

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF TRIPORT DISPOSAL)
COMPANY, FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY AUTHORIZING)
AND CONFIRMING SAID COMPANY'S CON-)
STRUCTION OF ITS SANITARY SEWAGE) CASE NO. 8506
FACILITIES TREATMENT AND DISPOSAL)
SYSTEM LOCATED IN MOON LAKE SUB-)
DIVISION AND PORTIONS ADJACENT IN)
SCOTT COUNTY, KENTUCKY AS WELL AS AN)
APPLICATION FOR APPROVAL OF A RATE)
INCREASE FOR TARIFFS)

ORDER ON REHEARING

The Commission issued an Order on January 6, 1983, granting a rate increase to Triport Disposal Company ("Triport") and requiring Triport to consolidate its sewer system by taking possession of the collection system, after inspection and acceptance, according to the plan set out in a series of contracts between Triport and Kentucky Curb Service, a sole proprietorship of William Daugherty,¹ Kentucky Curb Service and Home State Service Corporation ("Home State"),² and Home State and Triport.³ On January 28, 1983, Triport filed a petition for rehearing seeking reconsideration and clarification on the issue of acquiring

¹Section 10.

²Section 16.

³Page 2.

the collection lines. Triport also requested additional time to provide support for an inspection fee which the Commission had denied and asked the Commission to reconsider the method adopted for refunds on extensions. Finally, Triport requested that it be relieved of filing a summary of its plant account, tariffs and rates, a revised application for service and an extension of service policy until the petition for rehearing was addressed by the Commission. The Commission granted the petition for rehearing by an Order dated February 14, 1983, and the rehearing was held on April 5, 1983, with Triport and the Attorney General ("AG") appearing therein.

ACQUISITION OF COLLECTION LINES

In Case No. 7979, Complaint of Mr. Ray Parks Against Triport Disposal Company and Mr. William Daugherty As To The Provision Of Sewage Services To The Moon Lake Subdivision, Georgetown, Kentucky, the Commission addressed the issue of the proper level of charges to be collected as tap-on fees from customers. It was therein determined that Triport would be entitled to charge \$500 to each residential customer connecting to the sewer system. In that case, Mr. Daugherty described his interest in the collection lines as that of a contractor without any ownership. The Commission also considered the evidence of the intentions of Triport, Home State and Mr. Daugherty, as shown by the agreements previously referenced, which provided that Triport receive the lines in apparent consideration for the privilege of connecting Home State's lots to the sewer treatment facilities owned by Triport. The Commission then found that once Triport inspected and

approved the lines, Triport would take possession and ownership and record the lines as contributed property. Neither Triport nor Mr. Daugherty appealed that decision. Since the parties and the issue in this proceeding are the same, the matter is appropriately res judicata.

In the petition for rehearing, Triport admits that the ownership of all collection lines laid for Home State is to vest in Triport without further compensation, but asserts that it cannot acquire title to other collection lines laid by Daugherty without paying him for them. Mr. Daugherty claims in this proceeding that he constructed an extension line in 1979 to serve 19 lots, specifically, lots no. 14, 15, 16, 17, 18, 18A, 19, 19A, 21, 22, 30, 31, 32, 33, 34, 117, 118, 119 and 120. Mr. Daugherty provided no evidence of ownership of easements along the path of the extension, no invoices supporting the cost of labor and materials for the extension and no agreements with the lot owners providing for the extension. However, 8 of the 19 lots which may be served by the extension are owned by Home State and, therefore, no compensation from Triport will be required. In addition, Daugherty has received compensation for the section of line to 4 other lots (14, 15, 117 and 32). At most then, Daugherty may have a claim against 7 of the 19 lots, but he has not provided any proof of an ownership interest. Therefore, no obstacle exists for Triport to assume control of this segment of lines, as well as all others,

as long as the lines were built properly. Mr. Daugherty testified that lines he constructed were in compliance with all codes.⁴ Likewise, the Commission need not award any further rate relief to Triport for the purpose of compensating Mr. Daugherty.

Apparently, Mr. Daugherty would prefer that the Commission resolve that issue because it would save him the trouble and expense of collection activity,⁵ but the Commission cannot decide that question simply because it will be easier for Mr. Daugherty. The Commission does not have the jurisdiction to determine whether any equitable or legal rights exist for which Mr. Daugherty may be entitled to compensation by the 7 lot owners; counsel for Triport acknowledged this possibility at the hearing.⁶

SEWAGE TREATMENT SERVICE CONTRACT

In its Order dated January 6, 1983, the Commission ordered Triport to develop and file within 30 days a contract for service that is in compliance with the Commission's regulations. Triport's proposed sewage treatment service contract was filed April 15, 1983, some 99 days after the date of the Order.

Paragraph 5, page 1, of the contract relating to monthly rates indicates that other rates may be established from time to

⁴Transcript of 7/29/82, p. 79.

⁵Transcript of 4/5/83, p. 66.

⁶Transcript of 4/5/83, p. 59.

time according to the terms of a trust deed between Triport and Home State. KRS Chapter 278 grants exclusive jurisdiction over the regulation of rates and services of public utilities to the Commission. Triport may not charge a greater or lesser amount than that prescribed by the Commission, and any adjustment in the rates and charges must be approved by the Commission through its regular procedures; therefore, references to the trust deed should be deleted from the contract. Further, paragraph 12, page 2, subordinating the rights of the parties to the terms of the trust deed, should be deleted.

Paragraph 7, pages 1 and 3, provides for discontinuance of service for non-payment of bills by detaching or plugging the tap of the customer to the trunk line and requires the customer to pay all expenses incurred. 807 KAR 5:006, Section 11(3)(a), specifically prescribes the conditions under which service may be discontinued for non-payment of bills. This paragraph should be revised to comply with the regulation.

The costs incurred in discontinuing and reconnecting service for non-payment of bills may be recouped by the utility only where the amounts of such charges have been approved by the Commission and are stated in the utility's filed tariff. Triport's proposed disconnection and reconnection charges were denied by the Commission's January 6, 1983, Order due to Triport's failure to provide adequate cost justification. Triport objected to this denial but did not provide the required cost data during the re-hearing proceedings. Until such time as Triport files cost data based on the average cost of such disconnection and reconnection

showing the cost elements of the charges (transportation, labor, equipment, etc.), and Commission approval is obtained according to standard Commission procedure, such charges should be denied and references thereto deleted from the contract.

Paragraph 11 of the service contract contains an impermissible limitation of liability clause which must be deleted. The service contract should also be revised to include a reference to the approved tap-on fee of \$500.

INSPECTION FEE

Mr. R. W. Crabtree, President of Triport, testified that he or another Triport employee would perform the inspections.⁷ To that extent, the Commission has already provided for salaries that should cover this task. Therefore, the fee will not be allowed.

RATES

During the hearing held April 5, 1983, Mr. Crabtree testified that he was only charging \$12.50, rather than the authorized rate of \$13.50.⁸ Henceforth, bills should reflect the authorized rate or Triport should apply for a decrease in rates and obtain the Commission's approval therefor.

REFUNDS

Triport was unable to provide tangible evidence that the method of refunding for extensions would have any adverse

⁷ Transcript of 4/5/83, pp. 73-74.

⁸ Transcript of 4/5/83, p. 74.

effects. Triport admitted that the Commission's decision was fair.⁹ The Commission has determined that allowing 25 feet per additional tap-on is an adequate means of reimbursing customers. Since Triport has not convinced the Commission that another method of refunding is preferable, no change is ordered from the original Order.

IT IS THEREFORE ORDERED that the Commission Order of January 28, 1983, is hereby affirmed for the reasons set forth above.

IT IS FURTHER ORDERED that the service contract be revised in accordance with the above-stated findings and filed within 30 days from the date of this Order.

Done at Frankfort, Kentucky, this 22nd day of August, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary

⁹Petition for Rehearing, p. 5.