COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

I.C.H. CORPORATION A/K/A GLENWOOD HALL RESORT AND COUNTRY CLUB A/K/A PERRY PARK RESORT AND PAR-TEE, LLC D/B/A PERRY PARK RESORT	)	
_____	)	CASE NO. 99-210
ALLEGED VIOLATION OF KRS 278.020(4) AND (5), KRS 278.160, AND COMMISSION REGULATIONS 807 KAR 5:011, SECTION 2, AND 807 KAR 5:011, SECTION 11	)	

O R D E R

On May 24, 1999, a show cause Order was issued to ICH Corporation a/k/a Glenwood Hall Resort and Country Club a/k/a Perry Park Resort ("ICH") and Par-Tee LLC d/b/a Perry Park Resort ("Par-Tee"), alleging that each had violated KRS 278.020 and KRS 278.160. The Commission was advised by an ICH customer that ICH, and later Par-Tee, charged their customers an untariffed charge to hook onto a new line extension to the Carroll County Water District ("CCWD"). Because of procedural errors in its service, the May 24, 1999 Order was vacated and reincorporated verbatim in an Order entered July 2, 1999. The Commission directed ICH and Par-tee to show cause

why they should not be penalized pursuant to KRS 278.990(1) for the alleged violations of KRS 278.020(4) and (5), KRS 278.160,[1] and 807 KAR 5:011, Sections 2 and 11.[2]

On July 21, 1999, Commission Staff held an informal conference with the parties named in the Order. As a result of that conference an agreement was reached settling the issue of the unauthorized transfer of the utility. Subsequent to the conference, Paul D. Minch and David Burdette, two customers of the parties, were permitted to intervene in the proceeding. Thereafter all the parties, including the intervenors, signed the settlement agreement. In an Order dated January 26, 2000, the Commission approved the settlement agreement.

On March 14, 2000, a hearing was held before the Commission's hearing examiner on the issue involving the $388 connection charge. All parties appeared. ICH and Par-Tee were represented by counsel, and the intervenors appeared on their own behalf.

In February 1997, ICH emerged from bankruptcy with the Perry Park real estate as one of its assets. Perry Park Resort Inc. is a wholly owned subsidiary of ICH and was formed to manage the Perry Park assets. It is unclear whether the Perry Park assets were transferred to the new corporation. However, shortly after February 1997,

[1] KRS 278.160 provides that each utility shall file with the Commission schedules showing all rates and conditions of service and that no utility may charge for its services any amounts other than those in its filed tariff.

[2] 807 KAR 5:011, Section 2, provides that each utility under the Commission's jurisdiction is to file a tariff of all its rates, charges and tolls. 807 KAR 5:011, Section 11, requires any company acquiring ownership or control of a utility to use the rates, classifications and regulations of the former operating company unless otherwise authorized by the Commission and to file an adoption notice with the Commission at the time of the change of ownership or control making its own all rates, etc. of the former operating company.

the utility plant was extensively damaged by flood. That event together with problems with the water supply prompted ICH and CCWD to enter into negotiations to have CCWD take over the Perry Park system. CCWD was in the planning stage of a new water main near the Resort property and it was agreed that, for the sum of $100,000, CCWD would construct a connection to Perry Park Resort.

The tariff filed by ICH lists the name of the utility as "ICH Corporation, d/b/a Glenwood Hall Resort and Country Club a/k/a Perry Park Resort of Perry Park, Kentucky." There is also a Perry Park Resort, Inc. ("Perry Park Resort") which is a wholly owned subsidiary of ICH. Perry Park Resort was the operating entity for the property and ICH. Another entity in this conglomerate of names is the Perry Park Resident Owners Association ("PPROA"). Par-Tee also operates both the utility and the resort under the name of Par-Tee LLC d/b/a Perry Park Resort.

The Perry Park water system established by ICH and now owned by Par-Tee is a public utility subject to the jurisdiction of the Commission. In accordance with KRS 278.160, Par-Tee is required to file with the Commission schedules of its rates and conditions of service, commonly referred to as "tariffs.'' Public utilities may not impose charges that are not prescribed in their tariffs and the Commission may require them to refund any such charges that are collected. The show cause Order issued on May 24, 1999 and reissued on July 2, 1999 was based on a preliminary determination that the $388 connection charge that each homeowner was assessed was a "rate'' that should have been included in the utility's tariff.

The intervening homeowners also contend that the assessment was a "rate'' within the meaning of the statute. They reject any contention that there was an

agreement with Perry Park Resort, Inc. which was binding upon the homeowners and obligated them to pay the assessment. The intervenors maintain that the operators of the water system should refund the assessments collected and should be further required to pay the entire $100,000 to complete the connection.

Both ICH and Par-Tee contend that the fee collection efforts were not actions by the regulated utility and did not compensate for services rendered by a utility and, therefore, that the Commission has no jurisdiction to order any refund.

The threshold issue in this proceeding is whether the $388 assessment was a rate that the utility was required to file in its tariff. KRS 278.010(12) defines a "rate" as follows:

> "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.

As defined by this section, a "rate'' is a charge for services rendered or to be rendered. It is the price charged by a utility as compensation for a service that it has agreed to render.

DISCUSSION

John Bicks, Executive Vice President and General Counsel for ICH, testified at the public hearing that shortly after February of 1997, ICH entered into discussions with CCWD about the possibility of connecting Perry Park to the CCWD system. Bicks further testified that it was agreed that, in return for a payment of $100,000, grants of

easements and a parcel of land for a pumping station, CCWD would tap into the present Perry Park system from the new distribution line.[3]

As to the collection efforts, Bicks stated that there were two simultaneous efforts ongoing, and that ICH or its operating subsidiary (Perry Park Resort) was placing the fee amount on the regular maintenance bills. Bicks further testified that the homeowner associations and "folks who were running the association" were lobbying to get residents to pay.[4] Bicks denied any effort by ICH to deny water service to any resident and denied any connection between the fee and water service.[5]

Bicks explained in his testimony the processes of determining who would pay, and how much would be collected:

> My recollection is that, once we had the $100,000 number from Carroll County as sort of the bogey that had to get hit in order to make the connection, we then sat down-I say "we"- I believe it would have been Michael or Linda Dunn, who, at that time, was operating the property for ICH, sat down- with representatives of the homeowners association and worked up an allocation of the $100,000, you know, specifically that ICH would pay X and the Homeowners would pay Y. Once that gross allocation of the amount that was to be paid by the homeowners was determined, my understanding is that the homeowners themselves came up with the per resident fee and that number was then communicated back to the company.

(Transcript of Evidence ("T.E."), Bicks at 32-24).

Several documents entered into evidence shed more light upon the fee collection efforts of ICH and Par-Tee. The first document was a letter dated June 16, 1997 from

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[3] T. E., Hearing March 14, 2000, at 19-20.

[4] T. E. at 22.

[5] T. E. at 23, 128.

Robert F. Wesselman, President of the PPROA, in which issue is taken to the decision of ICH to require the homeowners to absorb the entire $100,000 cost of the CCWD fee.[6] This letter describes a meeting between Dunn and three members of the board of directors of the PPROA held on June 11, 1997 and also protests the decision of ICH to have the homeowners pay the entire $100,000. This appears to be the meeting referred to by Bicks in his testimony. The second document represents the minutes of a special meeting of the PPROA of June 28, 1997, in which there is an agreement between the ICH and PPROA that each metered owner/user would pay a fee toward the hookup.[7] Under the agreement, the company also agreed to administer the collection, which apparently meant mailing out the notices and depositing the collected funds in an escrow account. The escrow account, opened under the agreement, was a joint account in the names of Perry Park Resort Inc. and Perry Park Homeowners Association. The joint signatures of representatives from both the company and the homeowners association were required to withdraw funds deposited in the account. The next exhibit is two bills or invoices dated December 18, 1997 and January 27, 1998, both in the amount of $388 and described as an invoice for Perry Park Resort, Inc. and PPROA for "contribution" to the CCWD escrow account.[8] Neither of these documents resemble the form water bill contained in the utility tariff. The next document

[6] T. E. at 109-110 (Burdette Exhibit 1).

[7] T.E. at 129-130 (Minch Exhibit 1).

[8] T.E. at 120-121 (PSC Exhibit 2).

is a letter from Robert Wesselman to Jim Bering outlining the agreement for distribution of the trust funds.[9]

Regardless of the name used to describe the fee, if it is a charge or other compensation for utility service, it is subject to Commission jurisdiction and subject to refund if illegally collected.

The Commission finds that there is no evidence that there was a willful violation of KRS 278.160 on the part of the utility. There is no evidence that ICH, acting as a water utility, collected any of the $388 for the hook-up fee for the CCWD project. Even more crucially, the $388 connection charge was not assessed for a utility service that ICH or Par-Tee had agreed to provide or was obligated to provide. Customers were not required to pay the assessment to continue to receive water service and there was no threat to them that service would be discontinued if they failed to pay. Therefore, the assessment was not a rate that the utility was required to file as part of its tariff and the Commission cannot compel its refund.

Accordingly, the Commission, being sufficiently advised, HEREBY ORDERS that this case is dismissed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 11th day of July, 2000.

By the Commission

ATTEST:

Executive Director

[9] T.E. at 80 (Par-Tee Exhibit 2).