

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

COMPLAINT OF MR. RAY PARKS)
AGAINST TRIPORT DISPOSAL)
COMPANY AND MR. WILLIAM DAUGHERTY) CASE NO. 7979
AS TO THE PROVISION OF SEWAGE)
SERVICES TO THE MOON LAKE)
SUBDIVISION, GEORGETOWN, KENTUCKY)

O R D E R

On August 25, 1980, the Utility Regulatory Commission¹, ("Commission") received a letter from Mr. Ray Parks questioning the services, practices and charges of Triport Disposal Company ("Triport") and William Daugherty of Daugherty Engineers ("Daugherty") in the provision of sewage services to the Moon Lake Subdivision in Georgetown, Kentucky.

Subsequent investigation by Commission staff indicated that there were further questions concerning ownership of the sewer lines, responsibility for maintaining such lines, the reasonableness of construction charges and tap-on fees, the rates being charged both residential and commercial customers, the extent of the service territory, and failure to comply with other administrative regulations of the Commission. Triport was requested to submit certain information for Commission review but failed to file information adequate for such review.

By Order dated October 9, 1980, Triport and William Daugherty were ordered to appear at a hearing before the Commission to show

¹ Now Public Service Commission of Kentucky

cause why they should not be held as public utilities, subject to immediate compliance with the administrative regulations of the Commission, and to respond to the complaints of the residents of Moon Lake Subdivision.

The hearing was held at the Commission's offices in Frankfort, Kentucky, on November 11, 1980 at 10:00 a.m. (Eastern Standard Time). Present at the hearing were Mr. William Daugherty, Daugherty Engineers; Mr. R. W. Crabtree, President, Triport Disposal; Ms. Aleta Baker, Scott County Health Department; Mr. Tom Burnett, Home State Savings Association; Mr. Larry Oser, Mr. Robert Brooks, Ms. Alberta Cole and Mr. Jess Hulette, residents of Moon Lake Subdivision. Mr. Ray Parks was not present due to illness, but Mr. Oser was allowed to speak in his behalf. Also present was Intervenor, Consumer Intervention Division, Office of the Attorney General and Mr. Charles Perkins, Assistant Scott County Attorney.

The Commission, having reviewed the evidence and being sufficiently advised, is of the opinion and finds:

1. Triport owns and operates a sewage treatment plant providing sewage service to an industrial area, with five industrial customers, and to Moon Lake Subdivision in Scott County, Kentucky, with 23 residential customers. Triport also owns the sewage lines for the industrial area, and a contract exists between Triport and Home State Savings Association, (owner of the majority of undeveloped lots remaining in the Moon Lake Subdivision) which provides that title to sewage lines to those lots will be conveyed to Triport.

2. Triport began operation in 1973 and, at that time, provided service to Clark Equipment Company. Extensions were made in

1974 to serve Days Inn Motel and Stuckey's Pecan Shop, in 1975 to serve Moon Lake Subdivision, in 1976 to serve Hoover Ball and Bearing Company and in 1977 to serve Hoover Transportation.

3. Triport collects a monthly rate from each industrial and residential customer served.

4. Triport is functioning as a public utility as defined in KRS 278.010(3)(f) in that the company "owns, controls or operates or manages..." a "facility used or to be used for or in connection with ... treatment of sewage for the public, for compensation... ." Accordingly, Triport is subject to the regulatory jurisdiction of this Commission as provided in KRS 278.040.

5. Triport has received tap-on fees of varying amounts from its industrial customers and tap-on fees of \$500 each from residential customers in the Moon Lake Subdivision. The construction cost for residential customers is \$2,200, with industrial customers paying varying amounts.

6. When sewer service is desired by a prospective customer, Triport has required the customer to contract with Daugherty for construction of the sewer lines or extension. The contract for construction of the line includes a provision whereby Mr. Daugherty is to collect \$2,200 for construction cost and the \$500 tap-on fee which is passed on to Triport.

The evidence shows that Daugherty acts only as a contractor providing construction and maintenance service and retains no ownership in the utility. Ownership of the lines, as they are extended and completed to Triport's specifications, lies in Triport and should be considered as contributed property for rate-making purposes.

Maintenance of the lines is the responsibility of Triport.

7. The Scott County Health Department has determined that no additional septic tanks may be located in the Moon Lake Subdivision. Septic tanks presently in the subdivision are creating problems which can only be solved on a permanent basis by sewer service. The only sewer service available to the subdivision is through Triport.

8. Triport should submit to the Commission a comprehensive plan for the provision of sewer service to the entire subdivision. Further, insofar as Triport does not provide and maintain a construction program, customers who seek service should have the option to engage a contractor of their choice so long as the construction meets the specifications and requirements of Triport and this Commission.

9. The complaints expressed no dissatisfaction with the quality of service or the rates charged by Triport. The monthly rates charged are as follows:

Clark Equipment	\$.75 per 1000 gallons
Stuckey's Pecan Shop	1.25 per 1000 gallons
Days Inn Motel	1.08 per 1000 gallons
Hoover Ball and Bearing	1.25 per 1000 gallons
Hoover Transportation	1.25 per 1000 gallons
Moon Lake Residents	12.50 per month per resident

No evidence was entered as to the reasonableness of the rates charged and the Commission has no opinion at this time; however, the Commission finds that Triport should file a rate application for the purpose of determining the reasonableness of such rates.

10. Specific complaints of the Moon Lake residents are as follows:

Mr. Ray Parks and Mr. Larry Oser complained that William Daugherty failed to fulfill the construction contract which called

for restoration of property damaged by sewer line construction and that they were forced to restore the property at their own expense. Mr. Parks further stated that he granted the easement across his property on the condition that the line would be low enough to serve his basement, but that he had been unable to get information from the utility as to the depth of the line. Mr. Parks also stated he was forced to replace an electric ground cable at his own expense that was cut during the sewer line construction. Mr. Parks offered to pay the \$500 tap-on fee in order to receive service, but was refused service unless both the \$500 tap-on fee and \$2,200 construction fee were paid.

Mr. Robert Brooks purchased Lot No. 124 in the Moon Lake Subdivision (on which his home is built) from Home State Savings Association. The \$2,200 sewer construction fee was included in the cost of the lot, and information submitted by Triport and William Daugherty indicates the construction fee was transmitted to Daugherty. After his home was constructed, Mr. Brooks discovered he could only get sewer service by crossing Lot Number 24, owned by Home State. Home State refused to grant an easement. Triport was contacted about the problem, but took no action. It was necessary for Mr. Brooks to purchase Lot Number 24 and lay the sewer line at his own expense. He also paid the \$500 tap-on fee to Triport.

Mr. Jim Jones was not present at the hearing; however, the situation surrounding his obtaining sewer service was described by Mr. Oser and confirmed by Mr. Daugherty. No objection was made to the testimony. Mr. Jones constructed approximately 490 feet of sewer line at his own expense to reach a working manhole. He paid the \$500

tap-on fee and \$2,200 construction charge. Mr. Daugherty confirmed the collection of the construction fee even though no construction was done by him, but asserted the charge was justified by a change in lot sizes and costs of previous construction to bring the lines to that point.

Ms. Alberta Cole signed a contract for sewer service with Mr. Daugherty last year, but has not been provided service. She was told it would not be financially feasible unless at least three more people would take service. There is sewer service across the street from Ms. Cole.

Mr. Jess Hulette talked with Mr. Daugherty about getting sewer service. He offered to grant an easement across a lot owned by him for a free tap-on or to sell the lot for \$6,000. Both offers were refused, but Mr. Hulette later received a letter from Mr. Daugherty stating it had cost him \$15,000 to build the sewer line around the lot.

11. The complaints against Daugherty for alleged failure to fulfill contractual agreements and damage arising therefrom, and the alleged overcharges for construction costs are civil matters over which the Commission has no jurisdiction. These matters should be addressed to a court of competent jurisdiction.

12. Residents have been required to obtain easements and commitments from others as a condition for service and have been denied service for failure to do so. Further, Mr. Parks was denied information as to depth and location of lines and denied service pending payment of construction costs to Daugherty.

13. Triport should immediately furnish to Mr. Parks, and to any other customer within the service area requesting such information as

to the depth and location of lines, and should furnish service to any customer upon payment of charges and under conditions approved herein.

14. Kentucky Revised Statutes provide procedures whereby a utility may obtain easements by condemnation where other remedies are not available. The obtaining of easements is the responsibility of the utility and prospective customers should not be required to obtain such easements as a condition for providing services. Further, that Triport should pursue remedies through the Circuit Court in instances where other remedies have failed.

15. The tap-on fee of five hundred dollars (\$500) is reasonable and should be approved.

IT IS THEREFORE ORDERED that Triport Disposal Company is hereby held to be a public utility as defined in KRS 278.010(3)(f), subject to the regulatory jurisdiction of the Public Service Commission.

IT IS FURTHER ORDERED that the main sewer lines as they are constructed and added to the Triport system shall become the property of Triport, shall be serviced and maintained by Triport, and shall be treated as contributed property for rate-making purposes.

IT IS FURTHER ORDERED that the \$500 tap-on fee is reasonable and is hereby approved.

IT IS FURTHER ORDERED that Triport shall immediately furnish to Mr. Parks and to the Commission information concerning the sewer lines in question and shall provide service upon payment of the approved tap-on fee.

IT IS FURTHER ORDERED that Triport shall furnish information and sewerage service upon request to any customer within the service

area, consistent with the findings herein regarding easements, construction, charges and other requirements in accordance with the administrative regulations of the Public Service Commission and Kentucky Revised Statutes pertaining thereto.

IT IS FURTHER ORDERED that within 30 days Triport shall file with the Commission a comprehensive plan for the provision of sewer service to the entire Moon Lake Subdivision.

IT IS FURTHER ORDERED that Triport shall file with the Commission within 90 days an application for the approval of rates. The rates presently being charged by Triport shall remain in effect until such time as they are changed by order of the Public Service Commission.

Done at Frankfort, Kentucky, this 15th day of May, 1981.

PUBLIC SERVICE COMMISSION

Martin M. Vohy
Chairman

Not participating
Vice Chairman

Don Harrison
Commissioner

ATTEST:

Secretary