

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF FRIENDLY PARK)	CASE NO.
DEVELOPMENT INC.'S NOTICE OF INTENT)	2015-00101
TO ABANDON SERVICE)	

ORDER

Friendly Park Disposal Sanitation Corporation ("Friendly Park") is a for-profit sewer company operating in Daviess County, Kentucky.¹ Friendly Park provides sewage service to the public for compensation and is a utility subject to the Commission's jurisdiction.² The system currently serves approximately 69 customers.³

On March 30, 2015, Friendly Park tendered a letter to the Commission wherein it notified the Commission of its intent to "abandon the operation of its facilities used to provide solid waste and waste water disposal and discontinue all services to its customers."⁴ Friendly Park asserted that abandonment was necessary because the company was losing money, the deteriorating condition of the plant, and the age and health of its certified operator.⁵

The Commission opened this case to investigate Friendly Park's request to abandon by Order issued April 2, 2015. On April 22, 2015, the Commission granted

¹ *Annual Report of Friendly Park for the Year Ending December 31, 2014* at 12.

² KRS 278.010(3)(f).

³ Friendly Park' Response to Commission Staff's Initial Request for Information ("Staff's Initial Request"), Item 2.

⁴ Order (Ky. PSC Apr. 2, 2015). Appendix.

⁵ *Id.*

Daviess County Fiscal Court's ("Daviess Fiscal Court") request to intervene. No other person requested intervention in this matter.

The Commission issued one request for information to Friendly Park and one to Daviess Fiscal Court. The parties also participated in two informal conferences with Commission Staff. A formal hearing was held at the Commission on February 23, 2016.

The Friendly Park treatment plant was constructed in the 1960s and has reached the end of its useful life.⁶ The plant is currently owned by Scott Lewis, who acquired the utility in November of 1996.⁷ At the February 23, 2016 hearing, Mr. Lewis testified for Friendly Park that Friendly Park had reported a profit of \$735 in 2013, but a loss of \$791 in 2014.⁸ Friendly Park will again report a tax loss in 2015.⁹ Mr. Lewis has paid the losses out of his personal funds.¹⁰ Mr. Lewis has unsuccessfully attempted to find another party or entity to take over the plant.¹¹ Mr. Lewis, on behalf of Friendly Park, disclaimed and renounced any and all interests in the utility assets.¹²

Joe Schepers, executive director of the Regional Water Resource Agency ("RWRA") in Daviess County, testified on behalf of the county. Mr. Schepers testified that RWRA had investigated the issues with the Friendly Park plant and determined that ultimately the plant will need to be replaced.

⁶ Friendly Park's Response to Staff's Initial Request, Item 1.

⁷ Hearing Video at 10:08:50.

⁸ *Id.* at 10:18:15; and 10:18:25.

⁹ *Id.* at 10:19:08.

¹⁰ *Id.* at 10:19:41.

¹¹ *Id.* at 10:44:05.

¹² *Id.* at 10:15:38.

Mr. Schepers stated that if the Commission grants the request to abandon, RWRA would potentially be willing to act as a temporary receiver over Friendly Park, subject to five conditions.¹³ The conditions are: (1) RWRA must be able to enter into an agreed order with the Kentucky Division of Water to ensure that its operation of the plant as receiver will not impact RWRA's federal consent agreement regarding its combined sewer overflows;¹⁴ (2) all utility assets are to be transferred from Mr. Lewis personally to Friendly Park, the corporate entity, and must remain with the corporation;¹⁵ (3) the Friendly Park corporation must remain active throughout the receivership;¹⁶ (4) Friendly Park's discharge permit must remain active throughout the receivership;¹⁷ and (5) Friendly Park must remain responsible for the property and plant decommissioning.¹⁸

Mr. Schepers testified that he believed the first condition might be met within 60-90 days.¹⁹ He further asserted that the Friendly Park plant is not yet in critical condition.²⁰

Mr. Schepers detailed RWRA's plan for potentially taking over the system, including the need to acquire an adjacent plot of land at 5451 Gerald Court for the purpose of constructing a new treatment plant so that the existing plant could continue

¹³ *Id.* at 10:56:23.

¹⁴ *Id.* at 10:56:24–10:57:41.

¹⁵ *Id.* at 10:58:38.

¹⁶ *Id.* at 11:07:58.

¹⁷ *Id.* at 11:08:02.

¹⁸ *Id.* at 11:01:32.

¹⁹ *Id.* at 11:09:20.

²⁰ *Id.* at 11:15:31.

to operate until construction of a new plant is complete. Without that property, RWRA would be forced to operate a temporary plant while constructing a new plant where the existing plant currently resides.²¹ As Mr. Lewis testified that he had recently given that parcel away,²² Mr. Schepers testified that if the plot is not available for RWRA's use, the cost to revive the Friendly Park system would significantly increase. The Friendly Park treatment plant will need to be completely replaced at a cost of approximately \$650,000, and it will cost a further \$118,000 to repair the pipes, not inclusive of engineering costs.²³ To complete the repair and replacement project would take approximately 36 months.²⁴

At the conclusion of the hearing in this matter, the Commission granted the parties' request to file stipulated facts.²⁵ On March 9, 2016, Daviess Fiscal Court tendered its proposed findings of fact. On March 23, 2016, Friendly Park filed its response to Daviess Fiscal Court's proposed findings and filed its own proposed findings.

807 KAR 5:001, Section 9(6), permits parties to agree upon facts and submit a stipulation as to those facts that shall be treated as evidence. Here, the parties have not submitted an agreed-upon stipulation of facts. Having considered the competing findings proposed by both parties, the Commission finds that the proposed findings go beyond the basic analysis required to determine whether Friendly Park has satisfied the

²¹ *Id.* at 10:54:37–10:55:10.

²² *Id.* at 10:29:59.

²³ *Id.* at 10:53:26–10:53:59.

²⁴ *Id.* at 10:54:16.

²⁵ *Id.* at 11:44:22.

statutory criteria within KRS 278.021 and therefore declines to adopt the proposed findings.

KRS 278.021 provides for the abandonment of utilities. It provides in part:

(1) If the commission, after notice and hearing, enters an order in which it finds that a utility is abandoned, the commission may bring an action in the Franklin Circuit Court for an order attaching the assets of the utility and placing those assets under the sole control and responsibility of a receiver.

(2) For purposes of this section, a utility shall be considered abandoned if it:

(a) Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;

(b) Notifies the commission of its intent to abandon the operation of the facilities used to provide service;

(c) Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or

(d) Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.

KRS 278.020(5) further states:

(5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

KRS 278.020(5) provides that Commission approval is required prior to abandoning a utility. KRS 278.021 permits the Commission to find that a utility is abandoned, and provides that a utility may notify “the commission of its intent to abandon the operation of the facilities used to provide service.”

KRS 278.021(2) governs the Commission’s review of a request to abandon facilities. The Commission has held previously that “[i]f the Commission finds that one or more of the four criteria identified in KRS 278.021(2) is met, then the Commission has no discretion and is required, pursuant to the term ‘shall’ in the statute, to consider the utility abandoned.”²⁶ Mr. Lewis has clearly and unambiguously stated his intent to renounce and abandon his interests in Friendly Park.²⁷ Given the need to replace the entire system and the extreme costs of doing so, Friendly Park, as a private for-profit entity, is not capable of obtaining the needed financing to replace the system. While the Friendly Park customers have received the benefit of many years of low rates,²⁸ those artificially low rates have resulted in the need for Mr. Lewis to maintain the system at his own expense and have left the system with inadequate funding to maintain or continue service.

Accordingly, as the Commission finds that Friendly Park has satisfied KRS 278.021(2)(a), the Commission does not have any discretion in adjudicating the request to abandon and therefore finds that the request should be granted.

²⁶ Case No. 2015-00290, *Bullitt Utilities, Inc.'s Notice of Surrender and Abandonment of Utility Property* (Ky. PSC Aug. 31, 2015), Order at 4.

²⁷ Hearing video at 10:15:53; Friendly Park’s Response to Staff’s Initial Request, Item 16.

²⁸ Friendly Park currently charges a flat monthly rate of \$11.50, which was last adjusted in 1982.

The Commission further finds that RWRA is the only viable entity to take over the Friendly Park system. No other sewer system is in sufficient proximity to connect to the system, nor has any party identified any individual willing to take over or accept responsibility for running the plant. The Commission further finds that to provide an opportunity for RWRA to satisfy the preconditions it has set as a precursor to acting as a receiver over Friendly Park's assets and to ensure continuity of service for the Friendly Park residents, Friendly Park should continue operating the system until such time as the Franklin Circuit Court attaches Friendly Park's assets and appoints a receiver.

Commission Staff should commence an action in the Franklin Circuit Court for the purpose of attaching Friendly Park's assets and requesting the appointment of RWRA as receiver over those assets. In so ordering, the Commission cautions the parties that certain findings proposed by Daviess Fiscal Court may conflict with the Commission's jurisdiction over the rates and services of regulated utilities and may not be conditions of receivership. Namely, proposed finding number 49 states:

RWRA will set rates for the utilities under receivership under KRS 76.231 and permit water discontinuance under KRS 76.090.²⁹

KRS 278.040(2) empowers the Commission to regulate "all utilities in this state." The term utilities includes "[t]he collection, transmission, or treatment of sewer for the public, for compensation . . . that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220."³⁰ Accordingly, just as RWRA is exempt from Commission jurisdiction, so too would Friendly Park be

²⁹ Daviess Fiscal Courts' Notice of Filing Proposed Findings of Facts (filed Mar. 9, 2016) at 3.

³⁰ KRS 278.010(3)(f).

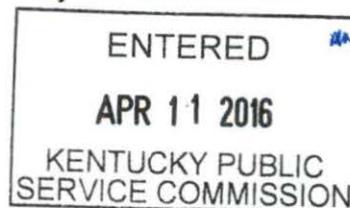
exempt upon its eventual transfer to and acquisition by RWRA. However, until RWRA fully acquires the Friendly Park assets, RWRA will act merely as a caretaker for those assets, and Friendly Park through its receiver remains a regulated utility subject to the Commission's jurisdiction for the duration of the receivership.

Finally, Friendly Park should submit financial and statistical and gross operating revenues reports for the period of January 1, 2016, through the final date of the utility's operation.

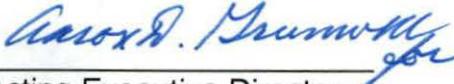
IT IS THEREFORE ORDERED that:

1. Friendly Park's and Daviess Fiscal Court's proposed findings of fact are rejected.
2. The request of Friendly Park to abandon its facilities is granted.
3. Friendly Park shall continue operating until the Franklin Circuit Court attaches Friendly Park's assets and appoints a receiver.
4. No later than 60 days following the date of this Order, Friendly Park shall submit its Report of Gross Operating Revenues and an Annual Report for the period spanning January 1, 2016, through the date of abandonment.
5. Commission Staff shall bring an action in the Franklin Circuit Court for the attachment of Friendly Park's assets and the appointment of RWRA as receiver.

By the Commission



ATTEST:


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