

COMMONWEALTH OF KENTUCKY
BEFORE THE UTILITY REGULATORY COMMISSION

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In the Matter of

THE COMPLAINT OF MR. FRED)
PFANNENSCHMIDT, LOUISVILLE,)
KENTUCKY AGAINST HIGHVIEW) CASE NO. 7692
SEWER DISTRICT, INC.)

ORDER

On August 8, 1979, the Commission received a letter from Mr. Fred Pfannenschmidt, Jr., Gibson-Pfannenschmidt Realtors, Louisville, Kentucky (hereinafter referred to as "Pfannenschmidt") challenging the appropriateness of Highview Sewer District, Inc.'s (hereinafter referred to as "Highview") collecting fees for tap-ons at Pfannenschmidt's building on Vaughn Mill Road in Louisville.

On August 17, 1979, Mr. Richard Treitz, the President of Highview, informed the Commission by letter that Highview had not received the tap-on fees nor did they own the sewers to which the building was connected. However, Mr. Treitz stated that Highview did receive a \$30.00 monthly sewer service charge per occupant for treating the sewage from the Pfannenschmidt building. Mr. Treitz advised that the tap-on fees in question were payments for Pfannenschmidt's share of construction costs involved in extending the sewer line to his property, and that the \$4,000 payment Pfannenschmidt had already made had been distributed to two companies which constructed and extended the sewers.

Mr. Pfannenschmidt informed the Commission by letter on September 11, 1979, that Pioneer American Enterprises, Inc. extended the sewer line owned by John Treitz and Sons Contractors. Pfannenschmidt described the building as being divided into five spaces, each with its own restrooms.

Highview filed a duplicate of its tariff with the Commission on September 19, 1979. That tariff provided for a residential rate of \$11.10 per month for sewer service and stated that commercial rates were to be "negotiated". The tariff also provided that tap-on fees for commercial use would also be "negotiated."

By order of January 3, 1980, the Commission set the matter for hearing to consider the rates, charges and operations of Highview Sewer District, Inc. Prior to the hearing, Mr. Orville R. Miller, Jr., a tenant in the Gibson-Pfannenschmidt building, advised the Commission by letter that he considered the \$30.00 per month commercial sewer rate he was paying to Highview to be excessive.

The hearing was held on January 25, 1980. Mr. Pfannenschmidt, Mr. Richard Treitz, President of Highview, and Mr. James H. Prater, President of Pioneer-American Enterprises, Inc. gave testimony. Mr. John G. Treitz, Sr., an officer of Highview, also attended the hearing.

On February 8, 1980, the Commission received Highview's responses to certain information requests made at the January 25, 1980, hearing.

It was established at the hearing that Highview Sewer District, Inc. is a privately-owned sewer utility, not a sewer district, and that all 196 shares of stock issued by Highview are owned by a partnership, John Treitz and Sons (hereinafter referred to as "Treitz and Sons"). Richard H. Treitz and John G. Treitz, Sr., are 50/50 partners in the Treitz and Sons' business. The sewage treatment plant and Glencoe subdivision system were purchased by Messrs. Treitz in 1969. The plant was constructed in 1963 and was owned by Mr. Coe. In 1973, tertiary treatment was added to the plant which had previously had a 100,000 gallons per day capacity. Highview serves 230 residential and 7 commercial customers.

Mr. Pfannenschmidt testified that he had purchased his company's property on Vaughn Mill Road (formerly two lots) from Pioneer-American Enterprises, Inc. (hereinafter referred to as "Pioneer") in October, 1977, in order to erect an office building. The real estate purchase contract provided for a \$4,000 sewer connection fee. The building which was erected contains five office spaces; all connected to one sewer line.

Mr. Pfannenschmidt introduced a letter dated October 18, 1977, from Treitz and Sons which stated that Pioneer had a contract with Treitz and Sons and that a tap-on fee of \$4,000 for two toilets and a \$30.00 per month sewer charge were to be paid when Pfannenschmidt's plumber connected to the sewer system. Mr. Pfannenschmidt also introduced a letter dated March 13, 1979, from Treitz and Sons in which John Treitz advised that another \$4,000 tap-on fee for two toilets at an insurance office and the \$30.00 monthly charge was due when that connection was made. On August 3, 1979, Mr. Pfannenschmidt paid a \$4,000 tap-on fee and \$30.00 monthly charge to Treitz and Sons. On September 13, 1979, Mr. Pfannenschmidt paid another \$2,000 tap-on fee to Treitz and Sons for the insurance office which only contained one rest room.

Mr. Richard Treitz testified that Highview owned the plant and the sewer lines in Glencoe subdivision, but that the lines in Spring Mill subdivision and commercial area around Fegenbush Lane and Vaughn Mill Road were owned by Treitz and Sons. He explained that in 1969 Treitz and Sons constructed 1600 linear feet of sewer line which was designed to serve 500 customers, from the edge of the Glencoe subdivision through Spring Hill subdivision to a shopping center and area of promising commercial growth. However, the commercial customers did not materialize as some of them were eventually served by the adjoining Apple Valley Utility. Mr. Treitz did not have records of the cost of the line extension to Treitz and Sons; however, he did furnish an estimate of \$46,000 from EZ Construction Co., Inc. and added \$6,000 of engineering fees for a total

estimate of \$52,000. Mr. Treitz also stated that the homeowners in Spring Mill subdivision have not been charged any tap-on fees.

Mr. Treitz introduced copies of agreements between Treitz and Sons, and Pioneer and Highview and Pioneer, both dated August 22, 1977, each an integral part of the other. According to the terms of the agreements, Pioneer constructed 400 feet of 8 inch sewer line at a cost of \$17,000. Pioneer then transferred title to the line to Treitz and Sons for \$10.00 and Treitz and Sons began collecting fees for tapping-on to the line. Lastly, Mr. Treitz testified that the reason Treitz and Sons is charging the specified tap-on fees is so they can recover their costs of constructing the 1600 foot sewer line extension in 1969.

The Commission having reviewed the record, having heard oral testimony and being advised, is of the opinion and FINDS:

1. That Highview Sewer District, Inc. is currently charging its residential customers \$11.10 per month and that the rates paid by its commercial customers are set by Highview Sewer District, Inc. on the basis of lot size, notwithstanding the contrary provision of the Commission's regulation, 807 KAR 25:020(6)(3).

2. That neither the Utility Regulatory Commission or its predecessor, the Public Service Commission, have approved the rates of Highview Sewer District, Inc. since 1975, the year in which the Commission first assumed regulatory jurisdiction over sewer utilities.

3. That there is a need to further examine the reasonableness of the rates of Highview Sewer District, Inc. in particular, the "negotiated" commercial rates, and the appropriate method by which they are to be calculated.

4. That John Treitz and Sons owns the sewer lines in Spring Mill subdivision, including the sewer line extension

constructed in 1969, and also the Pioneer sewer line extension built in 1977.

5. That John Treitz and Sons is collecting the tap-on fees being complained of in this proceeding, and that Highview Sewer District, Inc. only receives the monthly charges for sewage treatment.

6. That in accordance with the previous finding, John Treitz and Sons is functioning as a "non-energy utility" as defined in KRS 278.010(5)(c) in that the company "owns, controls, operates or manages" a "facility used or to be used or in connection with the treatment of sewage for the public for compensation... ." Accordingly, John Treitz and Sons is subject to the regulatory jurisdiction of this Commission as provided in KRS 278.040(2).

On the basis of the above-stated findings, and the evidentiary record in this case, the Commission:

HEREBY ORDERS that the Commission's staff be directed to immediately begin an investigation into the reasonableness of the rates and charges of John Treitz and Sons for operating facilities used in connection with the treatment of sewage.

It is FURTHER ORDERED that John Treitz and Sons shall file a tariff as required by 807 KAR 25:030 within 15 days from the date of this order.

It is FURTHER ORDERED that the issue of the reasonableness of the commercial rates of Highview Sewer District, Inc. contained in this proceeding be, and hereby is, consolidated with and merged into Case No. 7792 wherein the Commission is currently considering the rate application of Highview Sewer District, Inc.

Done at Frankfort, Kentucky, this 24th day of July, 1980.

UTILITY REGULATORY COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary