

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPALACHIAN RACING, INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 94-241
)	
AUXIER WATER COMPANY, INC.)	
)	
DEFENDANT)	

O R D E R

On June 20, 1994, Appalachian Racing, Inc. ("Appalachian Racing") filed a complaint against Auxier Water Company, Inc. ("Auxier") challenging a \$25,000 charge to initiate water service and requesting service be provided upon the payment of a \$450 tapping fee plus meter related costs. Two days later the Floyd Circuit Court directed Auxier immediately to provide service to Appalachian Racing.

The Commission subsequently granted the parties' request to continue generally a hearing scheduled on June 29, 1994 and has held this case in abeyance since that time pending negotiations between the parties. In a joint status report filed on January 31, 1995, the parties indicated that Appalachian Racing had filed a voluntary petition to reorganize its business under Chapter 11 of the Bankruptcy Code and that this petition triggered an automatic stay, pursuant to 11 U.S.C. Section 362, of any proceedings before the Commission.

Based on the record and being otherwise sufficiently advised, the Commission finds that under 11 U.S.C. Section 362 the filing of a petition in bankruptcy automatically stays only judicial or administrative proceedings instituted against the debtor or the debtor's property. The Bankruptcy Code creates no automatic stay for actions, like this complaint, initiated by the debtor. See In Re: Ruble, 34 B.R. 37 (Bankr. N.D. Ohio 1983). Thus, the parties should have 20 days to advise the Commission of the reasons why this case should not be dismissed without prejudice to the complainant's right to refile a complaint if and when he desires to pursue this matter.

IT IS THEREFORE ORDERED that the parties shall have 20 days from the date of this Order to file written memoranda setting forth the reasons why this case should not be dismissed without prejudice.

Done at Frankfort, Kentucky, this 1st day of February, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director