

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF GEORGE LUCAS, SR., ADDISON)
WATER AND SEWER FACILITIES, FOR APPROVAL)
OF CONSTRUCTION, FINANCING, RATES AND) CASE NO. 95-439
TRANSFER OF WATER AND SEWER FACILITIES)

O R D E R

On October 3, 1995, George Lucas, Sr., d/b/a Addison Water and Sewer Facilities ("Lucas") applied for authority to construct new sewer facilities, to finance the construction, to increase sewer rates, and to transfer the water and sewer facilities to Addison Water and Sewer, Inc. The application was deemed filed February 1, 1996.

Lucas currently provides sewer service to 10 customers along the Ohio River near Addison, Kentucky, by means of a cluster low pressure pipe system. Due to the inadequacy of the existing system, which leaves raw sewage standing above ground and has lateral lines which lie in the flood-plain of the Ohio River, the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water ("NREPC"), ordered Lucas to take action to abate the problem. Lucas therefore proposed to install a 4,000 gallon per day metal wastewater treatment plant on a concrete pad to serve his existing customers.

To finance this project, Lucas proposed to borrow \$85,000 for a 15 year term from the Scott County State Bank of Scottsburg, Indiana. Lucas requested a rate increase for sewer service from \$6.50 per month to \$180.00 per month. While Lucas in his Notice to

Customers referred to this as an increase of 288 percent, it was in fact a proposed increase of 2,669 percent. Lucas also proposed to transfer the water and sewer facilities from his personal ownership to a corporate entity by the name of Addison Water and Sewer, Inc.

On April 1, 1996, the application of Lucas for authority to transfer the water and sewer facilities to Addison Water and Sewer, Inc. was denied and the application of Lucas for authorization to borrow \$85,000 from the Scott County Bank was continued beyond the 60-day period specified in KRS 278.300(2).

Of the 10 homes served by Lucas, the owners of eight intervened in this proceeding. The intervenors are Thelma Bennett, Mr. and Mrs. James F. Hunt, Mr. and Mrs. Lonnie Lawson,¹ Mr. and Mrs. Robert Lenberger, Leroy Meador, Mr. and Mrs. John Monarch, and James Stephens. On January 30, 1996, an informal conference was held at the Commission's offices to discuss this case. Four of the intervening parties attended as well as Jack Hughes, Esq., representing Lucas, and Pamia Wood, Ombuds, from the Office of the Secretary of the NREPC. As all the intervenors had previously done by letter, the intervenors present for the informal conference expressed their concerns about the matter now before the Commission.

While the intervenors agreed that something needed to be done about their sewage situation, the remedy proposed by Lucas was not acceptable to them. They felt that the proposed monthly rate was excessive and unreasonable. The intervenors asked that the Commission deny the construction proposed by Lucas, as well as the proposed rates, rates which they say they would not, and could not, pay.

¹ The Lawsons own two of the homes served by Lucas.

Alternatives to the proposed treatment plant were discussed at the informal conference in the hopes of finding a less costly solution to the problem. The Commission Staff as well as the NREPC investigated the matter in depth. It appears that an alternative to the proposed treatment plant exists, one which both Lucas and the NREPC could agree upon and which would be less costly to construct and maintain as well.²

After a review of the evidence of record and being sufficiently advised, the Commission finds that:

1. The Commission has "exclusive jurisdiction over the regulation of rates and services of utilities" pursuant to KRS 278.040(2). It is a well-established principal of rate-making that an agency given such authority has a duty to fix utility rates which are fair to both the public and the utility involved. See Covington & Lexington Turnpike Road Company v. Sandford, 164 U.S. 578 (1896). In doing so, the interest of both the public and of the utility should be considered, but where it is not possible to do full justice to both, the rights of the public must prevail. 64 Am. Jur.2d, Public Utilities, Section 191. See also Re Alabama Power Company, 44 PUR 4th 413 (Ala. P.S.C. 1981).

2. While KRS 278.030 permits every utility to demand, collect and receive fair, just and reasonable rates for the services rendered, due to the oppressive nature of the proposed 2,669 percent increase, the rates proposed by Lucas cannot be considered reasonable in light of the fact that a less expensive, yet feasible, alternative to the proposed

² Commission Staff has been informed that the installation of a drip irrigation system together with an enhanced drainfield could be substituted for the proposed treatment plant.

construction appears to exist. It is for this reason that the rate increase proposed by Lucas should be denied at this time.

3. As the rate increase was proposed due to the anticipated cost of building, maintaining, and operating the above-mentioned wastewater treatment plant, and as the Commission cannot approve the rate increase required to build, maintain, and operate such a plant when a less expensive, yet feasible, alternative appears to exist, Lucas should not be granted the authority to construct the sewer facilities which have been proposed. Likewise, approval to finance the construction should not be granted at this time.

IT IS THEREFORE ORDERED that the application of Lucas for authority to construct the new sewer facilities as proposed, to finance that construction, and to increase sewer rates accordingly is denied without prejudice.

Done at Frankfort, Kentucky, this 25th day of November, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director