

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TONY HERRINGTON D/B/A
HERRINGTON HAVEN SEWER SYSTEM

ALLEGED FAILURE TO COMPLY WITH
KRS 278.140 AND 278.230(3)

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) CASE NO. 94-375
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O R D E R

On October 11, 1994, 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 278.140 and 278.230(3). A hearing in this matter was held on August 30, 1995. Neither Tony Herrington nor his representative 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 278.140 requires every utility, on or before March 31 of each year, to file with the Commission a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year.

3. 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.

4. 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.

5. On or about January 2, 1994, the Commission mailed to Tony Herrington two copies of its standard forms for report of gross earnings derived from intrastate business and for the annual financial and statistical report with a letter of instruction to complete the forms for his 1993 calendar year operations.

6. As of April 1, 1994, Tony Herrington had neither filed these reports for his 1993 calendar year operations nor requested an extension of time in which to make such filing.

7. On April 11, 1994, Commission Staff advised Tony Herrington by letter that the required reports were past due.

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

9. As of the date of this Order, Tony Herrington has not filed a report of gross earnings derived from intrastate business nor an annual financial and statistical report for his 1993 calendar year operations.

10. On June 19, 1995, Tony Herrington was served with a copy of the Commission's Orders of October 11, 1995 and June 15, 1995 by first class mail. See KRS 278.410(1).

11. 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).

12. Tony Herrington has willfully failed to submit reports required by KRS 278.140.

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

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

15. Tony Herrington should be assessed a penalty of \$250 for his willful failure to comply with KRS 278.140 and KRS 278.230(3).

IT IS THEREFORE ORDERED that:

1. Tony Herrington is assessed a penalty of \$250 for his willful violation of KRS 278.140 and 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 with the Commission a completed report of his gross

earnings derived from intrastate business for 1993 and a completed annual report for his 1993 calendar year operations.

Done at Frankfort, Kentucky, this 1st day of September, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director