

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF HARDIN COUNTY WATER )  
DISTRICT NO. 1, A WATER DISTRICT ORGANIZED )  
PURSUANT TO CHAPTER 74 OF THE KENTUCKY )  
REVISED STATUTES, IN HARDIN COUNTY, )  
KENTUCKY, FOR (1) A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY AUTHORIZING AND )  
PERMITTING SAID WATER DISTRICT TO ) CASE NO.  
CONSTRUCT WATER STORAGE AND DISTRIBUTION ) 10189  
SYSTEM IMPROVEMENTS, CONSISTING OF )  
ELEVATED STORAGE TANKS, AND WATER TRANS- )  
MISSION LINES (THE PROJECT); (2) APPROVAL )  
OF THE PROPOSED PLAN OF FINANCING OF SAID )  
PROJECT; AND (3) APPROVAL OF INCREASED )  
WATER RATES PROPOSED TO BE CHARGED BY THE )  
DISTRICT TO ITS RETAIL AND WHOLESALE )  
CUSTOMERS )

O R D E R

Before this Commission are motions by Joseph Janes, an intervenor in these proceedings, and by Hardin County Water District No. 1 ("Hardin County No. 1").

The Commission will deal first with Janes' motions. On November 7, 1988, Janes moved for dismissal of these proceedings, the initiation of an investigation into Hardin County No. 1's operations, and consideration of his motions as formal testimony. These motions followed Hardin County No. 1's failure to substantially comply with the procedural schedule established for these proceedings and a motion by the Attorney General's Utility and Rate Intervention Division ("AG") for dismissal of these proceedings because of that failure.

Shortly after Janes submitted his motions, Hardin County No. 1, Hardin County Water District No. 2, and the Attorney General, parties in this proceeding, agreed upon a revised procedural schedule which allowed Hardin County No. 1 additional time to prepare its testimony and respond to informational requests. Their proposed procedural schedule was subsequently submitted to this Commission for its approval. On January 5, 1989, the Commission approved and adopted the proposed procedural schedule as its own. The AG then withdrew its motion for dismissal. Janes' motions, however, were not withdrawn.

As to Janes' motion for dismissal, the Commission finds it to be without merit and is of the opinion that it should be denied. The primary ground for this motion was Hardin County No. 1's failure to substantially comply with the initial procedural schedule. This ground, however, no longer exists. The initial procedural schedule has been completely revised. The Commission notes that Janes offered no objections to this revision. As of this date, Hardin County No. 1 has fully complied with this revised procedural schedule.

Janes refers to Hardin County No. 1's alleged "unacceptable accounting practices, fraud and attempt[s] to deceive the customers of the district, the Public Service Commission and the intervenors" as additional grounds for dismissal. He presents, however, no substantive evidence to support his allegations. To obtain dismissal of Commission proceedings for fraud the movant bears the heavy burden of clear and convincing proof. Janes has not met this burden. His motion must, therefore, be denied.

Janes' second motion requests that an investigation of Hardin County No. 1's operations be initiated. This Commission believes that Janes' motion is premature. Historically, rate case proceedings have provided an opportunity to conduct a wide-ranging review of a utility's operations and to scrutinize its past and future expenses so as to determine the appropriate rates for utility service. The Commission sees no reason why such scrutiny will be lacking in these current proceedings. If, at the end of these proceedings, irregularities in Hardin County No. 1's operations are found, the Commission will certainly consider initiating a separate investigation. For now, the Commission is of the opinion that such an investigation is not required and that this motion should be denied.

In his final motion, Janes requests that his November 7, 1988 filing be considered as testimony. The Commission does not believe that Janes' filing is an appropriate form to present testimony. This Commission is of the opinion, therefore, that this motion should also be denied. If Janes wishes to present testimony, he should file it in the proper form and in accordance with the revised procedural schedule.

The Commission now turns to Hardin County No. 1's motion. On December 2, 1988, Hardin County No. 1 moved that Janes be directed to notify all parties of any conference which he holds with it. In its motion, Hardin County No. 1 specifically mentioned Janes' attempts to inspect its records outside Commission discovery procedures. In support of its motion, Hardin County No. 1 cites a Commission policy which requires all parties in a proceeding to be

notified of and afforded the opportunity to attend any informal conference with the Commission Staff.

Hardin County No. 1 confuses meetings between parties with informal conferences involving Commission Staff. The Commission Staff is an arm of this Commission, providing it with technical and legal advice and assistance. It is not, nor can it ever be under this Commission's existing structure, a party to a proceeding. Due to the unique relationship between this Commission and its staff, Commission Staff must avoid ex parte contacts with the parties to any proceeding. Such contacts would create the appearance of impropriety or undue influence. The parties to a Commission proceeding, however, play no role in the actual decision-making process and are, therefore, under no such prohibition. Hardin County No. 1 has provided no reason why that prohibition should be extended to the parties. Accordingly, the Commission is of the opinion this motion should be dismissed.

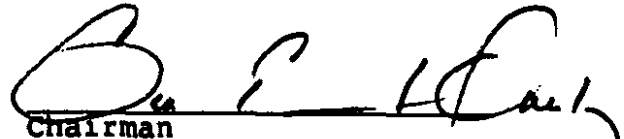
As to Janes' attempts to inspect Hardin County No. 1's records, KRS 74.240(3) specifically requires that the books of a water district be open to public inspection during normal business hours. Janes, as a member of the public, has a statutory right to inspect Hardin County No. 1's records. He does not forfeit that right by exercising his right to intervene in these proceedings.

IT IS THEREFORE ORDERED that Janes' motions to dismiss these proceedings, to initiate an investigation of Hardin County No. 1's operations, and to consider his November 7, 1988 filing as testimony be and they hereby are denied.

IT IS FURTHER ORDERED that Hardin County No. 1's motion that Janes be directed to notify all parties to these proceedings of any conference which he holds with the water district be and it hereby is denied.

Done at Frankfort, Kentucky, this 3rd day of February, 1989.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Executive Director