

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF FOREST HILLS DEVELOPERS)
SEWAGE TREATMENT PLANT FOR AN)
ADJUSTMENT OF RATES PURSUANT TO THE) CASE NO. 94-264
ALTERNATIVE RATE FILING PROCEDURE FOR)
SMALL UTILITIES)

O R D E R

In separate pleadings, Forest Hills Developers, Inc. ("Forest Hills") has moved to set aside the Commission's Order of August 22, 1994 and for a protective order excusing it from responding to discovery requests. The Attorney General ("AG") has responded to the motion for protective order. The Commission denies these motions.

Forest Hills moves to set aside the Commission's Order of August 22, 1994 which granted Robert Yaden leave to intervene in this proceeding. Citing Commission Regulation 807 KAR 5:076, Section 4(1), for the proposition that requests for intervention must be made within 30 days of the filing of the utility's application for rate adjustment, Forest Hills contends that Yaden's request was untimely. Forest Hills' application was filed with the Commission on July 11, 1994. Yaden's request for intervention was filed on August 18, 1994.

Ironically, Forest Hills' motion is itself untimely. Its motion is an application for rehearing on the Commission's Order of August 22, 1994. KRS 278.400 requires that such application be

made within 20 days of service of the Order. As the order was served on Forest Hills on August 25, 1994,¹ the motion should have been made no later than September 14, 1994.

Assuming arguendo that the motion was timely made, Commission Regulation 807 KAR 5:076, Section 4, does not limit the time to request intervention to 30 days from the filing of the utility's application. This regulation merely sets forth the contents of the utility's notice of the proposed rate change. It contains the same language found in Commission Regulation 807 KAR 5:011, Section 8. This Commission has yet to interpret either regulation as imposing time limits on requests for intervention.

Neither regulation is intended to limit the time in which a person may apply for intervention. Their purpose is to ensure that interested parties are aware of the need for prompt action. Pursuant to KRS 278.180, a utility's request for rate adjustment may become effective within 30 days of its filing of a revised rate schedule unless the proposed rates are suspended. Certainly, if an interested party fails to request intervention and thus notifies the Commission of its objections to the proposed rates, the likelihood that the Commission may allow the revised rate schedule to become effective increases.

Commission Regulation 807 KAR 5:001, Section 3(8), governs requests for intervention. It requires only that such requests be timely. Yaden's request was timely. It was made within 37 days of

¹ KRS 278.410(1) provides that "[s]ervice of a commission order is complete three (3) days after the date the order is mailed." The Order was mailed on August 22, 1994.

the filing of the utility's application and before the establishment of any procedural schedule. Forest Hills has not suggested that it suffered any prejudice from the timing of Yaden's request.

As to its second motion, Forest Hills moves for a protective order on the grounds that the intervenors' requests for discovery are outside of the period established by Commission Regulation 807 KAR 5:076, Section 6. This regulation provides that "[a]ny intervening party or the Commission shall submit requests for additional information to the applicant within forty (40) days after the application was received by the commission." Forest Hills contends that, since none of these requests were within the 40-day period, it should be excused from answering them.

This argument ignores two key points. First, an intervenor requested a discovery schedule within the 40-day period. Acting in accordance with Commission Regulation 807 KAR 5:076, Section 9, the Commission granted the request. Second, Forest Hills took no action to oppose the request. Its failure to act constitutes a waiver to the establishment of the discovery schedule.


Forest Hills also contends that the requests are burdensome, oppressive, and beyond the scope of its application. It fails to explain how these requests meet this description. Absent such specificity, the Commission finds that Forest Hills has failed to demonstrate sufficient cause to grant the motion.

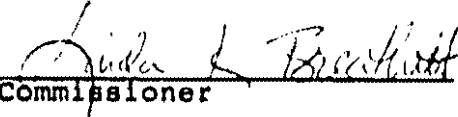
IT IS THEREFORE ORDERED that Forest Hills' motion to set aside the Commission's Order of August 22, 1994 and motion for a protective order are denied.

Done at Frankfort, Kentucky, this 11th day of October, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director