

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                   |   |            |
|-----------------------------------|---|------------|
| APPLICATION OF PURCHASE PUBLIC    | ) |            |
| SERVICE CORPORATION FOR A         | ) | CASE NO.   |
| CERTIFICATE OF PUBLIC CONVENIENCE | ) | 2008-00346 |
| AND NECESSITY – WASTEWATER        | ) |            |
| TREATMENT LAGOON CONSTRUCTION     | ) |            |

O R D E R

On September 19, 2008, Purchase Public Service Corporation (“Purchase”) filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a lagoon wastewater treatment facility. Prior to issuance of a CPCN by the Commission, Purchase began construction of the facility. In response, the Commission opened an investigation to determine whether Purchase should be penalized for willfully violating KRS 278.020, which requires a utility to obtain a CPCN prior to construction of a facility. Purchase has presented a settlement proposal, and the Commission accepts Purchase’s settlement proposal.

Purchase is a non-profit corporation that was established to operate neglected sewer systems in the Purchase Area Development District. It is governed by a 16-member board. Purchase’s board has delegated the day-to-day operations to two staff members, Mark Davis and Adam Scott.

Over the past several years, Purchase has acquired several small wastewater treatment systems that serve subdivisions in Graves, Marshall, and McCracken counties. It owns the wastewater treatment system that serves approximately 10

customers in Holifield Heights Subdivision in Graves County. Holifield Heights Subdivision was previously served by a package plant until the treatment system was destroyed when the driver of an uninsured vehicle crashed into the package plant in June 2007. After the accident and prior to a new facility becoming operational, Purchase paid approximately \$4,000 per month to have the sewage hauled away and disposed.

On September 19, 2008, Purchase filed an application for a CPCN to construct a lagoon treatment facility. The estimated cost of the project was \$95,680, which was to be funded by a grant from the General Assembly and funds from the Graves County Fiscal Court.

On November 6, 2008, and prior to the Commission's approval of a CPCN, Purchase notified the Commission that the project had been completed and that the system had begun operations on October 25. In its letter, Purchase stated that it needed the lagoon system to be functional as soon as possible because the cost of hauling the sewage was creating a financial strain on the utility. It suggested that, without the lagoon system, Purchase would become bankrupt in January 2009. Purchase also stated that it was initially aware of the Commission's CPCN requirements.

The Commission issued its show cause Order on April 3, 2009. In that Order, the Commission found that prima facie evidence exists to demonstrate that Purchase violated KRS 278.020 by constructing facilities without first obtaining a CPCN and that Purchase's board members aided and abetted Purchase's failure to comply with KRS 278.020. The Order required Purchase to demonstrate why the utility and its board

members should not be penalized under KRS 278.990 for a willful violation of KRS 278.020.

In response to the Commission's Order, Purchase and its board members maintained that they did not have the requisite willfulness, as specified by KRS 278.990, to be penalized. It argued that it communicated with Commission Staff on multiple occasions regarding the destruction of the sewer facility and that Staff did not mention CPCN requirements for construction of a new facility until August 2008. Immediately after learning of the CPCN requirements, Purchase filed documents with the Commission in order to obtain a CPCN. Ultimately, Purchase blames its failure to apply for a CPCN sooner on its lack of knowledge of relevant laws and regulations, and it maintains that it proceeded to construct the facility after it applied for the CPCN (but before the Commission ruled on the application) because of its poor financial condition.

After two informal conferences with Commission Staff, Purchase proposed a settlement for resolution of this case on November 2, 2009. In the proposal, Purchase maintains that none of its actions were willful, but it acknowledges that its personnel could benefit from additional training. It agreed to send its two staff members, Mark Davis and Adam Scott, to the 2009 Water Personnel Training Seminar presented by the Commission at Kentucky Dam Village State Resort. It also agreed to encourage its board members to attend the training.

Purchase's proposal was filed too late to be considered before the Water Personnel Training Seminar, which was held on November 4-5, 2009. Nevertheless, Purchase's staff members, Mark Davis and Adam Scott, attended the seminar, as did the chairman of Purchase's board of directors, Don Elias.

In determining whether Purchase's proposed settlement is in the public interest and is reasonable, the Commission has considered the unique circumstances that led up to the violation of KRS 278.020 and steps Purchase has taken to prevent similar misdeeds in the future. The Commission recognizes that Purchase's financial standing was significantly compromised after the Holifield Heights facility was destroyed in June 2007 because it was forced to pay approximately \$4,000 per month to have sewage hauled away and disposed. Fiscal responsibility required action. Nevertheless, legal responsibility required that Purchase obtain a CPCN from the Commission prior to construction of the new facility. Purchase had plenty of time to apply for and obtain a CPCN for the project because construction of a new facility did not begin for more than a year after the destruction of the previous facility.

Purchase cites its own ignorance in failing to obtain the CPCN. Ignorance is not a valid excuse, however, as it is the responsibility of the utility and its directors to comply with the laws of the Commonwealth and the Commission's regulations.

Purchase filed a proposed settlement that would mandate that Purchase's two employees, who were given day-to-day operational authority of the utility by its board, attend the 2009 Water Personnel Training Seminar. In addition, Purchase would encourage its board members to attend the training. Although these Commission-sponsored seminars are tailored to water utility personnel, a significant portion of the information presented applies to all regulated utilities. This year's seminar covered tariffs, electronic filings, rate applications, credit card payments, public education, and other regulations and laws applying generally to utilities. Attendance and participation

at this seminar would certainly increase an individual's understanding of requirements for a regulated entity.

In previous cases in which a utility has violated KRS 278.020 by failing to obtain a CPCN prior to construction, the utility or its directors were commonly fined. Purchase's proposed settlement does not evade a monetary consequence. Attendees must pay registration fees to cover the cost of the seminar. In 2009, there was a \$50 registration fee.

It is also worth noting that, unlike water district board members, Purchase's employees and directors do not have any additional incentives to attend water training seminars other than the educational opportunity. Water district board members are statutorily eligible to receive an increased salary after they complete six instructional hours of training certified by the Commission. Because Purchase is not a water district created under KRS Chapter 74, Purchase's employees and board members do not have a similar financial incentive for attending training.

For the reasons stated above, the Commission finds that Purchase's proposed settlement is in the public interest and is reasonable. Because Purchase's employees, Mark Davis and Adam Scott, and its board chairman, Don Elias, attended the training, Purchase has met its obligations under the proposal.

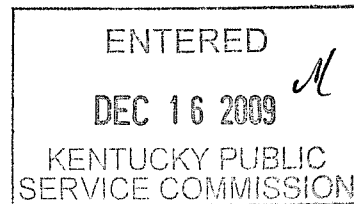
Purchase's board of directors must remember that they are ultimately responsible for the actions of the utility. Although the board is entitled to delegate day-to-day authority for operating the utility to its employees, the board cannot delegate responsibility for the utility. Purchase's board members must not fall into a trap in believing that they have limited responsibility to ensure that the entity complies with the

laws and regulations of the Commonwealth simply because each is one of many members on the board or because the board only holds meetings annually. The Commission places Purchase and its board members on notice that future sanctions for willful violation of laws, regulations, or Orders will likely be more severe.

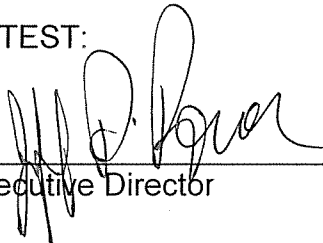
IT IS THEREFORE ORDERED that:

1. Purchase's proposed settlement is accepted.
2. Having satisfied the obligations of the proposed settlement, these proceedings are closed and this case is removed from the Commission's active docket.

By the Commission



ATTEST:

  
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