

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of

THE APPLICATION OF FIRST LIBERTY BANK OF)
CALVERT CITY, KENTUCKY, AS REPRESENTATIVE)
FOR RED WING UTILITY COMPANY, INC. FOR AN)
ORDER AUTHORIZING ADJUSTMENT OF RATES FOR)
THE SEWAGE TREATMENT FACILITIES LOCATED IN:) CASE NO.
1. GOLDEN ACRES, MARSHALL COUNTY; 2. GATE-) 8168
WAY, MARSHALL COUNTY; 3. HOLIFIELD HEIGHTS,)
GRAVES COUNTY; 4. BLANDVILLE WEST ESTATES,)
McCRACKEN COUNTY; 5. GREEN ACRES, McCRACKEN)
COUNTY; 6. FIELDMONT ESTATES, McCRACKEN)
COUNTY)

O R D E R

On April 17, 1981, Gateway, Marshall County, and Blandville West Estates, McCracken County, Kentucky, by counsel, filed their Motion to Dismiss Application for Rate Increase. In the alternative, the movants request that the Commission exclude from any hearing all evidence of indebtedness incurred subsequent to June 21, 1974.

Among other things, the motion alleges that Red Wing Utility Company, Inc. (Red Wing) did not obtain a certificate of convenience and necessity from the Commission with respect to the construction of sewage treatment facilities in the above subdivisions as required by KRS 278.020. The motion also alleges that the documentation in support of the application herein was presented during previous hearings, considered by the Utility Regulatory Commission (predecessor to the Public Service Commission)

in its Order entered October 31, 1980, in Case No. 7568, and absent the presentation of new evidence the prior Order should be res judicata as to this evidence. Finally, the motion alleges that Red Wing has issued evidences of indebtedness without having obtained the approval of the Commission as required by KRS 278.300.

On April 23, 1981, First Liberty Bank of Calvert City, Kentucky (Applicant), by counsel, filed its response to the motion stating, among other things, that the sewage treatment facilities referred to above were constructed prior to the requirement of a certificate of convenience and necessity. The response further states that the October 31, 1980 Order is not res judicata in that the present application is based on a different test year and different proforma income and expense projections. The response also states that KRS 278.300 is not applicable to the loan from the Small Business Administration (SBA) obtained by Red Wing since that loan is subject to the supervision of the SBA, an agency of the Federal Government, thereby falling within the exemption set forth in KRS 278.300(10).

On April 23, 1981, Applicant, by counsel, filed its Motion requesting that the Commission enter an Order requiring attorneys purportedly representing subdivisions to submit the names of those persons whom they represent.

On May 20, 1981, Gateway, Marshall County, and Blandville West Estates, McCracken County, by counsel, filed a motion requesting that the Commission schedule a hearing to consider the motion filed April 17, 1981.

The Commission, having considered the motions and response and being advised, is of the opinion and finds that:

1. A certificate of convenience and necessity to construct the sewage treatment plants in question was not required since the facilities were constructed prior to January 1, 1975, the effective date the Commission assumed jurisdiction over sewer utilities.
2. The Order of the Commission entered October 31, 1980, in Case No. 7568, is not res judicata with respect to the application (notice) herein which is based on a test period other than that considered in the prior case, thus resulting in the submission of data including projected revenues and expenses which is not identical to that filed in Case No. 7568.
3. While the loan obtained by Red Wing from the SBA was not authorized by the Commission, this represents only one aspect of the case now before the Commission, and while this does not justify dismissal it should be considered along with the merits of the rate proposal.
4. The attorneys representing subdivisions should submit the names of those persons whom they represent.

IT IS THEREFORE ORDERED That the motion to dismiss and the motion for a hearing with respect to the motion to dismiss filed by Gateway, Marshall County, and Blandville West Estates, McCracken County, be and they hereby are overruled.

IT IS FURTHER ORDERED That the motion filed by Applicant requesting that the Commission enter an Order to require attorneys representing subdivisions to submit the names of those persons whom they represent be and it hereby is sustained, and those attorneys are hereby directed to provide this information to the Commission and parties of record by June 8, 1981.

Done at Frankfort, Kentucky, this 29th day of May 1981.

PUBLIC SERVICE COMMISSION

Marlin H. Vogt
For the Commission

ATTEST:

Secretary