

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BOONE COUNTY WATER AND SEWER DISTRICT, )  
SANITATION DISTRICT NO. 1 OF CAMPBELL AND )  
KENTON COUNTIES, DWIGHT BRAY, BILL C. )  
SHEHAN, SR., ROBERT C. BELL, RICHARD )  
CRISP, AND R. C. DURR )

) CASE NO. 93-084  
)

\_\_\_\_\_  
ALLEGED VIOLATION OF KRS 278.020(1) )

O R D E R

On March 15, 1993, Boone County Water and Sewer District ("Boone District"), the members of its Board of Commissioners, and Sanitation District No. 1 of Campbell and Kenton Counties ("Sanitation District") were directed to appear before the Commission and show cause why they should not be penalized pursuant to KRS 278.990 for its alleged failure to comply with KRS 278.020(1).

Following the commencement of this proceeding, Boone District, Sanitation District, and Commission Staff entered into negotiations to resolve all disputed issues. On May 31, 1994, they executed a Settlement Agreement, which is appended hereto, and submitted it for Commission approval.

After reviewing the Settlement Agreement and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement is in accordance with the law, does not violate any regulatory principle, results in a reasonable resolution of this case, and is in the public interest.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement, appended hereto, is incorporated into this Order as if fully set forth herein.

2. The terms and conditions set forth in the Settlement Agreement are adopted and approved.

3. Within 20 days of the date of this Order, Boone District shall pay to the Commonwealth of Kentucky the sum of Five Hundred (\$500) Dollars.

4. Within 20 days of the date of this Order, Sanitation District shall pay to the Commonwealth of Kentucky the sum of Five Hundred (\$500) Dollars.

5. The payments herein ordered shall be made by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky," and shall be mailed or delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 13th day of June, 1994.

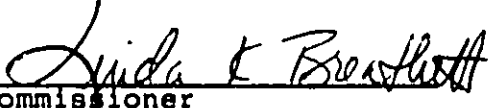
PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

  
Commissioner

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RECEIVED

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COMMISSION

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SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered this 31<sup>st</sup> day of May, 1994, by and between the STAFF OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY ("Commission Staff"), BOONE COUNTY WATER AND SEWER DISTRICT ("Boone District"), its Commissioners, DWIGHT BRAY, BILL C. SHEHAN, SR., ROBERT C. BELL, RICHARD CRIST, AND R.C. DURR ("Commissioners"), and SANITATION DISTRICT NO. 1 OF CAMPBELL AND KENTON COUNTIES ("Sanitation District").

W I T N E S S E T H :

THAT, WHEREAS, on March 15, 1993, the Public Service Commission initiated an investigation into alleged violations of KRS 278.020(1) and ordered Boone District and Sanitation District to show cause why they should not be penalized for their alleged failure to comply with KRS 278.020(1); and,

WHEREAS, the Public Service Commission in the same order directed the Commissioners to show cause why they should not be penalized for allegedly procuring, aiding, and abetting Boone District's alleged failure to comply with KRS 278.020(1); and

WHEREAS, Boone District, its Commissioners, Sanitation District, and Commission Staff have agreed to the following factual matters:

1. Boone District is a combined water and sewer district which owns and operates facilities in Boone County, Kentucky, for the collection of sewage, for the public, for compensation.
2. Boone District is a utility as defined by KRS 278.010(3) and is therefore subject to the jurisdiction of the Public Service Commission.
3. Sanitation District is a public corporation organized under the provisions of KRS 220.010 to 220.540 and established to provide for the collection and disposal of sewage and other liquid waste produced within Campbell and Kenton counties.
4. By letter dated April 5, 1988, the Public Service Commission declared that sanitation districts are not utilities within the meaning of KRS 278.010(3)(f).
5. KRS 278.020(1), inter alia, states:

"No person, partnership, public or private corporation, or combination thereof shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such construction."

6. Prior to April 5, 1988, Boone District and Sanitation District had applied for certificates of public convenience and necessity to construct certain facilities. In each instance, they expressly requested such certificate and filed an application which complied with the filing requirements of the Public Service Commission's Sewer Utility

Regulation 807 KAR 5:071. In each instance where the Public Service Commission granted such certificate, it issued an Order which expressly stated that a certificate had been granted.

7. On May 30, 1990, Boone District entered into a contract with Sanitation District which provided that Sanitation District would have the "right and responsibility to design and construct the force mains/trunk line and pump station in the Richwood Service Area . . . ." This contract further provided the "Boone District hereby agrees to purchase from the [Sanitation] DISTRICT . . . all DISTRICT facilities . . . ."
8. On July 2, 1990, Boone District submitted a copy of this contract to the Public Service Commission. Boone District did not request a certificate of public convenience and necessity for the facilities in question nor did its submission contain the information required by Commission Regulations 807 KAR 5:001, Section 9, or 807 KAR 5:071, Section 3.
9. The Public Service Commission initiated Case No. 90-216 to review the contract and suspended operation of the contract until completion of its review.
10. Finding that the contract was reasonable and comported with the provisions of KRS Chapter 278, the Public Service Commission approved the contract on November 1, 1990. The November 1, 1990 Order does not mention a certificate of public convenience and necessity to Boone District. It also does not state that a certificate of public convenience and necessity or any other regulatory approval from the Public Service Commission is required before the commencement of construction.
11. On September 10, 1991, Boone District and Sanitation District entered into a contract which provided that Sanitation District has "the right and responsibility to design and construct the force main/trunk line and pump station in CENTRAL SERVICE AREA . . . ." Boone District agreed to purchase these facilities upon completion of the construction.

12. On January 3, 1993, Boone District submitted the contract to the Public Service Commission. Boone District did not request a certificate of public convenience and necessity for the facilities in question nor did its submission contain the information required by Commission Regulations 807 KAR 5:001, Section 9, or 807 KAR 5:071, Section 3.
13. By Order dated June 16, 1992 in Case No. 92-245, the Public Service Commission made, inter alia, the following findings:
  - a. "Under the terms of the Agreement, Boone District also agrees to pay for certain facilities which Sanitation District No. 1 will design and construct. The cost of these facilities is currently estimated at \$8.5 million."
  - b. "The assumption of the obligations set forth in the proposed loan agreement is for a lawful object within Boone District's corporate purposes, is necessary and appropriate for and consistent with the proper performance by Boone District of its service to the public, and is reasonably necessary and appropriate for such purpose."
14. By the Order dated June 16, 1992, the Public Service Commission authorized Boone District "to issue long-term indebtedness as evidenced by its written agreement with Sanitation District No. 1 for the provision of sewer treatment service to Boone District's Central Region."
15. The June 16, 1992 Order does not mention a certificate of public convenience and necessity to Boone District. It also does not state that a certificate of public convenience and necessity or any other regulatory approval from the Public Service Commission is required before the commencement of construction.
16. On December 3, 1992, Boone District applied for a certificate of public convenience and necessity to construct the facilities referred to in the September 10, 1991 contract. In its application, Boone District stated its belief that the application was unnecessary as a

result of the Public Service Commission's Orders in Cases No. 90-216 and 92-245.

17. Sanitation District did not commence construction of the facilities discussed in the contracts of May 31, 1990 until the Public Service Commission had issued a final Order in Case No. 90-216.
18. Sanitation District did not commence construction of the facilities discussed in the contracts of September 10, 1991 until the Public Service Commission had issued a final Order in Case No. 92-245.
19. Sufficient information existed for the Public Service Commission to initiate a formal proceeding to determine whether violations of KRS 278.020(1) had occurred.

WHEREAS, Boone District, its Commissioners, Sanitation District, and Commission Staff desire to settle the issues raised by this proceeding.

NOW, THEREFORE, Boone District, its Commissioners, Sanitation District, and Commission Staff agree as follows:

1. Nothing contained herein shall be construed as an admission of violation of any statute or administrative regulation on the part of any signatory to this Settlement Agreement.

2. Boone District and Sanitation District each agree to pay the sum of Five Hundred Dollars (\$500.00) to the Commonwealth of Kentucky in settlement of this case to avoid further litigation and to minimize additional costs to the signatories. Payment shall be made within 20 days of the date of an Order of the Public Service Commission which approves and accepts this Settlement Agreement.

3. Boone District agrees to comply with all provisions of KRS Chapter 278 and all regulations promulgated pursuant thereto.

4. Sanitation District agrees to comply with all provisions of KRS Chapter 278 and all regulations promulgated pursuant thereto where such provisions, if any, are applicable to said Sanitation District.

5. The terms of this Settlement Agreement are reasonable, factually accurate, and in the public interest.

6. This Agreement is subject to the acceptance of and approval by the Public Service Commission. Commission Staff shall recommend to the Public Service Commission that this Settlement Agreement be approved in its entirety and without change or modification.

7. If the Public Service Commission fails to accept and approve this Settlement Agreement in its entirety, this proceeding shall go forward and neither the terms of this Settlement Agreement nor any matters raised during settlement negotiations shall be binding on any signatory.

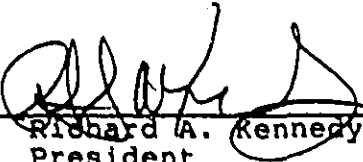
8. If the Public Service Commission accepts and adopts this Settlement Agreement in its entirety and enters an order in this proceeding to that effect, the signatories shall not apply for rehearing in this proceeding nor bring an action for review of that order.


9. If adopted in its entirety by the Public Service Commission, this Settlement Agreement shall constitute a final adjudication and dismissal of all issues presented in the Public Service Commission's Order of March 15, 1993.



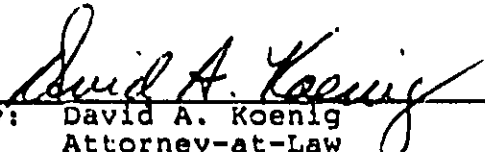
AGREED:

SANITATION DISTRICT NO.  
1 OF CAMPBELL AND KENTON COUNTIES

  
By: Richard A. Kennedy  
President

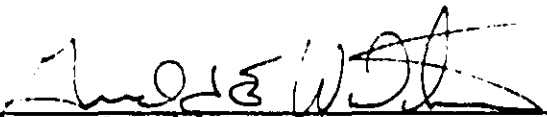
  
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BOONE COUNTY WATER AND SEWER  
DISTRICT, DWIGHT BRAY, BILL C.  
SHEHAN, SR., ROBERT C. BELL,  
RICHARD CRIST AND R.C. DURR

  
By: David A. Koenig  
Attorney-at-Law

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STAFF OF THE PUBLIC SERVICE  
COMMISSION

  
By: Gerald Wuetcher  
Staff Attorney

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