

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF PRICE ESTATES
SUBDIVISION WASTEWATER TREATMENT SYSTEM
and
ROBERT TRIMBLE

ALLEGED VIOLATION OF KRS CHAPTER 278

)
)
)
)
) CASE NO. 91-071
)
)
)

O R D E R

On November 26, 1991, the Commission received a letter from the residents of Price Estates Subdivision ("Residents") which requested the Commission join the First National Bank of Paintsville ("First National") as a party to this proceeding.¹

The Residents aver that First National attempted to quitclaim any title or interest in said sewage treatment plant to Thelma Activities, Inc., but that said Quitclaim Deed is void, ineffective and invalid as to transfer title or interest from First National because the language of First National's Trust Deed ("Trust Deed") for the operation of a privately owned sewage system recorded in Deed Book 169, Page 133, mandates consent by a majority of all owners of property connected to said system in order for a transfer to be valid.

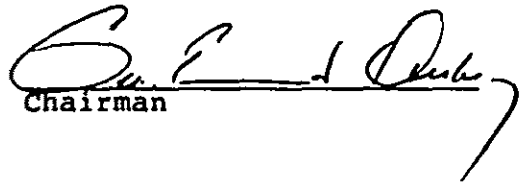
¹ A copy of the letter is attached hereto and incorporated by reference herein as Exhibit A.

Based on the foregoing, the Commission finds that further information is needed to reach a decision on the request by the Residents.

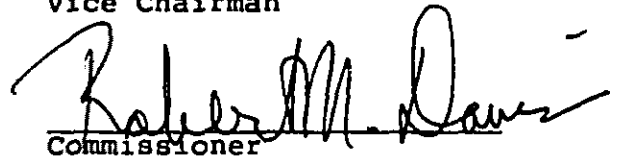
The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that First National file a response within 10 days of the date of this Order to the Residents' request to join First National as a party to this proceeding.

Done at Frankfort, Kentucky, this 20th day of December, 1991.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ATTEST:


Executive Director

LAW OFFICES
FRANCIS, KAZEE AND FRANCIS

PROFESSIONAL BUILDING

111 EAST COURT STREET

P. O. Box 700

PRESTONSBURG, KENTUCKY 41653-0700

TELEPHONE 606-886-2361 TELECOPIER 606-886-9603

PAINTSVILLE OFFICE

FAMILY FEDERAL BUILDING, SUITE 208

100 MAIN STREET

P. O. Box 1878

PAINTSVILLE, KENTUCKY 41240-1878

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P. FRANK HEADBERLIN
MARTIN L. OSBORNE
BRETT D. DAVIS

ROBERT J. PATTON*
WILLIAM C. MULLINS†

OF COUNSEL
FRED O. FRANCIS

* ALSO ADMITTED IN WEST VIRGINIA
† PAINTSVILLE OFFICE

November 20, 1991

Commonwealth of Kentucky
Public Service Commission
730 Shenkel Lane
P.O. Box 615
Frankfort, KY 40602

RECEIVED
NOV 26 1991
PUBLIC SERVICE
COMMISSION

To: Christopher D. Moore
Staff Attorney
Public Service Commission

RE: Case No.: 91-071
Price Estates (Thelma Activities)

Dear Mr. Moore:

This letter is to confirm that I represent Mr. Olin Fitch's interest in regard to the matter at issue. As Mr. Fitch advised, subsequent to the informal conference, a meeting of the residents of Price Estates was held on November 16, 1991. Various proposals were entertained and at the conclusion of said meeting, it was agreed by and between the residents of Price Estates that the existing waste water treatment system should be transferred to a qualified, competent operator. (A copy of resident's intention to transfer is attached hereto as Exhibit "A").

Mr. Keith Fairchilds, who advised he was a qualified operator pursuant to the Kentucky Administrative Regulations, has agreed to assume ownership and operation of said system for the sum of \$3,000.00. At this time, the residents are in agreement to compensate Mr. Fairchilds, the sum of \$1,500.00 with the remaining balance to be paid from the estate of Robert Trimble or other parties. As of the date of this letter, the undersigned attorney has been unable to contact Joann Trimble, Executrix of the estate of Robert Trimble.

November 20, 1981

Mr. Moore

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Further, an analysis of the records indicate at this time no transfer of the Price Estate Subdivision waste water treatment system could be accomplished, due to the fact title is vested in the First National Bank of Paintsville, as evidenced by Deed of Trust dated November __, 1972 and recorded in Deed Book 169, Page 113. (A copy of which is attached hereto as Exhibit "B").

From the records, it appears the First National Bank of Paintsville, attempted to Quitclaim any title or interest in and to said waste water treatment system to Thelma Activities, Inc. as evidenced by Quitclaim dated May 7, 1981 and recorded in Deed Book 212, Page 268, on August 17, 1981. However, said Quitclaim Deed is void, ineffective and otherwise invalid as to transfer title or interest from the First National Bank of Paintsville, Kentucky. An analysis of First National Bank's Trust Deed for the operation of a privately owned sewage system recorded in Deed Book 169, Page 133, recites in relevant part on page 4, section 1(a) as follows:

1. (a) "The trustee shall transfer the sewage system, facilities and other property granted by this indenture to a governmental authority or to a public utility company controlled by State Public Commission where a similar body which undertakes to operate and maintain the sewerage system (1) at the request of, and upon such terms and conditions as may be approved by, the owner or owners of the properties connected to the sewerage system, or (2) upon the issuance of a judicial decree requiring such transfer. The grantor shall have no rights with respect to such transfer of the system, facilities and property, and shall not be entitled to any portion of the proceeds, if any, resulting from such transfer. The term "transfer" as used herein shall include, but is not limited to, transfer by sale or as a result of condemnation proceedings. Immediately upon such transfer, this indenture shall be of no further effect. (b) In the event other adequate sewerage service is provided by governmental authority through means other than the operation of the sewerage system and the facilities transferred to the trustee herein, the provisions of this indenture relating to the operation and maintenance of the sewerage system shall be of no effect; but the trustee shall, under the circumstances, dispose of the system, facilities and property covered by this indenture upon the terms and conditions as may be approved by the owner or owners of a majority of the properties connected to the sewerage system. The grantor shall have no rights with respect to such

disposition of the system, facilities and property and it shall not be entitled to any portion of the proceeds, if any, resulting from said disposition. Immediately upon such disposition of the system, this indenture shall be of no further effect."

Therefore, a clear reading of the Bank's Trust Deed, renders the alleged Quitclaim Deed, referred to above, a nullity. In fact, a clear reading of the language of said Trust Deed mandates consent by a majority of all owners of property connected to said system in order for a transfer to be valid. Therefore, from the records, it would appear the First National Bank of Paintsville, Kentucky is the actual holder of title in and to the waste water treatment system of what is known locally as the "Price Estate Subdivision". I am forwarding a copy of this correspondence directly to the authorized agent for service on behalf of the First National Bank of Paintsville and respectfully request First National Bank of Paintsville be made an indispensable party to this proceeding.

Further, please be advised that I represent Olin Fitch individually in regard to this matter and any further correspondence or recommendation should be forwarded directly to the undersigned attorney as well as Mr. Fitch. Please take measures to insure that all residents of Neal Price Subdivision receive proper notification or copies of all relevant correspondence.

We look forward to an amicable resolution of this matter and should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

FRANCIS, KAZEE & FRANCIS



ROBERT J. PATTON

RJP/srh

Enc.

(39)

This DEED of QUITCLAIM between THE FIRST NATIONAL BANK of PAINTSVILLE, KENTUCKY, party of the first part; and THELMA ACTIVITIES, INC., Paintsville, Kentucky, a Utility Company, controlled by the PUBLIC SERVICE COMMISSION, party of the second part;

WITNESSETH, that for and in consideration of the sum of ONE DOLLAR (\$1.00), cash in hand paid, party of the first part does hereby release, remise, and forever quitclaim unto party of the second part, its successors and assigns, any and all right, title and interest which party of the first part may have, by virtue of being TRUSTEE, in a certain TRUST AGREEMENT dated November ____, 1972, in and to a certain lot in Nell Price Subdivision, Thelma, Kentucky, and sewage disposal or treatment plant and other equipment located thereon, said tract being described as follows, to-wit:

BEGINNING at the Southeast corner of Lot Number Nine, presently owned by Olen Fitch; thence N 87 - 30 W with the South line of said Lot No. 9, 27 feet; thence running S 2 - 30 W 30 feet, crossing a 25 foot Street and 5 feet into said Lot No. 12; thence running S 87 - 30 E 45 feet; thence running N 2 - 30 E 30 feet; thence running N 87 - 30 W 18 feet to the point of beginning.

Being a rectangular parcel of land 30 feet by 45 feet.

BEING a part of the same property conveyed to party of the first part by Price Estates, Inc., Nell Price, Sr. and Bonnie Price, by Deed dated the ____ day of November, 1972 and recorded in Deed Book 169 page 113, Johnson County, Kentucky, Court Clerk's Office.

By virtue hereof said TRUST AGREEMENT is terminated and party of the first part as TRUSTEE acquitted thereof.

RECEIVED

NOV 28 1991

PUBLIC SERVICE
COMMISSION

IN TESTIMONY WHEREOF, witness the signature of party of the
first part this 7th day of May, 1981.

THE FIRST NATIONAL BANK of
PAINTSVILLE
Paintsville, Kentucky

by

John L. Williams
JOHN L. WILLIAMS
President

STATE of KENTUCKY

COUNTY of JOHNSON

The foregoing instrument was acknowledged before me this 7
day of May, 1981, by JOHN L. WILLIAMS, President, The First
National Bank of Paintsville, Kentucky, on behalf of said Bank.

My commission expires October 1982
WITNESS my hand and Notarial Seal, this 7 day of May, 1981.

Leanne C. Short
NOTARY PUBLIC

I certify to preparation of
the foregoing instrument.

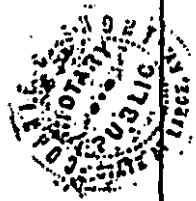
J.K. Wells
J.K. WELLS, Attorney
Paintsville, Kentucky 41240

STATE OF KENTUCKY
COUNTY of JOHNSON

I, BETTY JO CONLEY, CLERK of the County Court for
the County and State aforesaid, do certify that the
going Deed was on the 13th
day of August, 1981, lodged in my office
for record. Whereupon the same has been duly recorded.
Given under my hand this 17th day of
August, 1981.

Betty Jo Conley
BETTY JO CONLEY, Clerk
D.C.

Tax .50¢



RECEIVED

NOV 23 1991

PUBLIC SERVICE
COMMISSION

91-0171

11-16-91

ON THIS DATE Residents of
Price Estates have Reached
AN AGREEMENT OF INTENTION
TO LET Keith Fairchild
TO BECOME SOLE OWNER
& OPERATOR OF THIS SYSTEM
FOR THE AMOUNT OF \$3,000
IN ORDER TO COMPLETE THIS
AGREEMENT Residents of Price
Estates AGREE TO PAY 1500
 $\frac{1}{2}$ OF THE AMOUNT. if Shirley
Melvin, Administrator of R. Trimble
Estate AGREES TO PAY 1500 $\frac{1}{2}$
OF THE AMOUNT & AGREE TO
DEED THE SYSTEM TO Mr. Fairchild

① Harry ZIMMER

② Kenny BUTCHER

③ Kenneth CASADA

④ Glenis BLANE

⑤ Wayne FOXSON

⑥ Alan FISH

6-15-73
RECEIVED

NOV 26 1991

RECEIVED
MISSION

TRUST DEED

FOR THE OPERATION OF A PRIVATELY OWNED SEWERAGE SYSTEM

THIS TRUST INDENTURE, made this ____ day of _____, 19____, by and between _____, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Kentucky (hereinafter called "Grantor"), and _____, Trustee, a corporation duly chartered, organized and existing under and by virtue of the laws of the Commonwealth of Kentucky, (hereinafter called "Trustee").

WITNESSETH:

THAT WHEREAS, _____ is now the owner of property known as _____ located in or near the City of _____ County of _____, Commonwealth of Kentucky, which property is being improved and developed by the construction of dwellings thereon; and

WHEREAS, Grantor is the owner of certain property, (hereinafter more particularly described) upon which there is located a sewerage system including a sewage collection system and appurtenances together with a sewage treatment plant (hereinafter referred to as "sewerage system"), for the purpose of supplying sewage disposal service to all properties connected to or to be connected to the sewerage system; and

WHEREAS, the Federal Housing Administration will not accept for insurance, and the Veterans Administration will not guarantee or insure, mortgage loans covering the separate properties and improvements built or to be built thereon, without receiving assurances as to the continuous and satisfactory operation of the said sewerage system; and

WHEREAS, such improvement and development of the properties and the future financing and sale of the properties is contingent upon the insurance of said mortgage loans by the Federal Housing Administration or the guaranty or insurance of said mortgage loans by the Veterans Administration; and

WHEREAS, it is the intention and purpose of the Grantor that such sewerage system shall be used and operated to provide adequate disposal of sewage for each of the properties connected thereto, regardless of the ownership of the individual properties, and property to maintain the sewerage system so that it will not adversely affect said properties, and to assure the continuance of the operation and maintenance of such sewerage system for the benefit of the present and future owners of the properties connected thereto, the mortgagees holding mortgages covering such property, and the Federal Housing Administration and the Veterans Administration.

NOW, THEREFORE, for and in consideration of the undertakings of the Grantor to provide and assure the maintenance and operation of the sewerage system as aforesaid and the further sum of One Dollar (\$1.00) Lawful money of the United States cash in hand to Grantor by Trustee, the receipt whereof is hereby acknowledged, the Grantor does hereby grant and convey to the Trustee, the following property to wit:

(A) All of its right, title and interest in and to the following described real property:

Lot 12, Sub. by 20 ft. plat of general subdivision of N. E. of W. L. Corner of Lot No. 11, Sub. by 20 ft. plat of general subdivision said Lot No. 12 being more particular plat identified in plat showing property of said lot situated on the waters of Louisa River, Big Sandy River adjacent to Kentucky Route 1107, Johnson County, Kentucky prepared by Henry R. Mortimer Ky L. Reg. 192

(B) The sewage collection system including all appurtenances such as manholes, pumping stations, etc. and the sewage treatment plant including effluent line to point of final disposal, heretofore constructed or to be constructed, including all easements incident to the ownership and operation of said sewerage system.

Further, the Grantor hereby warrants that there is no existing encumbrances, liens, or other indebtedness to the title of the sewerage system conveyed hereunder other than the following:

First, the lien of First National Bank of _____

And warrants that the above said encumbrances, liens, or indebtedness (if any) have been subordinated to this conveyance and are subject to this trust deed.

This conveyance is upon the trusts and for the purposes following.

to wit:

1. This grant is for the benefit of the present and future owners of all and each of the properties now or hereafter connected to the said sewerage system, as well as the holders of the mortgages covering each of the properties, and the Trustee shall hold title to the property granted by this indenture until, as provided below, the indenture shall be of no further effect.

(a) The Trustee shall transfer the sewerage system, facilities and other property granted by this indenture to a Governmental authority or to a public utility company controlled by a State Public Commission or similar body which undertakes to operate and maintain the sewerage system (1) at the request of, and upon such terms and conditions as may be approved by, the owner or owners of a majority of the properties connected to the sewerage system, or (2) upon the issuance of a judicial decree requiring such transfer. The Grantor shall have no rights with respect to such transfer of the system, facilities and property, and shall not be entitled to any portion of the proceeds, if any, resulting from such transfer. The term "transfer" as used herein shall include, but is not limited to, transfer by sale or as the result of condemnation proceedings. Immediately upon such transfer this indenture shall be of no further effect.

(b) In the event other adequate sewerage service is provided by Governmental authority through means other than the operation of the sewerage system and facilities transferred to the Trustee herein, the provisions of this indenture relating to the operation and maintenance of the sewerage system shall be of no effect; but the Trustee shall, under such circumstances, dispose of the system, facilities and property covered by this indenture upon such terms and conditions as may be approved by the owner or owners of a majority of the properties connected to the sewerage system. The Grantor shall have no rights with respect to such disposition of the system, facilities and property, and shall not be entitled

to any portion of the proceeds, if any, resulting from said disposition. Immediately upon such disposition of the system, this indenture shall be of no further effect.

2. The Grantor agrees to provide at all times, for each of the properties connected to the said sewerage system, service adequate for the safe and sanitary collection, treatment, and disposal of all domestic sewage from said dwellings. The Grantor further shall operate and maintain the sewerage system, including the sewage treatment plant, in a manner so as not to pollute the ground, air, or water in, under or around said properties with improperly or inadequately treated sewage, or with noxious or offensive gases or odors. The Grantor further agrees to operate the system in accordance with regulations and recommendations of the Kentucky Water Pollution Control Commission or its successor and any and all other public authorities having jurisdiction in such matters, and to produce an effluent of a quality satisfactory to the Kentucky Water Pollution Control Commission or its successor and any and all other public authorities having jurisdiction over such matters. Records of any and all tests conducted in connection with said system shall be kept as permanent records by the Grantor and said records shall be open to inspection by the Kentucky Water Pollution Control Commission or its successor and the owners of the properties connected to the said sewerage system. The said Kentucky Water Pollution Control Commission and/or its agents shall at all times have access to the plant of the Grantor to conduct any and all tests as said Commission shall consider necessary to determine compliance with the said regulations and recommendations. In the event said Commission shall determine that the operation of the system does not meet the said regulations or recommendations, the Grantor shall with reasonable dispatch at its sole costs make any adjustment, repair, installation, or improvement that shall be necessary or recommended by said Commission to bring the operation of the system up to the said regulations and recommendations.

3. The Grantor shall maintain said sewerage system at all times in good order and repair so that satisfactory service as aforesaid may be supplied to each of said properties as provided in paragraph 2 above.

4. Until the happening of one of the events set forth under paragraph numbered 1 above: Should Grantor fail to operate and manage the sewerage system, in the manner and under the conditions specified in paragraphs numbered 2 and 3 above and should Grantor fail, after notice in writing from the Trustee to correct such failure with reasonable dispatch, then Trustee shall have the right to immediate possession of the sewerage system for the purpose of operating and maintaining the same, and the right to hold, use, operate, manage, and control the same either itself or by or through any of the agencies or parties for whose benefit this trust is created and it may take possession thereof for the purpose of operating the same, and in that event, the Trustee or the entity operating the sewerage system in its behalf or in the behalf of any of the beneficiaries of this trust, shall be subrogated to all rights of the Grantor to levy and collect a charge against each customer at rates not in excess of those specified in paragraph numbered 6 herein.

5. In the event the Trustee takes possession of the sewerage system pursuant to the provisions of paragraph numbered 4 or paragraph numbered 6 the Grantor shall have no further right, title or interest in or to the sewerage system or other property granted by this indenture and shall not be entitled to any portion of the proceeds resulting from any sale of such system or property; but the Trustee shall have the right to transfer such system to a governmental authority upon such terms or conditions as may be approved by the Trustee and the owner or owners of a majority of the properties connected to the sewerage system.

6. The Grantor reserves the right to levy and collect a charge for sewerage services provided to the occupants of each of the properties connected to the sewerage system in the amount of \$ 2.00 per _____ . A 30 cents discount will be

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allowed if paid within _____ days after same is due. Service shall be charged on a prorata basis from the date the service is established at the request of the customer to the date of its discontinuance.

(a) It is agreed between the parties hereto that for the first year of operation of the sewerage system the above rates shall be deemed reasonable.

(b) The Grantor shall maintain accurate books relative to the sewerage system. Such books shall be available for inspection by a person or persons designated in writing by the Trustee or designated in writing by not less than one-third of the beneficiaries of this Trust; provided, that the continuing right of inspection hereby created shall be exercised only at the place where such books are customarily maintained in _____; that such right of inspection shall be exercised during usual business hours, after reasonable notice and in such a manner as not to hamper unduly or interfere with the conduct of the Grantor's business.

(c) Changes in rates may be proposed by the Grantor and by the said beneficiaries. If within 90 days after notice to the Trustee and to the beneficiaries of a rate change proposed by the Grantor not more than one-third of the beneficiaries of this Trust shall have signified in writing their opposition to such proposed rate change, the Grantor may forthwith establish such new rates which shall be deemed reasonable pending the accumulation of experience to show such new rates to be unreasonable. If more than one-third of the beneficiaries signify in writing their opposition to a rate change proposed by the Grantor, or if more than one-third of the beneficiaries propose in writing a rate change which the Grantor opposes and the parties cannot reach an agreement by negotiation within 30 days, then the matter shall be referred to a board of arbiters who shall be designated as follows: The Grantor shall designate an arbiter, the beneficiaries shall designate an arbiter and the two arbiters thus selected shall choose a third arbiter. The decision of the board of arbiters as to the reasonableness of rates shall be final upon the parties hereto. All costs of arbitration shall be paid by the losing party or parties. The duly elected officers of a citizens' or property owners' association comprised of the

(d) Should the Grantor charge rates for sewerage service in excess of reasonable rates, as herein above defined, then the Trustee shall notify the Grantor of such over-charge by registered mail. Should the Grantor thereafter fail or refuse to establish and maintain fair and reasonable rates, as herein above defined, within the period of ninety (90) days, the Trustee shall have the right to immediate possession of the sewerage system for the purpose of furnishing sewerage service at fair and reasonable rates and the Trustee shall have the right to hold, use, operate, manage and control the sewerage system, as set forth under paragraph numbered 4 above.

8. If it should become necessary at any future time for the Trustee or any entity acting in its behalf or any beneficiary under this trust indenture, to take over, operate and manage the sewerage system under the provisions of this trust, then and in that event, the operator of such system shall be entitled to a Trustee's fee payable from the income of the sewerage system at a rate not in excess of 5 % of the gross charges collected by such Trustee, provided that such Trustee's fee may be increased with the approval of the owner or owners of seventy-five (75) per cent of the properties connected to the sewerage system.

- R -

(Grantor)

By: _____

(Trustee)

By: _____

Individually as Grantor and as Trustee
of and by authority of all persons, firms,
corporations or entities which are or
may be beneficiaries under the trust
created hereby.

STATE OF KENTUCKY
COUNTY OF _____

I, the undersigned Notary Public within and for the State and County
aforesaid, do hereby certify that the foregoing instrument was this day
produced before me in said State and County by _____
as _____ of
_____, a corporation,
and acknowledged before me by him to be his free act and deed in said
capacity for the uses and purposes stated therein.

Witness my hand and seal this 20th day of _____, 19__

My Commission expires: _____

Notary Public

STATE OF KENTUCKY
COUNTY OF _____

I, the undersigned Notary Public, do hereby certify that the foregoing
instrument was this day produced before me in said State and County by _____
as _____ of _____,
a corporation,
and was acknowledged before me by him to be his free act and deed in said
capacity for the uses and purposes stated therein.

Witness my hand and seal this 20th day of _____, 19__

My Commission expires: _____

This instrument was produced
by _____
ATTORNEY AT LAW
PAINTSVILLE, KENTUCKY

Notary Public

PERRY AND GREENE
Attorneys at Law
Paintsville, Ky.

STATE OF KENTUCKY
COUNTY OF JOHNSON

Sot.

I, BETTY JO CONLEY, CLERK of the County Court for the County and State aforesaid, do certify that the foregoing Trust Deed was on the 15 day of June, 1973, lodged in my office for record, Whereupon the same has been duly recorded in my said office.

Given under my hand this the 17 day of June, 1973.

Betty Jo Conley, CLERK
BY: [Signature], D.C.