

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE ADDISON
WATER AND SEWAGE TREATMENT
FACILITIES

ALLEGED VIOLATIONS OF KRS
CHAPTER 278

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) CASE NO. 93-053
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O R D E R

On March 14, 1994, the Commission received a motion to continue hearing from counsel for George Lucas, Sr., the owner of Addison Water and Sewage Treatment Facilities ("Addison"). In his motion, Mr. Lucas requests the Commission reschedule the hearing currently scheduled for March 18, 1994. For the reasons set forth below the Commission grants the motion to continue hearing and dismisses this case from its docket.

Background

On January 31, 1994, Mr. Lucas submitted to the Commission a motion for a formal hearing not later than March 4, 1994 to determine whether the rates he submitted in June of 1993 are fair, just and reasonable. In support of his motion, Mr. Lucas stated that the Commission had had the suspension period of June 25, 1993 to November 26, 1993 to conduct an investigation into the reasonableness of the rates and that Mr. Lucas had provided all requested documentation. He also stated that the Interveners in

the case, each of the homeowners served by Addison, discharged their attorney approximately six months before, but had yet to hire new counsel. He stated he did not believe going forward at this time would "place a burden on the Intervenors."

This case was initiated by the Commission on February 7, 1993 as an investigation into the ownership of Addison. The Commission was previously unaware of Addison's existence and thus it was not designated as a jurisdictional utility. Commission Staff informally investigated Addison and reported it appeared to be a utility; the case was initiated due to an ownership dispute. Mr. Lucas developed the property where Addison's ten customers are located. One of the property owners, Mr. Randall Butler, read the other property owners' meters and issued monthly bills. Since Mr. Lucas appeared to hold legal title to Addison, the Commission issued an order on February 12, 1993, directing Mr. Lucas to either comply with the applicable provisions of KRS Chapter 278 and the Commission's regulations or appear at a proceeding scheduled March 17, 1993, and show cause why he should not be penalized for noncompliance.

The hearing was continued several times. Mr. Lucas agreed to accept responsibility for the utility. The hearing was cancelled and Mr. Lucas was directed to file tariffs by Order dated May 19, 1993. The rates contained in his tariff were not the rates being charged and collected prior to the proceeding. The Commission issued an Order suspending the filed rates until November 26, 1993 to investigate their reasonableness. At that point this case

ceased to be an investigation into the jurisdiction of the Commission over Addison and became instead a rate filing.

The Commission scheduled a hearing on September 14, 1993 to consider the rate proposal Addison had submitted via its tariff filing in June of 1993. The hearing was cancelled at the Intervenor's request; they had discharged their attorney and would need time to find another one. The Commission has yet to receive any further notification from any of the intervenors.

The Commission has been hesitant to schedule another hearing on its own initiative since the Department for Natural Resources, Division of Water ("DOW"), and the Breckinridge County Health Department were, and still are, in the process of investigating the viability of Addison's entire sewer system. The Commission received a courtesy copy of a letter from the Lincoln Trail District Health Department (which oversees the Breckinridge County Health Department) to Mr. Lucas dated January 11, 1994 stating the health department "has deemed any further subsurface sewage treatment process unacceptable. Their recommendation, and pending district court action [against Addison], is based upon at least three failed attempts to repair the existing sewage treatment system, and the inadequate space available for future repair. Upon disconnecting from the existing onsite sewage disposal system, under either a court or health department order to 'cease operation', the following options appear available...." Each of the options would require Mr. Lucas to obtain additional money above what he listed as his necessary rates in his June 1993

filing. Therefore, that tariff, which is the basis for this case and any hearing, would most likely not generate funds in the amount Mr. Lucas needs to correct the system problems.

Commission Staff discussed these concerns with Mr. Lucas' counsel on several occasions in January, February, and March of 1994. Mr. Lucas' attorney was adamant about scheduling a hearing as soon as possible so Mr. Lucas could begin collecting rates. A hearing was scheduled for March 18, 1994. The Commission loses jurisdiction over Addison's rates at the end of March 1994 due to the ten month limitation imposed by KRS 278.190. In his affidavit attached to the motion to continue, Mr. Lucas states he requested a hearing by motion dated February 2, 1994, that subsequent to the submission of the motion his attorney has had further contact with the homeowners and the local health department, that he has engaged the services of a civil engineer to assist in this matter, and that "[c]ounsel believes that to adequately and accurately provide information about further expenses and possibly necessary construction at Addison, further information is required. Counsel cannot provide estimates, etc., as set forth in the Commission's Order of March 2, 1994." Therefore, as Mr. Lucas cannot provide adequate information about his rate request at this time, and the Commission being otherwise sufficiently advised, IT IS HEREBY ORDERED that:

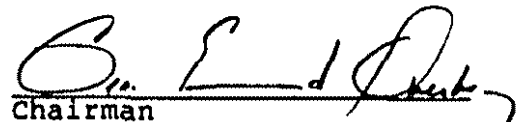
1. The hearing scheduled for March 18, 1994, at 10:00 a.m., Eastern Standard Time, in the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky is hereby cancelled.

2. Addison shall file with the Commission, within 30 days from the date of this Order, a tariff which reflects the rates its customers were being charged in June, 1993.

3. This case is hereby dismissed without prejudice. Addison may file a new rate application when it has determined rates which will adequately support the existing system or, if a new system is needed, the construction or acquisition thereof.

Done at Frankfort, Kentucky, this 16th day of March, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director