

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF FOREST HILLS DEVELOPERS)
SEWAGE TREATMENT PLANT FOR AN)
ADJUSTMENT OF RATES PURSUANT TO THE) CASE NO. 94-264
ALTERNATIVE RATE FILING PROCEDURE FOR)
SMALL UTILITIES)

O R D E R

Southwood Apartments and Brett D. Butler ("Intervenors") have moved that Forest Hills Developers, Inc. ("Forest Hills Developers") be prohibited from increasing its rates until proper notice of such increase is given. Intervenors further move that any increase be imposed incrementally. Forest Hills Developers has filed a response in opposition to the motions.

The Commission finds that the notice of the proposed increase is deficient. Forest Hills filed notice of its intent to place the proposed rates into effect on November 24, 1994. It seeks to place the rates into effect on December 14, 1994. This notice does not comply with KRS 278.180(1) which provides:

[N]o change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days.

Forest Hills Developers provided only 20 days notice of its proposed action.

The utility argues that the Commission, by promulgating Commission Regulation 807 KAR 5:076, Section 8, has shortened the notice period to 20 days for rates proposed under the Commission's Alternative Rate Filing Procedures and therefore its notice is proper.

History does not support this argument. Commission Regulation 807 KAR 5:076 became effective on April 7, 1982. See 8 Ky. Admin. Reg. 835. At that time, KRS 278.180(1) required utilities to provide the Commission with 20 days notice of any proposed rate change. In 1986, KRS 278.180(1) was amended to required 30 days notice to the Commission. 1986 Ky. Rev. Stat. & R. Serv. 677-678 (Baldwin). Where a conflict between a statute and administrative regulation occurs, the statute controls. Hence 30 days notice must be given.

While the Commission may shorten the required notice to 20 days, it must find that good cause exists for such action. There is no evidence in the record to support such a finding of good cause in this case. Therefore, the Commission finds that Forest Hills Developers' notice is defective.

Notwithstanding the Intervenors' argument to the contrary, the Commission finds that Forest Hills Developers should not be required to republish its notice. The utility in good faith followed the requirements set forth in Commission Regulation 807 KAR 5:076, Section 8. It may place its proposed rates into effect, subject to refund, for service provided on and after December 24, 1994.

The Commission finds that the Intervenors' second motion should be denied. It is axiomatic that a public utility may charge a new rate only for services rendered on and after the new rate's effective date. Forest Hills Developers is in apparent agreement on this point and has advised the Commission that it will assess the new rate only for service provided after the new rates' effective date. Therefore, there is no need for any action on this issue. The Commission, however, intends to monitor closely this situation to ensure that the utility's customers are billed at the proper rates.

IT IS THEREFORE ORDERED that:

1. Forest Hills Developers may place its proposed rates into effect, subject to refund, for service provided on or after December 24, 1994. Any utility service provided prior to that date shall be at the rate currently set forth in Forest Hills Developers' filed rate schedule.

2. Forest Hills Developers shall maintain its records in such manner as will allow determination of any amount to be refunded, in the event one is ordered upon final resolution in this matter.

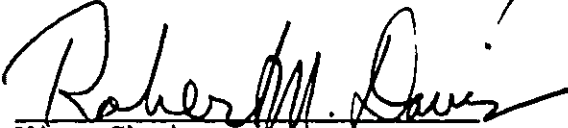
3. Forest Hills Developers shall file its tariff sheets reflecting its rates within 30 days of the date of this Order.

4. Intervenor's Motions are denied.

Done at Frankfort, Kentucky, this 20th day of December, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director