

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EUGENE MCGRUDER D/B/A BIG VALLEY MOBILE)
HOME SUBDIVISION SEWAGE TREATMENT PLANT)
_____))
INVESTIGATION INTO THE CONDITION AND) CASE NO. 94-451
JURISDICTIONAL STATUS OF SEWAGE UTILITY)
FACILITIES)

O R D E R

The Attorney General ("AG") and the Natural Resources and Environmental Protection Cabinet ("NREPC") have petitioned for a review of the jurisdictional status of sewage treatment facilities serving the Big Valley Mobile Home Park. In their petition, they state that the facilities are in poor condition and that the owner of the facilities is refusing to operate or maintain them. They assert that the facilities are subject to Commission jurisdiction.

Commission Staff conducted a field investigation of the sewage treatment facilities in question on March 28, 1994. In its investigation report, which is appended hereto, Commission Staff found that: Eugene McGruder owns the Big Valley Mobile Home Park sewage treatment facilities ("Big Valley"). These facilities serve 58 customers. Each customer pays a monthly fee of \$20 to the Big Valley Condo Association for water, garbage, and streetlight services and common area maintenance. Additionally each customer must pay a \$10 monthly fee to Eugene McGruder for sewer service. The Association collects both fees and forwards the sewer service fee to McGruder.

The Commission previously reviewed Big Valley's jurisdictional status in 1983.¹ After holding a hearing, the Commission concluded that the facility was not subject to Commission jurisdiction "since no compensation is received for the sewage disposal service."² We based this conclusion on the fact that the sewage fee was collected as part of the monthly maintenance fee.

In hindsight, our reasoning was erroneous. "Compensation" is defined as:

Indemnification; payment of damages, making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Remuneration for services rendered, whether in salary, fees, or commissions. Consideration or price of a privilege purchased.

Black's Law Dictionary 256 (5th ed. 1979) (emphasis added).

Where utility services are provided in exchange for legal tender, they obviously are provided for compensation. A service, however, may be provided for compensation where no fee or charge is directly assessed. In Chala v. Gordon, 26 PUR3d 47 (Cal. P.U.C. 1958), for example, the California Public Utilities Commission found a merchant operating a transportation service between his store and a labor camp to be operating that service for compensation even though he charged no fare. The Commission held that a requirement that passengers be permitted to board a vehicle

¹ Case No. 8812, Kentucky Public Service Comm'n v. Big Valley Trailer Sewage System (Sep. 19, 1983).

² Id. at 2.

for the return ride only if they had purchased merchandise at his store constituted compensation for the transportation service.

Similarly, where a tenant's rental payments cover the cost of utility service provided him and no fee directly attributable to utility service is assessed, the utility service is still provided for compensation. In Drexelbrook Associates v. Pennsylvania Pub. Util. Comm'n, 212 A.2d 237 (Pa. 1965), the Public Utility Commission argued that a landlord would not be a public utility where the cost of utility service was included in a flat rental, unitemized, rather than in a separate charge based on individual usage. Rejecting this argument, the Pennsylvania Supreme Court stated that "it is apparent that whether or not the utility charge is included in the flat rental fee or determined through submetering, it still constitutes compensation to the landlord." Id. at 240. Other courts have reached similar conclusions. See, e.g., Pub. Serv. Comm'n of Maryland v. Howard Research and Development Corp., 314 A.2d 682 (Md. 1974).

The more pertinent question is whether Big Valley is providing service to the public. The characterization of a service as public or private "does not depend . . . upon the number of persons by whom it is used, but upon whether or not it is open to the use of the public who may require it, to the extent of its capacity." Ambridge v. Pub. Serv. Comm'n of Pennsylvania, 165 A. 47, 49 (Pa. Super. 1933). See 64 Am. Jur. 2d Public Utilities §1 (1972). Stated another way, "[o]ne offers service to the 'public'. . . when he holds himself out as willing to serve all who apply up to the

capacity of his facilities. It is immaterial . . . that his service is limited to a specified area and his facilities are limited in capacity." North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966).

Accepting the petitioners' statements on their face, the sewage treatment facilities are serving the public. Sewage treatment services are being provided to persons within the trailer park. The facility is no different than any subdivision sewer treatment facility which the Commission presently regulates.

Based on the AG's and NREPC's petition, the Commission finds that proceedings are necessary to determine the present status of Big Valley's sewage treatment facilities and their compliance with Commission Regulation 807 KAR 5:071, Section 7, which requires sewage treatment facilities to be constructed, installed, maintained, and operated in accordance with accepted good engineering practice. The Commission must further determine whether the utility has been abandoned and the appointment of a receiver is necessary.

IT IS THEREFORE ORDERED that:

1. A hearing in this matter shall be held on January 4, 1995 at 9:30 a.m., Eastern Standard Time, in Hearing Room 2 of the Commission's offices at 677 Comanche Trail, Frankfort, Kentucky, for the purpose of determining the following:

a. the jurisdictional status of the Big Valley Mobile Home Park sewage treatment facilities;

b. the facilities' compliance with Commission Regulation 807 KAR 5:071, Section 7; and,

c. whether the facilities in question have been abandoned and the appointment of a receiver to operate these facilities is required.

2. Eugene McGruder shall appear before the Commission on January 4, 1995 at the same time and place as stated above for the purpose of presenting evidence on the issues identified in Ordering Paragraph 1.

3. McGruder, the AG and NREPC shall submit to the Commission within 20 days of the date of this Order written statements on the issues identified in Ordering Paragraph 1.

4. The Inspection Report of April 4, 1994, which is appended hereto, is made part of the record of this proceeding.

5. The record of Case No. 8812 is incorporated by reference into the record of this proceeding.

6. Any motion requesting any informal conference with Commission Staff to consider any matter which may aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

Done at Frankfort, Kentucky, this 1st day of December, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

Commonwealth of Kentucky
Public Service Commission

COMPLAINT INVESTIGATION REPORT

Big Valley Mobile Home Park
Wastewater Treatment System
Shepherdsville, Kentucky

The Public Service Commission (PSC) office of the Executive Director, received a letter dated March 16, 1994 (see copy attached) from Mr. Kenneth W. Wade, manager of the Environmental Sanitation Branch, Division of Environmental Health and Community Safety, Cabinet for Human Resources concerning the operation of a wastewater treatment system serving the Big Valley Mobile Home Park and owned by Eugene McGruder. The letter was then forwarded to the Division of Engineering.

This letter requested the PSC to investigate the above wastewater treatment system to determine if it is subject to the PSC's rules and regulations. This wastewater treatment system is located on Pryor Road, 2.2 miles north of the intersection of Buckman Street/61 and Blue Lick Road off Blue Lick Road.

On March 28, 1994, a field investigation was conducted to determine if the wastewater treatment system is operating as a public utility pursuant to state law and regulations.

Investigation

The investigation consisted of reviewing all files. Interviewing Mrs. Connie Hundley, 109 Pine Valley; Mr. James Crabtree, 171 Thousand Oak Circle and Mrs. Alpha Donaldson, 219 Thousand Oak

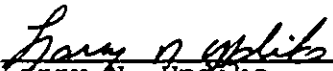
Circle who are customers of the utility and an on-site investigation of the wastewater treatment system. The following information was discovered:

1. The system consists of a lagoon, collection lines and a chlorination basin.
2. The system was constructed in 1977.
3. The system serves approximately 58 customers.
4. The customers pay a \$30 per month condominium assessment fee to the Big Valley Condo Association. This payment takes care of the water usage fees, the garbage pick-up, the street lights, the roads and the common area upkeep.
5. In the sales contract (see attached) it states that all lot owners are to pay a \$10 monthly sewer fee to be paid to Eugene McGruder and be collected by committee along with the condominium assessment.
6. On September 19, 1983, Case No. 8812 the Commission entered an order stating that Big Valley Mobile Home Park was non-jurisdictional to the Commission (see attached).

Conclusion

The office of General Counsel should determine if the Big Valley Mobile Home Park Wastewater Treatment System is subject to the jurisdiction of the Public Service Commission.

Submitted,
April 4, 1994



Larry N. Updike
Utility Investigator

GP



CABINET FOR HUMAN RESOURCES
COMMONWEALTH OF KENTUCKY
FRANKFORT 40621-0001

DEPARTMENT FOR HEALTH SERVICES

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MEMORANDUM

PUBLIC SERVICE
COMMISSION

TO: Don Mills, Executive Director
Public Service Commission
Public Protection and Regulation Cabinet

FROM: Kenneth W. Wade, Manager *KW*
Environmental Sanitation Branch
Division of Environmental Health
and Community Safety
Cabinet for Human Resources

SUBJECT: Big Valley Mobile Home Subdivision
Bullitt County

DATE: March 16, 1994

The Natural Resources and Environmental Protection Cabinet, the Bullitt County Health Department, and the Environmental Sanitation Branch are investigating the conditions at Big Valley Mobile Home Subdivision, Shepherdsville, Bullitt County, Kentucky. A concern has developed in regards as to whether Eugene McGruder, a developer of the mobile home subdivision, is operating as a public utility.

The sewage lagoon system has been inoperative for many years and the park is in terrible condition. We are presently attempting to determine how the utilities are being paid. The lot owners are required to pay \$20.00 per month for water, garbage collection, and park area maintenance. They are to pay an additional \$10.00 per month for sewage collection.

We are requesting you to investigate to determine if this situation is regulated under the rules and regulations of the Public Service Commission, and for any assistance that you may render to us.

Please contact me at 564-4856 or Mr. Scott Porter, Attorney, Department of Law, Natural Resources and Environmental Protection Cabinet at 564-5576.

Big Valley Modular Home *Subd.* "Country Living with City Conveniences"

Tired of apartment life or the cramped conditions in your present mobile home park?

Big Valley has large wooded lots-Some creekside or hillside and a new concept in modular home living . . .

Live on your own property under a condominium-set up

- \$20.00 monthly to the condominium pays for water, garbage collection, street lights and road and park area maintenance
- Commonsense restrictions to protect you and your property value

Developer provides

- Wide paved streets-Lots completely set up with water-sewer-electric and driveways

Ownership will include

- Recreation area with creek - basketball courts - tennis courts - *Adult Section*-horseshoe pitch
All furnished by Developer

Other important features of Big Valley living

We trade for Cars,
Trucks, Boats, Motor
Homes, Anything of
value.

- Louisville phone service
- Lower car insurance rates
- State Highway Dept. has funds allocated for ramp to I-65 within 3 miles
- Developer will assist you in the purchase of a new mobile home
- Owner financed

Developer will finance your lot with only 10% down

If you have equity in your present mobile home, Developer may be able to refinance your home and lot with lower monthly payments than you now have.

SEE BACK FOR
RESTRICTIONS

The annual interest you pay on your lot payment is tax deductible, which may make your lot payment less than you now pay for rent, while at the same time building up equity in your own property.

McGruder Realty & Development Co.
Route 4 Preston Hwy.
Phone: 955-6598

McGruder Realty
SALES CONTRACT

Date _____

Lot No. _____

RESTRICTIONS COVERING RESIDENCY AT BIG VALLEY MODULAR HOME PARK:

One (only) mobile home per lot

Tongue ~~just be removed~~ from mobile home when set up if bolted on

Lots must have off-street parking for all vehicles

All pets (dogs and cats only) to be kept in fenced yard or on leash - no other animals allowed

No junked or inoperable cars to be kept on lots

Yards to be kept mowed and no cars to be parked in front yards

All room additions to be approved by Developer or Committee, including outbuildings

All drainage to remain as is unless otherwise approved by Developer

All mobile homes must be underpinned

All homes must be a minimum of 720 sq. ft., either new or in good repair and condition

Fences shall not extend past front of the mobile home

All lots to pay \$20.00 a month for water, garbage pick-up, street lights, road and common area upkeep, and other uses to improve development

Developer reserves the right to remove gravel from creek

All lots owners to pay a \$10.00 monthly sewer fee to be paid to Eugene McGruder and be collected by Committee along with abovementioned condominium assessment. Water will be shut off if assessment not paid.

Water lines to be owned by Condominium and maintained

Developer will not be held responsible for trees dying, erosion, flooding, slides, or other acts of nature

Developer reserves the right to add to or to delete restrictions

Committee of three people to first be appointed by Developer and elected every year thereafter will enforce restrictions. Restrictions may be changed by a vote of 70% of lot owners with Developer approval as long as Developer has an interest

We have read this contract, understand the contents thereof fully, and acknowledge receipt of same. We are not relying on verbal statements not contained herein. We further certify that we have examined the property described hereinabove: that we are thoroughly acquainted with its condition and accept it as such.

McGruder Realty
SALES CONTRACT

Date _____

Lot No. _____

RESTRICTIONS COVERING RESIDENCY AT BIG VALLEY MODULAR HOME PARK:

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