

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF REIDLAND WATER)
AND SEWER DISTRICT FOR (1) A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY, AUTHORIZING)
APPLICANT TO CONSTRUCT A)
WASTEWATER TREATMENT PLANT; (2))
APPROVAL OF FINANCING THE)
PROPOSED CONSTRUCTION THROUGH) CASE NO. 96-314
THE KENTUCKY INFRASTRUCTURE)
AUTHORITY TO INCUR AN)
INDEBTEDNESS; AND (3) APPROVAL OF)
THE PROPOSED ADJUSTMENT OF RATES)
NECESSARY TO PAY THE INDEBTEDNESS)
INCURRED)

O R D E R

On July 3, 1996, Reidland Water and Sewer District ("Reidland") submitted an application on behalf of its Sewer Division for a Certificate of Public Convenience and Necessity to construct a wastewater treatment plant, for approval of its plan of financing for this project, and for approval of an increase in its sewer rates. The project, to be funded by a \$3,517,638 loan from the Kentucky Infrastructure Authority ("KIA"), consists of a one million gallon per day wastewater treatment plant, an influent pump station, a new outfall line, and an office building. The wastewater treatment plant includes treatment units for grit removal, oxidation ditch, clarifiers, ultraviolet disinfection, piping, aerobic digestion tanks, sludge drying beds, and related appurtenances. This project

was stipulated in a settlement agreement entered into between Reidland and the Kentucky Division of Water dated November 4, 1991. The settlement agreement was necessary due to a failure of the existing sewage plant to comply with the discharge limits in Reidland's Kentucky Pollutant Discharge Elimination System ("KPDES") permit. Reidland's application, after the minimum filing requirements were met, was filed July 31, 1996.

Reidland is a water district created pursuant to Chapter 74 of the Kentucky Revised Statutes. As such, it operates a sewage disposal system pursuant to KRS 74.407 which provides sewer service to approximately 1,568 customers in and around the Reidland Community of McCracken County.¹ Reidland is subject to the Commission's jurisdiction pursuant to KRS 278.010(3)(d) and (f); KRS 278.015; and KRS 278.040.

Ronnie Freeman was granted full intervention in this proceeding on August 28, 1996, as spokesperson for a large group of petitioners. The Attorney General was granted full intervention on September 17, 1996. Commission Staff having completed its limited financial review of Reidland's test-period sewer operations for the 1995 calendar year, its report was issued by the Commission on February 18, 1997. It was Staff's recommendation that if Reidland was to be granted a Certificate of Public Convenience and Necessity, an increase in sewer revenues of \$409,161 should be approved. However, if Reidland was not to be granted a Certificate of Public

¹ Reidland also provides water service to approximately 2,816 customers in McCracken County and Marshall County.

Convenience and Necessity, Staff recommended that an increase in sewer revenues of \$46,312 be approved. An informal conference was held on March 11, 1997 to discuss the Staff Report and other outstanding issues. All parties attended. On March 27, 1997, a formal hearing was held in the matter at the Commission's offices. Again all parties were present represented by counsel, except Mr. Freeman, who appeared pro se.

Certificate of Public Convenience and Necessity

According to KRS 278.020(1), "No person, partnership, public or private corporation, or combination thereof shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, . . . until such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such construction." The need for a new sewage treatment plant to serve the Reidland community is clear, well documented, and undisputed. Reidland's existing treatment plant cannot handle the demands placed upon it and cannot operate in compliance with environmental regulations and its KPDES permit.² As a result of its current plant's shortcomings, Reidland has been served with two notices of environmental violations by the DOW. Following the first notice of violation, Reidland entered into the Agreed Order mentioned above, which obligated Reidland to rehabilitate its sewer line collection system and to construct a new sewage treatment plant. The Agreed Order also imposed a tap-on ban. At first, exemptions to the tap-on ban were granted by DOW on a case-by-case basis, but on November 1, 1996, a complete tap-on ban went into effect.

² March 27, 1997 Transcript of Evidence ("Transcript") at 136-137.

Reidland's existing treatment plant is 32 years old.³ It is located within the 100 year flood plain.⁴ While it was designed to treat a flow of 300,000 gallons of wastewater per day, the present average is 500,000 gallons per day.⁵ Reidland testified that this situation worsens during wet weather due to inflow and infiltration, resulting in the plant being even more overloaded. The technology is also "somewhat out of date when you look at it in terms of what the permit discharge requirements are today."⁶

Reidland's need for a new wastewater treatment plant has not been challenged. The Attorney General has acknowledged that the "need for the sewer project is well documented," while Mr. Freeman has stated that "I'm in total agreement that this plant needs to be built."⁷ The AG, however, does not believe that Reidland used an appropriate level of diligence in securing land for the new plant, arguing that the record does not reflect that the Schroeder property was the most cost-effective location for the new treatment plant, that Reidland failed to properly address the true cost of utilizing the site selected for the new treatment plant, and that the Culp land transaction does not cure the failure associated with the Schroeder property transaction.

While it may be true that the record does not definitively reflect that the Schroeder property was the most cost-effective location for the new treatment plant, Reidland has

³ Transcript at 136.

⁴ Transcript at 27.

⁵ Transcript at 136.

⁶ Transcript at 102.

⁷ Transcript at 16-17.

offered significant testimony in support of its choice of sites. The land on which the new treatment plant is to be located was donated to Reidland by the Schroeders along with a 25 foot wide public utility easement. In return, Reidland has agreed to provide the Schroeders with a long-term lease for the existing plant site, to raze the existing treatment plant, to raise the manholes on the site, and to provide the Schroeders with a water and sewer tap-on at no charge.⁸

According to Reidland, before it entered into the agreement with the Schroeders, its engineers conducted a preliminary review of alternate sites.⁹ According to Reidland, the site is ideal for its new treatment plant:

The Schroeders' property was adjacent to the lower portion of [Reidland's] collection system, which minimizes the amount of pumping and transmission cost to get the wastewater to the plant. The Schroeders' property was also located above the 100 year flood plain, whereas the existing site is within the flood plain and subject to annual flooding. It was important, too, that the Schroeders' property was relatively level, thus minimizing the cost for earth work.

Furthermore, the Schroeders' property is relatively close to Reidland's existing treatment plant. This is important because Reidland intends to have an influent pump station on the existing site. The pump station will be connected to the new treatment plant via force mains . . . [which] will be located in the permanent utility easement that crosses the Schroeders' property.¹⁰

⁸ Reidland must receive the Commission's approval prior to providing free water and sewer tap-ons to the Schroeders. See KRS 278.170.

⁹ Transcript at 73-74.

¹⁰ Reidland's Post-hearing Brief at 14.

The AG asserts that Reidland has agreed to perform \$33,000.00 of work to benefit the Schroeders in exchange for property valued at \$2,500.00. According to Reidland, most of this cost would be expended regardless of the location of the new plant. For environmental and safety reasons, Reidland would be required to demolish the old treatment plant after it was taken out of service.¹¹ Also, due to their location in the flood plain, the manholes need to be raised regardless of the agreement with the Schroeders.¹² Likewise, the cost of an access road would have to be borne by Reidland regardless of the location of the new plant. Whether this amount could be less at another site than at the Culp property is unknown, but under the circumstances irrelevant. Reidland must have safe and reliable access to its new plant site, and from the evidence given the site chosen by Reidland for its new plant is appropriate for such a facility. No evidence to the contrary was offered by either intervenor.

Mr. Freeman asks the Commission to make the requested Certificate of Public Convenience and Necessity contingent upon Reidland obtaining additional bids for construction of the plant from contractors outside of the Paducah area, and that Reidland obtain bids for an access road through the Schroeder property in addition to those received for an access road through the Culp property. In regards to the first contingency, pursuant to KRS 74.260, Reidland must give notice of the time and place of bid letting by publication pursuant to KRS Chapter 424. KRS 424.120 requires this

¹¹ Transcript at 68 and 104.

¹² Transcript at 126.

publication to be in a newspaper published in the publication area, with "publication area" being defined in KRS 424.110(1) as:

[T]he city, county, district, or other local area for which an advertisement is required by law to be made. An advertisement shall be deemed to be for a particular city, county, district, or other local area if it concerns an official activity of the city, county, district, or other area or of any governing body, board, commission, officer, agency, or court thereof, or if the subject of the advertisement concerns particularly the people of the city, county, district, or other area.

The record shows that Reidland met its legal requirements in advertising for bids.¹³ The Commission has no authority to require Reidland to seek additional bids outside of its area.

Regarding the second contingency requested by Mr. Freeman, while it is true that no actual bids were obtained for constructing a roadway through the Schroeder property, engineering estimates placed the cost at \$99,429.00. The Schroeder road would have to cross over "extreme topography," with fairly steep slopes and very sharp curves, making it difficult for trucks and equipment to travel.¹⁴ As a result, alternate routes were sought, resulting in the Culp proposal. The road through the Culp property, with more friendly topography, was bid at a cost to Reidland of \$50,941.36, or about one-half the estimated cost of the Schroeder route. There is no reason to believe that bids could be taken for the Schroeder route which would result in a less expensive, or equally feasible, option for Reidland. Furthermore, McCracken County will assume responsibility for

¹³ Transcript at 46-48.

¹⁴ Transcript at 39.

maintenance of the roadway through the Culp property, while Reidland would retain maintenance responsibility for the road through the Schroeder property.¹⁵ Based on the facts presented to the Commission, Mr. Freeman's request is not reasonable.

Reidland has shown that public convenience and necessity require the construction of the proposed plant. Nothing in the record refutes this showing. Accordingly, the Commission should grant Reidland the requested Certificate of Public Convenience and Necessity.

Financing

In order to finance the construction of its new wastewater treatment facility, Reidland has proposed to borrow \$3,517,638 from KIA. Mr. Freeman is opposed to this form of financing for the project. It is his opinion that the customers of Reidland should not be responsible for the cost of the new treatment plant, but that the Division of Water and Reidland itself should bear the cost. Mr. Freeman's position is that despite the Agreed Order between Reidland and DOW, which included a tap-on ban, Reidland has, with DOW's approval, allowed additional customers to connect to Reidland's system, thereby, in his opinion, further overloading its treatment plant. DOW also required Reidland to connect two small community systems to its system. Mr. Freeman contends that those responsible for allowing Reidland to get into its current condition, namely DOW and those in control of Reidland's operations, should be required to pay the cost of the solution through some type of errors and omissions insurance coverage or bonds. This is not, however, within the jurisdiction of the Commission.

¹⁵ Transcript at 42-43.

Pursuant to KRS 278.300(1), no utility may assume any obligation of indebtedness until it has been authorized to do so by the Commission. The Commission shall not approve any such obligation unless it finds that it:

[I]s for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose. KRS 278.300(3).

Reidland is borrowing the money in question to pay for the cost of installing a new sewage treatment plant, a plant which Reidland has shown to be necessary for the proper performance of its service to the public. Mr. Freeman does not dispute this fact. According to Reidland, grants are not available to it to pay for the project, and it has shown that a loan from a commercial lender would be at an interest rate of 8.25 percent, rather than at KIA's 3.8 percent.¹⁶ Reidland's proposed method of financing is thus not only reasonably necessary, but appropriate, and should be approved by the Commission.

Rates

In its report, Staff determined that the proposed KIA loan would have an annual debt service of \$240,834 based on a 20-year term and a 3.2 percent annual interest rate. However, at the hearing Reidland provided a letter from the KIA showing that the interest rate has increased from 3.2 percent to 3.8 percent. This new interest rate will result in an annual debt service of \$254,271, an increase of \$13,437 above Staff's original estimate.

¹⁶ Transcript at 142 and Exhibit S to Reidland's March 26, 1997 prehearing statement.

The \$13,437 change in Reidland's debt service and a debt service coverage of 1.1x DSC will result in an increase of \$14,781¹⁷ above Staff's original revenue requirement of \$749,891, as discussed in the Staff Report. Based on the evidence of record, Reidland should be allowed to increase its rates to produce the revenue requirement from sewer rates of \$764,672.¹⁸

Mr. Freeman is opposed to the adjustment of rates to pay for the proposed indebtedness. Again, he believes that Reidland's customers should not be required to pay for what, in his opinion, were "criminal acts" on the part of DOW and those in control of Reidland's operations. The Commission does not have the authority to allocate the cost of providing sewer service to Reidland's customers to another state agency. Furthermore, pursuant to KRS 278.030(1),

Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.

Service, according to KRS 278.030(2), is required to be adequate, efficient, and reasonable. Reidland has shown that in order for it to provide adequate, efficient, and reasonable service, it must construct the proposed treatment plant. In order to construct the new treatment plant, Reidland needs the \$3,517,638 loan from KIA. The loan, in turn, has been shown to require an annual debt service of \$254,271 which, when combined with Reidland's operating expenses, results in a revenue requirement from

¹⁷ \$13,437 (DSC Change) x 1.1 DSC = \$14,781.

¹⁸ \$749,891 (Original Revenue Requirement) + \$14,781 = \$764,672.

sewer rates of \$764,672. In order for Reidland to receive fair, just, and reasonable rates for its services, its rates must be increased accordingly.

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

1. Public convenience and necessity require that the construction proposed be performed and that a Certificate of Public Convenience and Necessity be granted.

2. The financing plan proposed by Reidland is for lawful objects within the corporate purpose of its utility operations, is necessary and appropriate for and consistent with the proper performance of the utility's service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for that purpose. It should therefore be approved.

3. The recommendations and findings contained in the Staff Report, as amended above, are supported by the evidence of record, are reasonable, and are hereby adopted as the findings of the Commission in this proceeding and are incorporated by reference as if fully set out herein.

4. The rates in Appendix A, which is attached hereto and incorporated herein, are the fair, just, and reasonable rates for Reidland and should be approved for service rendered on and after the date of this order.

5. Reidland should obtain approval from the Commission prior to performing any additional construction not expressly authorized by this Order.

6. Any deviation from the construction approved should be undertaken only with the prior approval of the Commission.

7. Reidland should furnish documentation of the total costs of this project including the cost of construction and all other capitalized costs (engineering, legal, administrative, etc.) within 60 days of the date that construction is substantially completed. Construction costs should be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for Water Utilities prescribed by the Commission.

8. Reidland should require construction to be inspected under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering, to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

9. Reidland should furnish, within 60 days of the date of substantial completion of this construction, a copy of as-built drawings and a signed statement from the Engineer that the construction has been satisfactorily completed in accordance with the contract plans and specifications.

10. Reidland should file with the Commission its revised tariff setting out the rates contained in Appendix A in conformance with 807 KAR 5:011 within 30 days of the date of this Order.

IT IS THEREFORE ORDERED that:

1. Reidland is granted a Certificate of Public Convenience and Necessity to proceed with the proposed construction project as set forth in the drawings and specifications of record herein.

2. Reidland's financing plan consisting of a \$3,517,638 loan from KIA is hereby approved. The financing shall be used only for the lawful purposes specified in Reidland's application.

3. The rates in Appendix A are approved for service rendered by Reidland on and after the date of this Order.

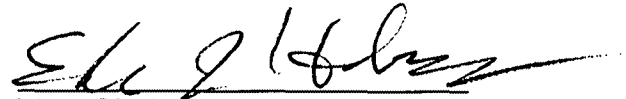
4. Reidland shall comply with the requirements contained in Findings 5 through 10 as though individually so ordered.

Nothing contained herein shall be deemed a warranty of the Commonwealth of Kentucky, or any agency thereof, of the financing herein accepted.

Done at Frankfort, Kentucky, this 22nd day of May, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 96-314 DATED MAY 22, 1997

The following rates and charges are prescribed for the customers in the area served by Reidland Water and Sewer District. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of this Commission prior to the effective date of this Order.

SEWER - ALL CLASSES

Rate Increment

First	2,000	Gallons	\$19.78	Minimum Bill
All Over	2,000	Gallons	4.52	Per 1,000 Gallons