

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CEDARBROOK WASTEWATER)	CASE NO.
TREATMENT PLANT REQUEST TO CEASE)	2014-00091
OPERATIONS)	

ORDER

R.A. Williams Construction Co., Inc. d/b/a Cedarbrook Treatment Plant (“Cedarbrook”) is a for-profit sewer company operating in Harrison County, Kentucky, and serving Cedarbrook subdivision.¹ Cedarbrook provides sewage service to the public for compensation and is a utility subject to the Commission’s jurisdiction.²

On March 6, 2014, Cedarbrook tendered a letter to the Commission wherein it requested authorization “to cease operations of the treatment plant.”³ As cause for the requested abandonment, Cedarbrook cited its inability to resolve violations noted by the Energy and Environment Cabinet’s Division of Enforcement, the facility’s poor overall plant condition, a delinquency totaling more than \$46,000 on accounts of 24 of its 52 customers, and the fact that the system had at that point been subsidized by an associated business entity by \$216,000.⁴ On March 31, 2014, this action was commenced to investigate Cedarbrook’s request to abandon its facilities. The Attorney

¹ *Annual Report of R.A. Williams Construction Co., Inc. d/b/a Cedarbrook Treatment Plant* for the Year Ending December 31, 2013 at 9.

² KRS 278.010(f).

³ Letter from Ron Osborne, Owner, Cedarbrook to George Wakim, Manager, Kentucky Public Service Commission (Mar. 3, 2014).

⁴ *Id.*

General, by and through his Office of Rate Intervention, was granted intervention in this matter on May 2, 2014. There are no other intervenors.

In late 2014, Harrison County formed the Harrison County Sanitation District ("Harrison Sanitation District"). Throughout 2014 and 2015, Commission Staff held meetings with Harrison Sanitation District regarding its intention and ability to take over Cedarbrook. In a January 20, 2015 informal conference, Harrison Sanitation District representatives stated that a grant request would be submitted in April 2015 to the Kentucky Infrastructure Authority ("KIA"), and that two requests for Community Development Block Grants ("CDBG") would also be submitted for the purpose of obtaining funding to take over and replace the Cedarbrook system, along with a second small system in Harrison County.⁵ In the course of the informal conference, Ron Osborne, Cedarbrook's owner, indicated that R.A. Williams' fiscal year would end on February 28, 2015, and that he would like to cease operating shortly thereafter. Therefore, in accordance with the request to resolve this matter, on February 4, 2015, the Commission denied Cedarbrook's previously tendered requests to withdraw and hold this matter in abeyance, and issued a procedural schedule to provide for the orderly resolution of this matter.

On February 23, 2015, in a written response to a Commission Staff Request for Information, Cedarbrook formally stated that it intended to close and cease all operations effective February 28, 2015. Subsequently, in the course of a February 24,

⁵ Intra-Agency Memorandum dated Jan. 20, 2015.

2015 informal conference, Mr. Osborne agreed to continue operating through March 2015.⁶

A public hearing was held in this matter on March 3, 2015. Mr. Osborne testified that Cedarbrook currently has monthly expenses of \$3,400, including \$1,000 per month for its certified operator. He stated that based upon Cedarbrook's current \$62 monthly rate, if all customers paid their bills, the utility would bring in \$3,200/month. However, he noted that of the 52 homes on the system, 27 customers are current on their bills and 18 are more than 90 days delinquent. The total customer arrearage is currently in excess of \$32,000.

Mr. Osborne testified that Cedarbrook is the only asset of R.A. Williams. R.A. Williams is a wholly owned subsidiary of BEX Construction, which is also owned by Mr. Osborne. R.A. Williams acquired and began operating Cedarbrook consequent to its purchase of the remaining undeveloped lots in the Cedarbrook subdivision from Highland Development. Highland Development deeded its interest in the treatment plant property to R.A. Williams. Mr. Osborne asserted that the Cedarbrook subdivision was ultimately to have formed a homeowners association which would have taken over responsibility for the treatment plant. However, he stated that an association was never formed.

Mr. Osborne alleged that BEX Construction has subsidized Cedarbrook's operations throughout the years and is currently owed \$228,000, which he does not expect to ever recover. This amount includes costs such as system repairs and sludge hauling. Mr. Osborne testified that due to the poor original construction of the lines, a significant inflow and infiltration problem exists, such that when it rains, the inflowing

⁶ Intra-Agency Memorandum dated Feb. 26, 2015.

water causes the system to far exceed its capacity of 25,000 gallons per day. This results in additional expenses incurred to clean the untreated sewage from the nearby creek. To replace the lines would cost more than \$300,000, which does not include replacement of the treatment plant itself.

Exacerbating difficulties in collecting customer payments, the Harrison County Water Association, which serves all Cedarbrook customers, stopped shutting off residents' water service for nonpayment of sewer service several years ago, Mr. Osborne stated. When questioned why Cedarbrook had not physically severed any customer sewer lines, Mr. Osborne stated that the utility could not afford the estimated \$1,500 cost to dig up and cap the sewer line. However, enforcement letters are routinely sent and liens have been placed on homes, to minimal effect. Since the commencement of this case, several customers have attempted to bring their accounts current and have negotiated settlements with Cedarbrook.

Mr. Osborne stated that R.A. Williams is currently winding down operations, but that the process need not be completed in a defined period of time. Mr. Osborne expressed a willingness to shut down the system in an orderly fashion, but stated that if the Commission denies his request to abandon the utility, R.A Williams will immediately file for bankruptcy. Cedarbrook's only outstanding debt is owed to BEX Construction.

In an effort to address the above issue regarding shutoffs, Danny Northcutt, Harrison County Water Association's general manager, was called to testify at the hearing. Mr. Northcutt stated that the water association does not provide water shut off service for non-payment of sewer service to Cedarbrook because the water association

is prohibited from doing so by Commission regulations; however, he agreed that if the Commission granted a deviation to allow the practice, the association would provide such service. The Commission has previously granted a water association a deviation to provide water shut off service for non-payment of sewer service to a private sewer utility.⁷ Pursuant to KRS 220.510, Harrison County Water Association is required to provide water shut off service for non-payment of sewer service to sanitation districts.

Mr. Northcutt stated that due to the potential cost involved, Harrison County Water Association is not currently willing to provide billing services to Cedarbrook or the Harrison Sanitation District in the event of a transfer, but that the association's board members would consider providing the service for an acceptable fee.

Finally, Scott McCaulley, chairman of the Harrison Sanitation District, was called to testify. Mr. McCaulley testified that the Harrison Sanitation District was formed for the purpose of addressing sanitation issues throughout unincorporated areas in Harrison County. He stated that it was not formed for the purpose of taking over Cedarbrook. Mr. McCaulley stated that a \$1 million to \$1.1 million funding request will be submitted to KIA within the next 90 days, as well as a request for matching CDBG funds. However, he stated that the KIA funding is to serve North Harrison Elementary School and is not intended to assist Cedarbrook. He admitted that the CDBG funds may be used for Cedarbrook. Mr. McCaulley stated that the sanitation district is currently supporting a bill in the Kentucky legislature aimed at increasing the repayment period of KIA loans from 20 to 30 years, making the loan payments more feasible. He testified that the district may consider taking over Cedarbrook in the third quarter of 2015, after

⁷ Case No. 2011-00417, *Application of Bronston Water Association, Inc. for Approval of Agreement and Deviation from 807 KAR 5:006, Section 14* (Ky. PSC July 17, 2012).

receipt of the grant funds. Until it receives such funds, he stated, Harrison Sanitation District is entirely unwilling to take over Cedarbrook. He further stated that the sanitation district will not act as a receiver for Cedarbrook under any circumstance, even if a rate increase were to be granted.

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.

Further, KRS 278.020(5) 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."

Cedarbrook has explored all available options for transferring the utility. Due to the size and location of the for-profit system, coupled with the rate of customer delinquencies, it is not financially viable for Cedarbrook to continue operating. Cedarbrook last sought and received a rate increase in 2008.⁸ Its current rate is among the highest sewage rates in the Commonwealth. Due to the already low rate at which customers pay their bills, a further rate increase would be unlikely to alleviate the revenue shortage experienced by Cedarbrook.

The Commission notes that no customer has requested a rate increase to maintain Cedarbrook's viability, the subdivision has not come forward to form a homeowners' association to take over operation of the treatment plant, and no individual customer has come forth to take over or maintain the system. The Commission therefore finds that Cedarbrook is no longer able to provide sewage service to the public.

The only remaining viable option to maintain service and avert the loss of service for the residents of the 52 homes in the Cedarbrook subdivision is the proposed transfer

⁸ Case No. 2008-00040, *Application of the Cedarbrook Treatment Plant for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC July 29, 2008).

to the Harrison Sanitation District. While Mr. McCaulley was unwilling to admit that the sanitation district was formed for the express purpose of solving the Cedarbrook issue, the sanitation district was formed shortly following Cedarbrook's request to abandon was tendered to the Commission. On multiple occasions, Harrison Sanitation District representatives indicated to Commission Staff that Harrison Sanitation District was requesting funding with the primary goal of replacing the Cedarbrook system and that it would likely be in a position to support an application to transfer the utility to the sanitation district in the fall of 2015.⁹ The Commission finds that, while Cedarbrook does not currently have the financial ability to continue operating as a stand-alone, for-profit sewer utility, the system continues to adequately function on a daily basis, except during rain events.

Accordingly, the Commission finds that Cedarbrook's request to abandon its facilities should be granted. However, the Commission further finds that to provide an opportunity for the Harrison Sanitation District to enter into an agreement to operate the system on a temporary basis to ensure the continuity of service for the Cedarbrook residents, R.A. Williams should continue operating the system until April 30, 2015. The loss of utility service is regrettable under any circumstance, and such loss of service is further exacerbated in this situation by the potential for the 52 homes in the Cedarbrook subdivision to be declared no longer habitable. The Commission therefore hopes that Cedarbrook and the Harrison Sanitation District can come to an acceptable agreement to provide for the continued operation of the sewage facility pending the sanitation

⁹ See, e.g., Intra-Agency Memorandum dated Jan. 20, 2015.

district's receipt of grant funding and upon receipt of that funding to formally request a transfer of the Cedarbrook system to Harrison Sanitation District.

Should the parties be unable to reach an agreement, Cedarbrook should shut down its operation in a safe and orderly fashion. It should ensure that electric service is discontinued, chemicals disposed of properly, and all facilities safely secured. Finally, Cedarbrook should submit separate financial and statistical and gross operating revenues reports for the calendar year ending December 31, 2014, and for the period of January 1, 2015, through the final date of the utility's operation.

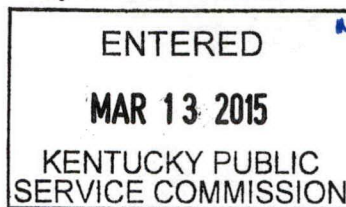
IT IS THEREFORE ORDERED that:

1. Cedarbrook shall continue operating until April 30, 2015.
2. The request of Cedarbrook to abandon its facilities is granted, to be effective April 30, 2015.
3. No later than April 15, 2015, Cedarbrook shall provide a status update detailing any agreement entered into with the Harrison Sanitation District regarding an operational agreement or transfer of the Cedarbrook system.
4. If an agreement with the Harrison Sanitation District is not reached by April 15, 2015, the Commission will bring an action in the Franklin Circuit Court and will request the appointment of the Harrison Sanitation District to act as receiver over the Cedarbrook assets.
5. No later than March 31, 2015, Cedarbrook shall submit its Gross Report and an Annual Report for the calendar year ending December 31, 2014.

6. No later than June 1, 2015, Cedarbrook shall submit its Gross Report and an Annual Report for the period spanning January 1, 2015, through the date of abandonment.

7. A copy of this Order shall be served on the Kentucky Division of Water, Wedco District Health Department, the Harrison County Judge/Executive and Harrison Sanitation District.

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end. It is positioned above a horizontal line.

Executive Director

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