

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF GEORGE LUCAS, SR.	)	
D/B/A ADDISON WATER AND	)	CASE NO. 97-177
SEWAGE FACILITIES TO ABANDON	)	
FACILITIES	)	

O R D E R

On April 10, 1997, George Lucas, Sr., d/b/a Addison Water and Sewage Facilities ( Addison ) filed a petition for authority to cease operation as a public utility. Addison is a ten-customer water and sewer utility located adjacent to the Ohio River in Breckinridge County, Kentucky.

There have been two other cases concerning Addison to come before the Commission.<sup>1</sup> In 1995 Addison was cited by the Natural Resources and Environmental Protection Cabinet ( Cabinet ) for failure to comply with certain environmental regulations concerning the operation of the septic system and pollution of the ground water in the area of the septic field. As a result of negotiations between Addison and the Cabinet, an Agreed Order was entered into whereby Addison would install a package treatment plant to serve the customers of the utility.

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<sup>1</sup> Case No. 93-053, An Investigation of the Addison Water and Sewage Treatment Facilities and Case No. 94-439, The Petition of George Lucas, Sr., Addison Water and Sewer Facilities, For Approval of Construction, Financing, Rates and Transfer of Water and Sewer Facilities.

On October 3, 1995, Addison petitioned this Commission in Case No. 95-439 for authority to construct and finance the facility and for a rate increase. In that same application George Lucas, Sr., also requested authority to transfer the facilities from himself to a corporation. The Commission denied the request to transfer the facilities by an Order dated April 1, 1996. On November 25, 1996, the Commission issued an Order denying the application for financing and the proposed rate increase. The Commission found that the proposed 2,669 percent increase in rates was oppressive and that a less expensive, yet feasible, alternative to the proposed construction appeared to exist.

A public hearing was held in this case on September 22, 1998. Three intervenors appeared at the hearing along with counsel for the Cabinet. The evidence for the petitioner at the hearing consisted of testimony from Dennis O'Brien (Addison's accountant), Cindy Napier (George Lucas's attorney) and Woodrow W. Smither (Addison's engineer). These witnesses indicated that George Lucas was the sole operator of the system and had been for several years, but that he was in ill health and unable to operate the system and there was no one available to assume operational responsibility. Engineer Smither stated it was his opinion that the present system would work if properly installed and maintained. At the hearing there was sparse evidence pertaining to other systems that would work. Mr. Smither, however, had not inspected the present system. He did design the system that had been proposed, and rejected, in Case No. 95-439. He stated he had reviewed a GO-flow Drip System, but he did not know anything about it and would not recommend it. It appears that several systems have been proposed in this case, but none has received much, if any, study by Addison.

There is evidence that Addison did not explore the system mentioned by the EPA in its letter and also that some systems were rejected after only cursory consideration.

The intervenors in this case are owners of properties served by Addison, and point to the lack of any additional study by Addison as to treatment plants, especially the EPA suggestion of a recirculating sand filter, and to the obligations of George Lucas to provide water and sewer service. The residents of Addison claim that George Lucas has a duty to provide this service as set out in their deeds and as a condition of the purchase of this tract from the government.

The filed tariff rate for the service is \$6.50 per month. However, there has been little, if any, effort by Addison to collect the monthly fees from all customers.

On January 22, 1999, the Commission entered an Order that held this case in abeyance for 60 days and directed Addison to report upon other systems that could be considered as alternatives.

On February 8, 1999, counsel for Addison filed a Motion to Submit upon the grounds that George Lucas, Sr., the operator of the facilities, had died on February 3, 1999. Consequently, there is no one to operate the facilities, expend funds, or provide for the maintenance of the sewer and water facilities.

On March 19, 1999, an intervenor filed into the record a copy of the Notice which she had received from the attorney for George Lucas, Sr. This Notice indicated George Lucas, the owner and operator of the utility, was dead and that all payments for utility service should be suspended.

KRS 278.021 gives the Commission the authority to request that a receiver be appointed by the court if the Commission determines, after notice and hearing, that any utility is abandoned. The Commission has previously found utilities to be abandoned.<sup>2</sup>

In this case, the sole operator of the utility is deceased and no one appears to be responsible for the daily operation. In addition, no payments for the utility service appear to have been accepted by any person. The record also contains evidence that Addison has lost approximately \$50,000 since 1994 and that Addison does not have a certified plant operator.

In addition, based on the record herein, the Commission finds that:

1. George Lucas, Sr., has personally subsidized the operations of the utility.
2. This utility was a sole proprietorship, exclusively operated and maintained under the direction of George Lucas, Sr.
3. George Lucas, Sr., is now deceased.
4. There is no indication that anyone else has accepted compensation for or has participated in the overall operations or would take over the operation of the utility.

The Commission finds that the facilities operated by Addison, for all practical purposes, have been abandoned. Since the sole proprietor and operator of Addison is

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<sup>2</sup> See Case No. 96-386, Barren County Gas Company and Barry Rogers, Individually: Alleged Violation of KRS Chapter 278 (Order dated October 4, 1996). See also Case No. 94-451, Eugene McGruder d/b/a Big Valley Mobile Home Subdivision Sewage Treatment Plant: Investigation into the Condition and Jurisdictional Status of Sewage Utility Facilities (Order dated May 9, 1995).

deceased, said facilities do not provide adequate service, as defined in KRS 278.030(1) and (2), to the customers of Addison, and this utility should be declared abandoned.<sup>3</sup>

IT IS THEREFORE ORDERED that:

1. The facilities of Addison are declared to be abandoned.
2. Pursuant to KRS 278.021, the appointment of a receiver for Addison is appropriate.

Done at Frankfort, Kentucky, this 7<sup>th</sup> day of July, 1999.

By the Commission

ATTEST:

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Executive Director

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<sup>3</sup> See Case No. 96-117, Lake Shore Waterworks, Inc. Petition for Abandonment (Order dated October 14, 1996).