

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF COLUMBIA GAS )  
OF KENTUCKY, INC. FOR APPROVAL OF ) CASE NO. 95-432  
GAS PURCHASES UNDER A SPECIAL )  
EMERGENCY ASSISTANCE PROGRAM )

O R D E R

On September 29, 1995, Columbia Gas of Kentucky, Inc. ("Columbia") filed with the Commission an application for approval of a special natural gas purchase contract with Citizens Energy Corporation ("Citizens") for continuation of a Special Emergency Assistance Program ("Program") through the winter of 1995-96. The Program originated in 1983 and has been extended in each subsequent year.<sup>1</sup>

After reviewing the record in this case and being otherwise sufficiently advised, the Commission finds that:

1. The Program distributed \$54,044 to 420 households during the 12 months ended June 30, 1995. A balance of \$32,806 remained to be disbursed in the fall of 1995. In order to continue assistance to these needy households, the Program should be

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<sup>1</sup> Case No. 94-273, Application of Columbia Gas of Kentucky, Inc. for Approval of Gas Purchases Under a Special Emergency Assistance Program, Order dated January 12, 1995.

## TRANSFER OF EQUESTRIAN WOODS SEPTIC SYSTEM

KRS 278.020(4) provides that the Commission shall approve a proposed transfer if the person acquiring the facilities demonstrates financial, managerial and technical expertise to provide reasonable service. KRS 278.020(5) provides that the Commission shall approve the transfer if it finds the transfer is to be made in accordance with the law, for a proper purpose, and is consistent with the public interest.

Springcrest Sewer, the proposed purchaser, was incorporated by Melvin and Linda Price to acquire and operate the Equestrian Woods Septic System. Mr. Price is certified as a wastewater treatment plant operator by the Cabinet for Natural Resources and Environmental Protection<sup>1</sup> and has operated two wastewater systems for the last several years.<sup>2</sup> He also operates the Herrington Haven Wastewater Treatment plant which is subject to Commission jurisdiction.<sup>3</sup> Linda Price has one year of business school and in conjunction with her husband has owned and operated the Camp Nelson RV Park and its sewer plant.<sup>4</sup>

Springcrest Development purchased an area north of the Equestrian Woods Subdivision approximately 5 years ago for residential real estate development. Testimony in the record reflects that Springcrest Development never intended to operate the

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<sup>1</sup> Transcript of Evidence ("T.E.") at 111.

<sup>2</sup> T.E. at 111-112.

<sup>3</sup> Id. at 112.

<sup>4</sup> T.E. at 111-112.

septic system once the lots were sold.<sup>5</sup> Springcrest Development has nonetheless been operating the plant for five years as development continues.<sup>6</sup> No rate for the septic service has been charged and all expenses have been absorbed by the developers.<sup>7</sup>

The Intervenor expressed considerable concern at the hearing regarding the lack of a third-party beneficiary agreement to assure the continued operation of the plant after the transfer. 807 KAR 5:071, Section 3(1)(a), requires that applicants provide a copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the facility or other evidence of financial integrity such as will ensure the continuity of sewage service. The shareholders of Springcrest Sewer have provided an irrevocable, secured letter of credit not to exceed \$10,000 from the First National Bank and Trust Company of Nicholasville, Kentucky. The Commission finds the letter of credit and supporting promissory note to be sufficient evidence of financial integrity as required by the regulation.<sup>8</sup>

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<sup>5</sup> Id. at 28-30.

<sup>6</sup> Id. at 30.

<sup>7</sup> Id. at 31.

<sup>8</sup> A motion was made by the Intervenor at the conclusion of the Applicant's case to deny the proposed transfer of the septic system because certain aspects of the formation of Springcrest Sewer allegedly violate Section 193 of the Kentucky Constitution. The Intervenor argue that pursuant to the Kentucky Supreme Court's holding in Kirk v. Kirk's Auto Elec., Inc. et al., 728 S.W.2d 529, (1987) (interpreting Section 193), that any issuance of stock by Springcrest Sewer for anything less than the equivalent in money paid, labor done or property actually received is void. The Intervenor further argue that, as Mr. Price testified he paid nothing for the stock in the newly formed corporation, the issuance is a fictitious increase and is void. Alleged irregularities in corporate formation are appropriate questions for a court of competent jurisdiction and are not matters within the Commission's jurisdiction under KRS Chapter 278.

After consideration of the record in this proceeding, being otherwise sufficiently advised, and based upon the foregoing findings, the Commission finds it in the public interest to approve the transfer and further finds that the purchasers have demonstrated the requisite financial, managerial, and technical expertise to provide reasonable service. The transfer should therefore be approved.

#### INITIAL RATES

Initial operating revenues and expenses are based upon projections and estimates provided by Springcrest Sewer. Since actual operations may vary from the projections, the Commission advises Springcrest Sewer to monitor and review its first year of operations. Springcrest Sewer should take appropriate action if actual results differ substantially from the projections.

In its application, Springcrest Sewer projected annual operating expenses of \$1,243.66 per month, or \$14,924 annually for the initial year of operations.<sup>9</sup> The projected expenses for the initial year of operations appear reasonable subject to the following modifications.

Springcrest Sewer proposed an annual electric expense of \$480. Testimony at the hearing based upon the actual expenses for electric service established the average monthly electric expense at \$12.61.<sup>10</sup> Based upon the actual expense incurred, annual electric expense would be \$151, or \$329 less than the projected annual total.

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<sup>9</sup> \$1,243.66 x 12 = \$14,923.92

<sup>10</sup> T.E. at 61.

Springcrest Sewer proposed an annual manager/operator salary of \$5,700, or \$475 per month. Historically, this sewer system has required little or no maintenance and the record reflects that no more than two site visits per month have been required.<sup>11</sup> Although Mr. Price testified that he would visit the plant daily,<sup>12</sup> no demonstrable need for more frequent site visits has been shown.

The Commission's normal practice in cases involving small sewer utilities is to allow an annual fee to compensate an owner/manager for general oversight responsibilities. Based upon the record and the testimony referred to above, an annual fee of \$3,600 is reasonable and adequate compensation for approximately two site visits per week in addition to Mr. Price's general oversight responsibilities.

Springcrest Sewer proposed annual legal and engineering fees of \$1,200. However, Springcrest Sewer has not demonstrated a need for continuing legal and engineering services and has not proposed any rate case expense to be amortized. Thus, Springcrest Sewer has not supported this expense.

The remaining proposed expenses are reasonable and are supported by the record in this proceeding. Total annual expenses of \$11,295<sup>13</sup> should be used in establishing the initial rates for Springcrest Sewer.

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<sup>11</sup> Id. at 16-17.

<sup>12</sup> Id. at 113-114.

<sup>13</sup> Projected annual operating expense	\$14,294
Less: Adjustment to proposed electric expense	( 329)
Less: Adjustment to proposed salary	( 2,100)
Less: Adjustment to proposed legal and engineering expenses	<u>( 1,200)</u>
Adjusted annual operating expenses	\$11,295

The approach generally used by the Commission to determine reasonable revenue requirements for small, privately-owned utilities is an operating ratio of 88 percent. Based upon application of the 88 percent operating ratio, the Commission has determined that an annual revenue requirement of \$12,835<sup>14</sup> will allow Springcrest Sewer sufficient revenues to cover its operating expenses and provide a reasonable return to its owners. Therefore, Springcrest Sewer has been granted rates sufficient to provide operating revenues of \$12,835.

Springcrest proposed a flat rate design in its application requiring each customer in its service area to pay \$40 per month. Testimony at the hearing affirmed that two present commercial customers do not conduct businesses that would place more demand on the system than a residential customer<sup>15</sup> and the potential exists for a third commercial customer to be added.<sup>16</sup> However, present zoning restrictions prohibit types of businesses that would place a high demand on the system.<sup>17</sup> Therefore, as all customers are expected to impose an equal demand on the system, a flat monthly rate for service is reasonable.

The record reflects that thirty-two customers were connected to the system when the application was filed, but the developer was unsure whether two commercial customers were included in that total.<sup>18</sup> Testimony also indicates that 5 or 6 new residences have

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<sup>14</sup>      $\$11,295 / .88 = \$12,835.23$

<sup>15</sup>     T.E. at 67-68.

<sup>16</sup>     Id. at 89.

<sup>17</sup>     Id. at 66, 89.

<sup>18</sup>     Id. at 32, 67.

been completed and connected since that time.<sup>19</sup> The Commission will divide the annual revenue requirement by a total customer base of 39 to determine the appropriate rate of \$27.43 per month for services rendered on and after the date of this Order.

IT IS THEREFORE ORDERED that:

1. The transfer of the anaerobic septic system and related assets identified in the petition of Springcrest Development to Springcrest Sewer is approved.

2. Springcrest Sewer shall maintain its books of account in accordance with the Uniform System of Accounts for Sewer Utilities as prescribed by the Commission.

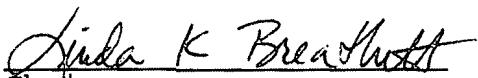
3. Springcrest Sewer shall file journal entries reflecting the asset transfer within thirty days of the date of this Order.

4. The rates proposed by Springcrest Sewer are denied.


5. The rates in the Appendix to this Order are the fair, just and reasonable rates to be charged by Springcrest Sewer for service rendered on and after the date of this Order.

Done at Frankfort, Kentucky, this 20th day of February, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

<sup>19</sup> Id. at 91.

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 95-289 DATED FEBRUARY 20, 1996

The following rates and charges are prescribed for the customers in the area served by Springcrest Sewer Company, Inc.

Monthly Flat Rate

All Customers

\$27.43