

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF VERNA HILLS	)	
NEIGHBORHOOD ASSOCIATION, INC. FOR AN	)	
ORDER AUTHORIZING VERNA HILLS LTD. TO	)	CASE NO. 93-315
TRANSFER ITS ASSETS TO APPLICANT AND FOR	)	
DETERMINATION OF JURISDICTIONAL STATUS	)	

O R D E R

Verna Hills Neighborhood Association, Inc. ("Neighborhood Association") has applied for Commission approval of its proposed acquisition of the sewage treatment facilities of Verna Hills, Ltd. ("Verna Hills"). It also seeks a declaratory ruling on its jurisdictional status after this acquisition.

After reviewing the application and being otherwise sufficiently advised, the Commission finds as follows:

1. Verna Hills is a Kentucky corporation which owns and operates the subdivision treatment facility plant providing sewer service for compensation to the residents of the Verna Hills Subdivision of Clark County, Kentucky, and is a utility under Commission jurisdiction. KRS 278.010(3)(f).

2. The Neighborhood Association is a non-stock, non-profit corporation organized under the provisions of KRS Chapter 273 and composed of all real property owners within the Verna Hills Subdivision.

3. The Neighborhood Association's members depend upon Verna Hills' sewage treatment facilities for sewer service. No other

public or private sewage treatment facility provides service to the Verna Hills Subdivision.

4. Verna Hills has agreed to the transfer of its sewage treatment facilities to the Neighborhood Association.

5. The Neighborhood Association has retained a certified wastewater treatment plant operator to operate the sewage treatment facilities.

6. The Neighborhood Association's members are served by Verna Hills' sewage treatment facilities and have a significant financial interest in their maintenance and operation. Moreover, the Neighborhood Association has the authority to assess its members for expenses related to the maintenance and operation of these facilities. This ability to assess its members is adequate evidence of its financial integrity to ensure the continuity of service. No third party beneficiary agreement is required. 807 KAR 5:071, Section 3(1)(a).

7. The Neighborhood Association has the financial, technical, and managerial abilities to provide reasonable service.

8. The characterization of service as public depends "upon whether or not it is open to the use of the public who may require it, to the extent of its capacity." Ambridge v. Pub. Serv. Comm'n of Pennsylvania, 165 A.47, 49 (Pa. Super. 1933). "One offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities." North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966).

9. After the proposed transfer is completed, the sewage treatment facilities will serve a defined, privileged, and limited group -- the Neighborhood Association's members. The facilities will not be serving the public. The Neighborhood Association will not, therefore, be a utility. KRS 278.010. See also Lockwood Water Users Ass'n v. Anderson, 542 P.2d 1217 (Mont. 1975); Re Stonecrest Manor Water Service, 13 PUR3d 123 (Conn. P.U.C. 1956).

IT IS THEREFORE ORDERED that:

1. The proposed transfer of sewage treatment facilities from Verna Hills to the Neighborhood Association is approved.

2. Within 10 days of the date of completion of transfer, the Neighborhood Association shall advise the Commission in writing of its completion.

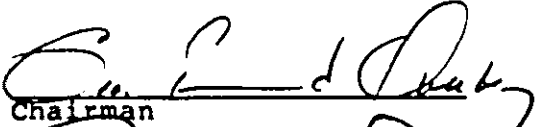
3. Until the transfer has occurred, the sewage treatment facility shall remain under Commission jurisdiction.


4. Within 30 days of the completion of transfer, Verna Hills shall submit a complete and accurate annual report for the period from January 1, 1993 to the date of transfer.

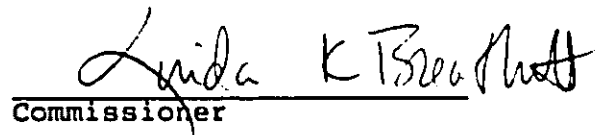
5. Upon completion of the transfer, the Neighborhood Association will not be a utility subject to Commission jurisdiction. Any subsequent change in the Neighborhood Association's membership policies or its provision of service to persons outside the existing Verna Hills Subdivision, however, may subject the Neighborhood Association to Commission jurisdiction.

Done at Frankfort, Kentucky, this 16th day of September, 1993.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director