibited by the statute. From the evidence presented, it appears that the rates charged commercial customers by Forest Hills do not conform to its tariff.

On the contrary, although the tariff requires that rates charged to commercial businesses be based upon their water consumption, the accountants who manage the utility's financial affairs have confirmed that this is not the case. This failure of Forest Hills to charge its commercial customers in accordance with the filed tariff is a violation of KRS 278.160(2).

KRS 278.990 prescribes the penalty for violation of the statutes regulating utilities. Subsection 1 of that section specifically provides as follows:

"[I]f any utility willfully violates any of the provisions of this chapter . . ., the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25), not more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission or failure of the utility."

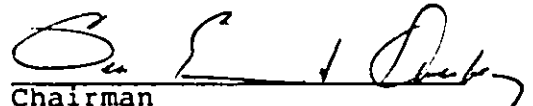
Given the clear language of the tariff that commercial businesses be charged for service based upon their water consumption, it is reasonable to conclude that those responsible for collecting the sewer fees knowingly and intentionally disregarded the tariff when they chose to charge the customer a flat rate for the service. As officers and agents of the utility their actions constituted a willful violation of KRS 278.160(2) which may be imputed to the utility. Given all of the circumstances surrounding the violation, a fine of \$1,000 for the violation assessed against Forest Hills would be appropriate.

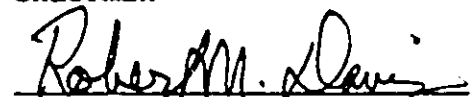
This Commission being otherwise sufficiently advised,

IT IS ORDERED that within 30 days from the date of this Order, Forest Hills shall fully comply with the provisions of KRS 278.160 by filing a tariff with the Commission which accurately reflects all rates charged and services provided. If it fails to do so, a civil penalty in the amount of \$1,000 shall be immediately due and owing. A certified check made payable to the Kentucky State Treasurer shall be mailed, if compliance is not completed, to the Office of General Counsel, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602 within 50 days from the date of this Order.

Done at Frankfort, Kentucky, this 7th day of April, 1994.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner