

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WILLABROOK SANITATION, INC. )  
\_\_\_\_\_) )  
ALLEGED VIOLATIONS OF KRS 278.020 AND 807 ) CASE NO. 97-090  
KAR 5:001, SECTION 9 )

O R D E R

On March 5, 1997, the Commission ordered Willabrook Sanitation, Inc. ("Willabrook") to show cause why it should not be subject to the penalties prescribed in KRS 278.990(1) for its alleged violation of KRS 278.020(1) and 807 KAR 5:001, Section 9(2).

Following the commencement of this proceeding, Willabrook and Commission Staff entered into negotiations to resolve all disputed issues. On April 24, 1997, they executed a Settlement Agreement, which is appended hereto, and subsequently submitted it for Commission approval.

In reviewing this Settlement Agreement, the Commission has considered, inter alia, the seriousness of the violations and Willabrook's willingness to remedy the violations.

After reviewing the Settlement Agreement and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement is in accordance with the law, does not violate any regulatory principle, results in a reasonable resolution of this case and is in the public interest.

pursuant to the alternative rate adjustment procedure for small utilities.<sup>1</sup> During the course of reviewing that application, Commission Staff noted that Willabrook had constructed a new sewage treatment plant;

WHEREAS, a review of Commission records indicates that Willabrook failed to seek approval from the Commission prior to constructing this new sewage treatment plant;

WHEREAS, KRS 278.020(1) requires a utility to obtain a certificate of public convenience and necessity from the Commission prior to beginning the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, which includes sewer service;

WHEREAS, 807 KAR 5:001, Section 9(2), contains the procedure a utility must follow in order to obtain a certificate of public convenience and necessity from the Commission prior to beginning construction of a new facility;

WHEREAS, on March 5, 1997, the Commission found that a prima facie showing had been made that Willabrook had violated KRS 278.020(1) and 807 KAR 5:001, Section 9(2);

WHEREAS, on March 5, 1997, the Commission ordered Willabrook to show cause why it should not be subject to the penalties prescribed in KRS 278.990(1) for its alleged violation of KRS 278.020(1) and 807 KAR 5:001, Section 9(2);

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<sup>1</sup> Case No. 96-568, The Application of Willabrook Sanitation, Inc. For an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities.

WHEREAS, Willabrook admits that in constructing its new sewage treatment plant, it acted in violation of KRS 278.020(1) and 807 KAR 5:001, Section 9(2). However, Willabrook holds that it did not intentionally violate KRS 278.020(1) or 807 KAR 5:001, Section 9(2);

WHEREAS, Willabrook has agreed to file all plans and specifications regarding its new sewage treatment plant with the Commission;

WHEREAS, while the Commission does not retroactively grant Certificates of Public Convenience and Necessity, Willabrook and Commission Staff wish to resolve the issues regarding Willabrook's violation of KRS 278.020(1) and 807 KAR 5:001, Section 9(2), in a prompt and complete manner.

NOW, THEREFORE, in release of the mutual promises contained herein and the release and discharge of all liabilities and obligations rising out of Willabrook's unauthorized construction, the parties agree as follows:

1. Willabrook shall comply with all provisions of KRS Chapter 278 and all regulations promulgated pursuant thereto.
2. Willabrook shall, within ten days of entry of an Order from the Commission approving this Settlement Agreement, pay to the Kentucky State Treasurer through the Commission a penalty in the amount of \$250.00.
3. Willabrook shall immediately submit all plans and specifications regarding its new sewage treatment plant to the Commission. Until such plans and specifications are submitted, Commission Staff shall not submit this Settlement Agreement to the Commission for its approval.

4. . . Regardless, the Commission shall not approve Willabrook's unauthorized construction, as the Commission does not retroactively grant Certificates of Public Convenience and Necessity.

5. . . Upon execution of this Settlement Agreement and its approval by the Commission, this case is hereby settled as to only the issues contained herein, with prejudice, notwithstanding any other provision of this agreement to the contrary.

6. . . The Settlement Agreement is submitted for the purposes of this case only and is not deemed binding upon the signatories hereto in any other proceeding, nor is it to be offered or relied upon in any other proceeding involving Willabrook or any other utility.

7. . . Once Willabrook has complied with paragraph number three above, Commission Staff shall use its best efforts in recommending complete adoption of this Settlement Agreement by the Commission. If the Commission issues an Order approving this Settlement Agreement in its entirety, Willabrook shall not file an application for rehearing or appeal to the Franklin Circuit Court from such Order.

8. . . If this Settlement Agreement is not accepted in its entirety, Willabrook reserves the right to withdraw from it and require that hearings go forth upon any or all matters involved herein. In such event, this Settlement Agreement shall not be deemed binding upon the signatories hereto nor shall same be admitted into evidence or referred to or relied upon in any manner by any signatory.

9. The signatories hereto agree that the foregoing Settlement Agreement is reasonable, not contrary to regulatory principals or the law, is in the best interest of all concerned, and urge that the Commission adopt this agreement in its entirety.

WILLABROOK SANITATION, INC.

By Neill B. Williams Sr.  
Neill B. Williams, Sr.  
President

Date 4/19/97

PUBLIC SERVICE COMMISSION STAFF

By John R. Steffen  
John R. Steffen  
Staff Attorney

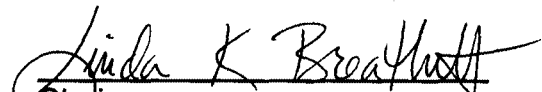
Date 4/24/97

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement, appended hereto, is incorporated into this Order as if fully set forth herein.
2. The terms and conditions set forth in the Settlement Agreement are adopted and approved.
3. Willabrook is assessed a penalty of Two Hundred and Fifty (\$250) Dollars.
4. Willabrook shall pay the assessed penalty within 10 days of the date of this Order by check made payable to Treasurer, Commonwealth of Kentucky. Said check shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 7th day of May, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

COMMONWEALTH OF KENTUCKY  
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WILLABROOK SANITATION, INC. )  
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\_\_\_\_\_ ) CASE NO. 97-090  
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ALLEGED VIOLATION OF KRS 278.020 )  
AND 807 KAR 5:001, SECTION 9 )

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 24th day of April, 1997, by and between STAFF OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY ("Commission Staff") and WILLABROOK SANITATION, INC. ("Willabrook").

WITNESSETH:

THAT, WHEREAS, Willabrook is a privately owned corporation which owns and controls facilities that are used for or in connection with the treatment of sewage for the public for compensation in Bullitt County, Kentucky;

WHEREAS, Willabrook is a utility subject to the jurisdiction of the Public Service Commission ("Commission") pursuant to KRS 278.010(3)(f) and KRS 278.040;

WHEREAS, on February 16, 1996, Willabrook was inspected by Commission Staff for compliance with Commission statutes and regulations at which time Willabrook was found to be in the process of constructing a new plant alongside its existing one. Willabrook has since filed an application with the Commission seeking a rate increase