

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BETHANY CHRISTIAN MISSION CENTER, INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 98-282
)	
HOLLY CREEK PRODUCTION CORPORATION)	
)	
DEFENDANT)	

O R D E R

On July 28, 1999, the Commission found that Bethany Christian Mission Center, Inc. ("Bethany") had been overbilled \$23,674 from January 1994 through December 1997 by Holly Creek Production Corporation ("Holly Creek"). The Commission ordered Holly Creek to refund \$23,674 to Bethany. Holly Creek was also ordered to prepare a plan setting forth Holly Creek's proposal for making the refund of \$23,674 over a 3-year period.

The Commission found that on September 27, 1999, in paragraph 4(a) and (b) of a letter addressed to the Commission, Holly Creek submitted a plan for repayment. That plan is based upon gas sales to Bethany for the three years, which totaled \$68,137. Using that figure and the amount of the rebate of \$23,674 Holly Creek formulated a ratio of rebate to total sales of 34.74 percent. Holly Creek proposed to credit Bethany's monthly bill, excluding sales tax, the amount of 34.74 percent on each month's bill. However, Holly Creek's plan made any payment or credit subject to the

ruling of the Franklin Circuit Court on its appeal of the Commission's Order. The plan submitted by Holly Creek notes that the Commission's Order of July 28, 1999 is on appeal to the Franklin Circuit Court and that Holly Creek will make no refunds until "after Holly Creek has exhausted its all [sic] appeals."

On April 7, 2000, Franklin Circuit Court dismissed the action brought by Holly Creek for review of the Commission's Order. Holly Creek then filed an appeal of the decision of the Franklin Circuit Court to the Kentucky Court of Appeals.

The Commission found in its Order of October 16, 2000, that Holly Creek's plan to delay refund payments until all appeals of the Commission's Order of July 28, 1999 are exhausted was unacceptable. Holly Creek was ordered to refund the \$23,674 with said payments to begin immediately and the entire amount to be refunded by August 1, 2002. Bethany filed a motion on November 1, 2000 that indicated a repayment had not occurred but that Holly Creek had offered a rebate of the gross cost of gas supplies to Bethany. On November 20, 2000, the Commission ordered Holly Creek to reply to the motion of Bethany and state the amount of its initial refund payment. On December 4, 2000, Holly Creek filed its response to that Order. In that response, Holly Creek stated that its local counsel was experiencing medical problems, that Holly Creek was responding directly, and that it was commencing immediately with a rebate to Bethany for the month of October.

The Order requiring the refund plan established that it was to be accomplished over a three-year period, but did not specify how such refund was to be effected. Holly Creek proposed that the refund take the form of a rebate of a calculated percentage of Bethany's gas bill over the three-year period. Holly Creek conditioned the payment on

the finality of its appeal process. Bethany objected and the Commission rejected the delay in implementing the refund.

Bethany has refused to accept the refund in the form of a rebate on its gas bill. However, nowhere in the Commission's Order was Holly Creek directed to make the refund in cash. To the Commission the repugnant concept of Holly Creek's plan was the delay in beginning the refund process until it had exhausted its appeals. The Commission will examine the method of the proposed refund plan by the utility so as to satisfy itself the method is fair, reasonable and equitable.

In its December 4, 2000 filing, Holly Creek proposes to make immediate refunds by the mechanism of rebates on Bethany's gas bill using the percentage of 34.74, which it based upon Bethany's gas usage over the time period during which the overcharges occurred. In prior cases the Commission has approved refunds by billing credits and in proportion to an amount attributable to monthly usage.¹ In its response Holly Creek notes that Bethany's gas consumption has increased in volume due to additional facilities served by gas on campus. Given the projected increased volume of Bethany's usage, it would seem that applying the percentage proposed by Holly Creek to this increased volume would result in a shorter refund period than the required three years.

Having considered the proposed refund plan, the Commission finds that the plan is fair and reasonable and should be approved.

¹ See, e.g., Case No. 98-427, The Joint Application of Big Rivers Electric Corporation; Case No. 98-631, Application of Berea College Electric Utility; Case No. 98-244, The Petition of Sigma Gas Corporation.

IT IS THEREFORE ORDERED that:

1. The plan submitted by Holly Creek in its response of December 4, 2000 is approved.
2. Holly Creek shall rebate to Bethany on its gas bill each month an amount equal to 34.74 percent of the gross billings.
3. Holly Creek shall retain records of its calculations for inspection by Bethany or the Commission.
4. Holly Creek shall, in any event, complete the full refund of the \$23,674 on or before August 1, 2002.

Done at Frankfort, Kentucky, this 16th day of January, 2001.

By the Commission

ATTEST:


Executive Director