

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 filings, Forest Hills Developers, Inc. ("Forest Hills"), has moved to disqualify certain intervenors, quash the "Notice of Deposition" issued to Ken Dowell, A.B. Schlatter, and Fred Schlatter, and quash subpoenas issued by Commission Staff. Having considered these motions and the response, the Commission denies them.

Forest Hills has moved to disqualify Brett Butler and the group of intervenors known as the Southwood Apartments for their failure to answer interrogatories and requests for production of documents in a timely manner. On September 23, 1994, Forest Hills served interrogatories and requests for production of documents on Brett Butler and the Southwood Apartments. Under the terms of the Commission's Order of August 30, 1994, the intervenors were required to respond no later than October 7, 1994. Responses were not served on Forest Hills until October 21, 1994.

While the Commission shares Forest Hills' concern for adequate and meaningful discovery, the draconian measures sought are not appropriate. The requested information has been provided to Forest

Hills. If Forest Hills requires additional time to review this information and prepare for the scheduled hearing in this matter, it should move for a postponement. The Commission will view favorably such motion. The Commission advises all parties that it will not treat disobedience of its Orders lightly, but will consider the assessment of civil penalties when appropriate.

Forest Hills has also moved to quash notices of deposition which were served upon Ken Dowell, A.B. Schlatter, and Fred Schlatter. As the time for which these depositions were scheduled has passed, the Commission finds this motion to be moot.

Forest Hills' final motion concerns subpoenas issued to Ken Dowell, A.B. Schlatter, and Fred Schlatter to compel their appearance at the scheduled hearing. Forest Hills contends that the issuance of these subpoenas is contrary to the Commission's stated position that it is a judge and not a party. By calling witnesses to appear, Forest Hills contends, the Commission makes itself a party to this proceeding and must subject itself to the discovery process.

Requiring the appearance of witnesses to testify does not alter the Commission's position as a neutral finder of fact. Commission Regulation 807 KAR 5:001, Section 4(3), specifically provides that the Commission may "obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties." The power which the Commission exercises is similar to a judge's power to call witnesses. See Fed. R. Evid. 614; KRE 614.

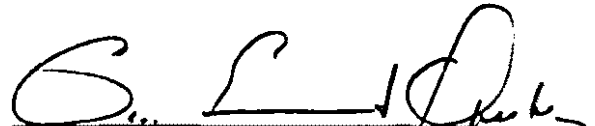
Moreover, the witnesses to whom the Commission has issued a subpoena are the utility officials who prepared the rate adjustment application and responses to the Commission's information requests. They are the only persons who can explain the documents which the utility presented in support of its application. The Commission is unable to discern how the utility's right to due process is infringed by questioning those who have already tendered evidence.

Accordingly, the Commission finds that the motion to quash subpoenas issued by the Commission Staff should be denied.

IT IS THEREFORE ORDERED that Forest Hills' motions are denied.

Done at Frankfort, Kentucky, this 14th day of November, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director