COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

COMPLAINT OF CHRISTOPHER L. LILLY AGAINST SOUTH ELKHORN SERVICE COMPANY	)))	CASE NO. 8794

O R D E R

On February 8, 1983, Mr. Christopher L. Lilly, Secretary, Clemens Heights Neighborhood Association ("Association"), filed a complaint of behalf of the Association and member-residents of the Clemens Heights Subdivision against the South Elkhorn Service Company ("South Elkhorn"). The complaint questioned South Elkhorn's advance billing policy, rates and penalties in excess of those specified in the tariff and the adequacy of sewage treatment. On June 23, 1983, the Public Service Commission ("Commission") issued its Order requiring South Elkhorn to: cease the charging of rates other than those authorized by its approved tariff; develop a standard quarterly billing procedure; delete the interest provision from its tariff and apply the late payment penalty uniformly to all customers; file data showing the status of sale negotiations with the City of Lexington; file copies of its monthly Discharge Monitoring Reports for a period of 1 year; obtain approval of the Commission prior to performing future construction governed by KRS 278.020; and file revised tariff sheets setting out its rates, rules and regulations in accordance

with KRS Chapter 278, Chapter 807 of the Kentucky Administrative Regulations and the Commission's findings in this matter.

On July 13, 1983, South Elkhorn filed an Application for Rehearing objecting to each of the Commission's findings except the requirement that approval be obtained for future construction governed by KRS 278.020. By Order of July 25, 1983, an informal conference was scheduled for August 4, 1983, and by subsequent Order of August 17, 1983, a hearing was scheduled for September 1, 1983. During the August 4 conference, the Association tendered a motion requesting refund of all monies collected by South Elkhorn in excess of those authorized by its tariffed rates. The motion was considered at the hearing.

At the hearing, Mr. Ted Osborne, President of South Elkhorn, testified that the plant was originally built in 1968 to serve the Robinwood, Waverly and Grasmere Subdivisions and that the rates established and included in the tariff were intended for those subdivisions only;[1] however, South Elkhorn's tariff provides a rate for Robinwood and Waverly Subdivisions and a rate for Grasmere and other users, which appears to anticipate users other than those specifically mentioned in the tariff. Mr. Osborne also testified that contracts for extensions into the Clemens Heights, Plantation, Hidden Springs and High Plains Subdivisions were let in 1974, but that actual construction did not take place

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[1] Transcript of Evidence ("T.E."), September 1, 1983, pp. 14 and 17.

until 1975;[2] thus, customers in these subdivisions did not begin receiving service until after Commission jurisdiction over sewer utilities. Further, Mr. Osborne's testimony at the initial hearing on April 27, 1983, shows that the actual rates being charged customers in the Robinwood, Waverly and Grasmere Subdivisions are not the same as those specified in the tariff for customers in those subdivisions.[3]

In its Application for Rehearing, South Elkhorn relied upon City of Catlettsburg v. Public Service Commission, Ky., 486 S.W.2d 62 (1972), to show that the Commission is without authority to require information as to the status of the possible sale of the utility to the City of Lexington. The Commission disagrees with South Elkhorn's interpretation of the holding in that case. In that case, the Kentucky Court of Appeals upheld an Order of the Commission in which the Commission limited its findings to whether the purchaser was ready, willing and able to continue providing adequate services to the customers of the utility, and further found that the Commission was correct in determining that it did not have jurisdiction to rule upon the authority of a city to purchase a privately-owned utility. No finding was made as to the type of information the Commission may require or the time frame in which it may be required. Further, South Elkhorn introduced

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2 T.E., September 1, 1983, pp. 18 and 19.

3 T.E., April 27, 1983, pp. 59-62.

testimony concerning this possible sale[4] as justification for its failure to file a rate application with the Commission, thereby voluntarily placing the issue before the Commission. In addition, KRS 278.260 provides that the Commission may, upon complaint or upon its own motion, investigate any rate, regulation, measurement, practice or act relating to the service of a utility. In this instance, information regarding the status and any possible or probable sale date is within the scope of KRS 278.260, in no way conflicts with the holdings in City of Catlettsburg, supra, and is pertinent to the further determinations of the Commission with regard to possible requirement of a rate case filing and/or refunds.

South Elkhorn contends that the Commission may not require it to charge only those rates prescribed by its tariffs since no specific finding was made that the rates being charged are unfair, unjust or unreasonable. KRS 278.160 provides that no utility may charge, demand, collect or receive from any person a greater or lesser compensation than that prescribed by its filed schedules, and further sections of KRS Chapter 278 and Chapter 807 of the Kentucky Administrative Regulations establish the procedure to be followed in making changes to the filed schedules. The evidence is clear from South Elkhorn's own testimony that it is charging rates that differ from and are in excess of those rates prescribed by its filed schedules. The Commission is of the opinion that the

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[4] T.E., April 27, 1983, p. 73.

reasonableness of the rates is not at issue in this case and that there is no merit to South Elkhorn's argument in this regard since the rates being charged are clearly unauthorized upon application of KRS 278.160, 278.180 and 278.190.

South Elkhorn presented no further testimony to support its contention that it should not be required to develop a standard quarterly billing policy, to delete the interest provision and apply the late payment charge uniformly and to file copies of its monthly Discharge Monitoring Report.

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

(1) A certificate of convenience and necessity was not required for the construction of extensions to serve the Clemens Heights, Plantation, Hidden Springs and High Plains Subdivisions since contracts for such extensions were in effect prior to Commission jurisdiction over sewer utilities.

(2) Customers within these subdivisions began receiving service after January 1, 1975; thus, absent an application to and approval of the Commission of a different rate, the appropriate rates to be charged these customers is the amount specified in South Elkhorn's tariff for "other users."

(3) The Commission does not have sufficient data available to determine the amount of overcharges or undercharges and the effect a refund would have on the financial viability of South Elkhorn and the resulting effect on customers; therefore, the motion for refund should be denied without prejudice to the further pursuit of this motion in a separate action.

IT IS THEREFORE ORDERED that Finding No. 7 and the final ordering paragraph of the Commission's June 23, 1983, Order be and they hereby are deleted.

IT IS FURTHER ORDERED that filings required in the June 23, 1983, Order shall be made within 20 days of the date of this Order.

IT IS FURTHER ORDERED that all other provisions contained in the Commission's Order of June 23, 1983, be and they hereby are affirmed.

IT IS FURTHER ORDERED that the motion for refund be and it hereby is denied without prejudice.

Done at Frankfort, Kentucky, this 3rd day of November, 1983.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary