

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DORIS HORN AND J. W. HENDERSON, ET AL.)	
)	
COMPLAINANTS)	
)	
VS.)	CASE NO. 91-032
)	
ESTILL COUNTY WATER DISTRICT NO. 1)	
ARCHIE MCINTOSH, DAN ROSE, JAMES SONS)	
)	
DEFENDANTS)	

O R D E R

This matter arises upon the September 25, 1991 filing by the Defendants in this action of a motion to strike the witness list and list of exhibits of the Complainants; and, a motion to dismiss the complaint. In support of the motion to strike, the Defendants state that the witness list filed by the Complainants does not contain a "brief narrative statement" of the subject of the witnesses' testimony and the exhibit list does not indicate the relationship the exhibits have to the acts complained of. Defendants argue they are unable to prepare a defense because they do not know the subject of each witnesses' testimony. In support of the motion to dismiss the Defendants argue that "the facts alleged in the complaint and the proof thereof in the submission of the list of witnesses and exhibits by the Complainants do not set out sufficient grounds to remove Defendant Commissioners or

subject the Defendant 'District' to corrective orders of the Commission"

After consideration of the motions and grounds therefor, and being otherwise sufficiently advised, the Commission finds both motions should be denied for the following reasons. The stipulation referred to by the Defendants in support of the motion to strike is the joint stipulation filed by the parties on July 19, 1991. In its Order dated August 9, 1991, the Commission specifically rejected the stipulation and set forth procedural guidelines the parties should follow in further litigating this action. Specifically, at ordering paragraph 3.e. the Commission directed that both the Complainants and Defendants shall prefile all exhibits and a narrative summary of each witness's testimony on or before October 1, 1991. Thus, the Defendants' motion to strike is premature as the Complainants have until October 1, 1991 within which to submit a narrative summary of the witness's testimony.

In addition, the Commission notes that the witness and exhibit lists complained of were filed into the record of this proceeding on July 19, 1991, however, the Defendants waited nine weeks before filing the motion to strike. Inasmuch as the hearing is scheduled for October 7, 1991, the Commission also finds it appropriate to allow the parties an additional three days within which to comply with the Commission's August 9, 1991 Order.

The Commission further finds the Defendants' motion to dismiss should be denied. The complaint which initiated this action was found to establish a prima facie complaint against the


Defendants. That is all that is required at this stage of the proceeding. In fact, if the Complainants are unable to show their right to the relief requested, based upon the facts and the law adduced at the hearing, the Defendants may move to dismiss the proceeding prior to the presentation of their defense.

IT IS THEREFORE ORDERED that the Defendants' motion to strike and motion to dismiss be and they hereby are denied.

IT IS FURTHER ORDERED that the procedural schedule set forth in the Commission's Order of August 9, 1991 is hereby modified to allow both the Complainant and the Defendants to prefile all exhibits and a narrative summary of each witnesses' testimony on or before October 4, 1991.

Done at Frankfort, Kentucky, this 1st day of October, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director