

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO ALLEGED)
UNAUTHORIZED CHARGES OF HIGHVIEW) CASE NO. 91-317
SEWER DISTRICT, INC.)

O R D E R

On September 18, 1991, the Commission initiated this investigation to determine whether Highview Sewer District, Inc. ("Highview") has charged, or is attempting to charge as a condition of service, fees for sewer capacity which have not been authorized by the Commission and whether Highview is denying reasonable extensions of service. Specifically, the Commission had received information that Highview had advised a potential customer, Dairy Mart Southeast ("Dairy Mart"), that sewer service would be available for a new food mart; but, that once construction commenced, Highview advised Dairy Mart that it had no capacity available for its usage. Highview additionally advised Dairy Mart that it might be possible to obtain the capacity by purchasing, at a cost of \$18,000, capacity previously sold to John Treitz and Sons, Inc. ("JTS"). JTS is a company which apparently acquired several lots in the Highview area for future development and which needed the sewer capacity from Highview in order to develop the lots.

Highview's current schedule of rates does not include a charge for new connections or a charge for capacity.

The Commission's September 18, 1991 Order directed Highview to provide additional information concerning the transfer of its remaining sewer capacity to JTS. Highview responded to the Commission's Order on October 8, 1991. In its response, Highview provided a copy of the agreement dated October 19, 1988 between Highview and JTS transferring all of Highview's excess capacity. Pursuant to the agreement, JTS has the right to use the excess sewage capacity of Highview's plant up to a total of 29,600 gallons per day. According to the agreement, JTS sought the excess sewer capacity for residential subdivisions on or near areas served by Highview including, but not limited to, Resch Property, 6705 Briscoe Lane; the Alexander Property, Vaughn Mill Road; and the Slack Property, 6707 Briscoe Lane (collectively as the "Projects"). The agreement cites as consideration for the transfer of excess sewer capacity JTS's promise to cause all homes which are built in the Projects which are developed by JTS to connect to the Highview plant.

Highview also stated in its response that in addition to the capacity agreement, JTS performs maintenance and repair functions for the Highview plant. Highview's shareholders are John G. Treitz and Elizabeth Treitz (John G. Treitz's sister-in-law) who each own 50 percent of Highview's stock. JTS's sole shareholder is John G. Treitz who is president of both Highview and JTS.

Highview further states in its response that it is not presently charging for sewer capacity. Also, Highview identified that it made an aid-in-construction charge of \$1,000 to Highview Meat Market ("Market"), 7202 Fegenbush Lane, Louisville, Kentucky,

in April 1989. Highview additionally claims that there have been no other connections made to the plant since it adopted its Rules and Regulations in 1982. At the time the Market requested service, Highview alleges that it believed that the Market was part of the "Prater Addition," an area in which Highview's current schedule of rates authorizes a \$1,000 aid-in-construction charge;¹ but that subsequent to the connection, Highview determined that the Market was not one of the properties located in the Prater Addition.

In August 1991, JTS released a portion of the capacity which it had allegedly reserved by its agreement with Highview.² JTS apparently released this reserved capacity for Dairy Mart's use. On October 22, 1991, the Commission received a letter from Highview that alleged that Dairy Mart had concluded a satisfactory arrangement with JTS and that Dairy Mart has no interest in pursuing this investigation. Highview also requested that this case be dismissed. The Commission subsequently, by Order dated November 7, 1991, directed that Dairy Mart respond to Highview's letter. On November 18, 1991, Dairy Mart responded by letter which advised the Commission that Dairy Mart has no further interest in this matter and requested that this case be dismissed.

¹ Highview's current tariff filed with the Commission provides at Original Sheet No. 7 that "Aid-In-Construction charges for four commercial lots in the 'Prater Addition' are to be \$1,000.00 per lot."

² The Release by JTS provided in relevant part: "[JTS] hereby releases all right, title of interest which it may have to use 1,000 gallons of sewage effluent capacity per day of Highview Sewer District, Inc., pursuant to the Capacity Agreement between [JTS] and Highview Sewer District, Inc."

In Kentucky, KRS 278.030(2) requires that "every utility shall furnish adequate, efficient, and reasonable service." Moreover, pursuant to KRS 278.170(1),

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that further investigation is needed to determine whether Highview is charging fees for capacity which are not authorized in its tariff, whether Highview is denying reasonable extensions of service to applicants, and whether Highview is discriminating as to rates or services.

IT IS THEREFORE ORDERED that:

1. Highview's request for dismissal be and it is denied.
2. Dairy Mart's request for dismissal be and it is denied.
3. Highview shall file the original and five copies of the following information with the Commission within 20 days of the date of this Order:
 - a. Identify what section of Highview's current rate schedule, or other authority upon which Highview relies to authorize selling or transferring its remaining excess sewer capacity.
 - b. Explain how the agreement between Highview and JTS will not result in an unreasonable prejudice to potential customers.

c. Will the capacity reservation by JTS result in any double recovery of the cost of the construction of Highview's plant?

d. Is Highview currently charging JTS a monthly fee for the capacity reserved? If yes, how much?

e. Explain how the agreement reserving all of Highview's excess capacity will aid in providing service to other customers.

f. Identify all current resale customers and all potential resale customers that are affected by the transfer of the excess capacity.

g. Provide a discussion of the impact of the capacity reserve agreement on existing charges for potential applicants seeking sewer service.

h. The agreement contains no amount charged to JTS for the excess capacity. Was JTS charged any amount for the excess capacity? If yes, how much.

i. Did Highview seek approval of the capacity transfer agreement by the Commission? If no, why not?

j. How many customers has Highview refused service to since the transfer of excess capacity?

k. How much of your 100,000 gallon capacity is currently in use?

l. If all remaining capacity was transferred to JTS in October 1988, how did Highview obtain the capacity to serve the Meat Market in April 1989? Was a release obtained from JTS? Did

JTS receive any payment from the Meat Market for release of reserved capacity?

m. Subsequent to discovering that the Market was not one of the properties in the "Prater Addition," did Highview refund the \$1,000 to the Market? If not, by what authority was no refund given?

n. Provide a map of the areas now serviced by Highview. Indicate on the map where Dairy Mart is located and where the new proposed subdivision is to be built.

o. The property acquired by Dairy Mart was formerly a Gulf Station. Did Highview charge Gulf any charges for connection of sewer service or any other fees? If yes, tell when it was charged and the amount.

p. Has JTS developed any tracts of property in the Projects? If yes, has Highview connected any of the properties to its plant? If Highview has connected any of the properties to its plant, list any charges made for connection of sewer service or any other fees.

q. Did JTS charge Dairy Mart a fee for the release of a portion of the capacity it attempted to reserve pursuant to the agreement with Highview? If yes, state the amount charged.

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

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Director


For the Commission