

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

GLENNIS BLAIR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2007-00502
)	
APPALACHIAN WASTE CONTROL)	
)	
DEFENDANT)	

BRIEF OF DEFENDANT
APPALACHIAN WASTE CONTROL

Comes the Defendant, Appalachian Waste Control, and for its Brief in the above-captioned matter, states as follows:

INTRODUCTION

This matter is before the Commission on the petition of Glennis Blair, a sewer customer of the Respondent Appalachian Waste Control's Neil Price waste water treatment plant. Mr. Blair makes two complaints; one, that he is being billed for services that are not available, and should not have to pay for them (Complaint), and; two, that he should not have to pay as much as customers of Neil Price who have more than one resident in the household. (Complaint; Transcript of April 16, 2008 hearing (hereinafter "Tr."), p. 17).

As the Commission is aware, Appalachian Waste Control (hereinafter "AWC") and its operators have been the subject of numerous complaints and actions both before the Commission, and in the Franklin Circuit Court. In case No. 2006-00569, the Commission has found that AWC had abandoned its sewage collection and treatment facilities. In case 2007-0093, the Commission

set the rate to be charged AWC's customers, including those located in Neil Price, at \$56.72 per month. The former operator of AWC, Jeffrey Lance Bowling, is the named defendant in an action brought by the Kentucky Environmental and Public Protection Cabinet pending before the Franklin Circuit Court for the inappropriate operation of the five AWC plants, including Neil Price. This matter is still pending. Finally, the Commission has brought an action in the Franklin Circuit Court for the appointment of a permanent receiver of AWC.

In addition to the actions set out above, there have been several investigations into the operation and condition of the AWC plants by the Commission, the Kentucky Environmental and Public Protection Cabinet, and the Attorney General. In each action and investigation, it has been well noted and documented that the AWC plants were not operated or maintained properly, and that each of the plants is in some state of disrepair. The Commission has heard much testimony and reviewed the results of the investigations such that a recitation of the same here would be simply repetitious. Accordingly, this Brief will focus solely on the evidence presented to the Commission at the April 16, 2008 hearing.

For the reasons set out below, Mr. Blair's petition must be dismissed.

ARGUMENT

I. THE PETITIONER MUST PAY FOR HIS SEWER SERVICES

KRS 96.930 provides:

The General Assembly hereby recognizes and declares that the use of water in any manner tending to contaminate it, raises a correlative public duty to provide for the proper disposition thereof according to the highest public health standards, and that such public duty includes full responsibility for paying the cost of such disposition.

It is undisputed that the Mr. Blair uses water in his residence serviced by the Neil Price plant.

Accordingly, as provided by KRS 96.930, Mr. Blair has a duty to pay the cost of the disposition of the waste water produced from his residence. There is no evidence in the record that Mr. Blair takes any steps to dispose of his waste water in any manner other than allowing the same to flow to the Neil Price treatment plant, thus adding to the amount of sewage that must be treated by the plant. The treatment provided by the Neil Price plant, though not perfect, is the only treatment currently available for the waste water produced by Mr. Blair's residence, and he is legally responsible for paying for such treatment.

As stated above, the poor physical condition of the Neil Price plant is well documented. When operation of the plant was taken over by the Prestonsburg City's Utilities Commission (hereinafter "Prestonsburg"), the plant was a "pass-through" plant which did not provide any treatment at all. (Tr. pp. 46, 47). Prestonsburg repaired the electrical problems, and the chlorination box, and got the plant operating. (Tr. p. 47). However, despite the fact that it is currently running, the plant itself remains in bad condition as testified by David Ellis: "The plant, as they've already testified, the PSC deemed it inoperable. As far as housing, the plant itself, it's not in real good shape. So you're working with something there that's in a bad condition to begin with, but we do have it

operating as a plant with what bacteriological activity we can get out of it.” (Tr. pp. 47, 48).

Though the plant operates, it must be constantly monitored in order to ensure that even the low level of treatment that it can provide is maintained. In addition to the repairs that Prestonsburg made to the plant it also maintained the plant on a weekly basis: “...we actually go to the plant, return what we need to return or what we can return back to the primary end, chlorinate. We’ve made several electrical repairs during this time, and I think we have actually pumped that plant three times; on start-up, June of ‘07 and March of ‘08.” (Tr. pp. 48,49). In fact, pumping the plant more frequently would hinder its operation: “In order for a plant to work correctly, you have to have that bacteria operating and, for lack of a better term, healthy. So, at a point where you can’t do anything with that sludge, then you pump it out. Now if it were just a holding tank without it operating at all, you would pump it a lot because you’d just be holding material until it was filled and then you would be pumping it and hauling it away.” (Tr. p. 49). Though the Petitioner complains that the plant is not being pumped out enough, he admits that he has no expertise or other knowledge to support his claim. (Tr. pp. 25, 26). As stated by David Ellis, pumping too often will hinder the bacterial operation of a plant.

The Neil Price plant has been inspected by the Division of Water, and the Commission’s own engineers. All agree that the plant is in poor condition, and does not operate to an optimal level. This is not, however, an indication of the level of service that the plant has received. As set out above, and further in the record, since it took over the operation of the Neil Price plant, Prestonsburg has done what it can do to make the plant operate as best it can in its current physical condition. This is a daunting task as, according to Mr. Blair, the plant has had troubles since it was built. (Tr. pp. 24, 36). The waste water flowing from Mr. Blair’s residence

to the Neil Price plant receives the best treatment that the plant can provide. Such treatment, whether Mr. Blair, who admittedly has no expertise in sewer treatment plants, is aware or not, has been sufficient to ensure that the coliform count at discharge from the Neil Price plant stays in compliance. (Tr. p. 54).

As the Commission is aware, the current status of the plant is temporary. It is necessary to operate the plant in its current condition until a permanent solution is finalized. Several potential solutions are being pursued. As testified by John West, counsel for the Environmental and Public Protection Cabinet, potential options include connecting the Neil Price customers to a near-by plant¹, replacing the plant with individual septic systems, small individual package plants for each residence, or systems that provide for spray irrigation. (Tr. p. 63). The best solution must be determined, funds raised to pay for the solution, or other arrangements made, and the solution must be implemented.

II. THE PETITIONER IS NOT ENTITLED TO PAY A RATE DIFFERENT THAN THE FLAT RATE ESTABLISHED FOR AWC BY THE PUBLIC SERVICE COMMISSION

The Petitioner, Mr. Blair, asks that he not be required to pay the same rate for his sewer services as that paid by other customers of Neil Price who have more than one person residing in their residences. Each residence of the Neil Price development is charged the flat monthly rate of \$56.72, as approved by the Commission, for sewer services, despite the number of residents in each household using the service.

As recognized at the hearing by Commission Staff Attorney Osterloh, and as is a matter of record with the Commission, Appalachian Waste Control, Inc. applied to the Commission for the

¹Unfortunately, this option was rejected by Johnson County, which has some ownership interest in the near-by plant, Thelma No. 2. (Tr. pp. 60-61).

determination of an appropriate rate to charge all of the customers of AWC in Case No. 2007-00093. Appalachian Waste Control gave proper notice of the hearing on the proposed application, as recognized by the Commission in its Order dated April 9, 2007. The Petitioner herein, Mr. Blair, did not intervene in the rate case as required by 807 KAR 5:076 Section 4(3). b Instead, once the rate was established, Mr. Blair refused to pay his sewer charges, stating that he should not owe on any sewer bills until he had proper services, and that he did not want his water shut off. (Complaint). Mr. Blair waited eight months to file this complaint with the Commission alleging that the rate for a service for which he was not paying is too high. Despite his intimate knowledge of the workings, and non-workings, of the Neil Price plant since it was built, Mr. Blair did not take advantage of his chance to weigh in on the establishment of the rate to be charged AWC customers. The rate case is over, the rate has been established, and the time for appeal has run. For this reason alone, Mr. Blair's petition should be dismissed.

Moreover, the rate is an established flat rate, untied to water usage levels. AWC has no connection with the provider of water services to the residences of Neil Price such that its rate could be determined by their water use level. Mr. Blair argues, though there is no evidence in the record in support of his argument, that the other houses in Neil Price have more residents, and, accordingly should pay more for their sewer services than Mr. Blair, or Mr. Blair should pay less. Even if comparing Mr. Blair's water use with other residences in Neil Price were feasible and proper in this case, the Commission has been presented with no evidence regarding the amount of water used by other residences at Neil Price, and can make no determination for such a comparison.

Since the rate that has been established by the Commission for sewer services provided by the Neil Price plant is a flat rate, and there is no method by which to charge Mr. Blair based upon

his water usage, Mr. Blair must pay the current monthly rate for his sewer services, as established by the Commission, of \$56.72.

CONCLUSION

For the reasons stated above, the Respondent respectfully requests that the Commission deny and dismiss Mr. Blair's Complaint in its entirety.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Brief was mailed via U.S. Mail, first class on this the 2nd day of June, 2008 to the following:

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