

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COVERED BRIDGE UTILITIES, INC.	)	
_____	)	CASE NO. 99-079
	)	
ALLEGED FAILURE TO COMPLY WITH THE	)	
COMMISSION'S OCTOBER 9, 1998 ORDER	)	
IN CASE NO. 97-455	)	

O R D E R

On March 10, 1999, the Commission initiated this case to allow Covered Bridge Utilities, Inc. ( Covered Bridge ) to show cause why it should not be subject to the penalties prescribed in KRS 278.990 for two probable violations of the Commission's October 9, 1998 Order in Case No. 97-455.<sup>1</sup> Case No. 97-455 was a rate case in which Covered Bridge sought to increase its charges for sewer treatment service to the Covered Bridge Farms subdivision. In approving a rate increase, the October 9, 1998 Order required Covered Bridge to: 1) file within 30 days a revised tariff setting forth the new rate; and 2) file within 60 days a rate application to establish an initial rate for service to an adjoining sewer utility, Hayfield Utilities, Inc. ( Hayfield ), and to adjust as appropriate the residential rate.

On March 25, 1999, the Countryside Homeowner s Association ( Countryside Homeowner s ) filed a motion stating that its members are customers of Hayfield and requesting: 1) intervention in this show cause case; 2) consolidation of Case Nos. 97-

---

<sup>1</sup> Case No. 97-455, The Application of Covered Bridge Utilities, Inc. For a Rate Adjustment Pursuant to 807 KAR 5:076 For Small Utilities.

455 and 97-457<sup>2</sup> with this show cause case; and 3) an Order prohibiting Hayfield from charging any fees other than those approved in Case No. 97-457.

On April 6, 1999, Covered Bridge filed a response in opposition to the Countryside Homeowner s motion. Covered Bridge states that members of Countryside Homeowner s are customers of Hayfield, not customers of Covered Bridge, and that Hayfield is no longer a jurisdictional utility since it now has no treatment facilities and charges only for the collection and transmission of sewage. For these reasons, Covered Bridge also claims that Countryside Homeowner s has failed to demonstrate sufficient facts to justify disregarding Hayfield s separate corporate existence and treating it and Covered Bridge as a single entity. Covered Bridge supports its claim of separate corporate entities by an affidavit of one of its owners and an affidavit of the owner of Hayfield.

Further, Covered Bridge opposes consolidation on the basis that final orders were issued in Case No. 97-455 and 97-457 over six months ago and no rehearing or appeal was filed in either case. Finally, Covered Bridge notes that the Commission Staff Report in Hayfield s rate case, Case No. 97-457, explicitly recognized that Commission regulation will end once the Hayfield plant is taken out of service and sewage is transmitted to Covered Bridge for treatment. Thus, Covered Bridge asserts that the Commission now has no jurisdiction to enjoin Hayfield from collecting any fees in excess of the rate established in Case No. 97-457.

---

<sup>2</sup> Case No. 97-457, The Application of Hayfield Utilities, Inc. For a Rate Adjustment Pursuant To 807 KAR 5:076 For Small Utilities.

Hayfield Utilities also filed a response in opposition to the Countryside Homeowner s motion. Hayfield echoes Covered Bridge s claim of separate corporate identities and also argues that Countryside Homeowner s, having intervened in Case No. 97-457, is barred by principles of res judicata from now attempting to challenge the determination in that case that closing Hayfield s treatment plant renders its sewage collection and transmission system non-jurisdictional.

Based on the motion, the responses, and being sufficiently advised, the Commission finds that the relief requested by Countryside Homeowner s is beyond the scope of this case. The only issue before us now is whether Covered Bridge violated the October 9, 1998 Order in Case No. 97-455 by failing to file certain items by the specified dates and, if so, the appropriate remedies for the violations.

The Countryside Homeowner s motion attempts to expand this case into an investigation of unrelated issues: the corporate relationship of Covered Bridge and Hayfield; the fees now charged by Hayfield for sewer collection and transmission service; whether Hayfield is a jurisdictional utility; and if so, whether Hayfield is in violation of the October 9, 1998 Order in Case No. 97-457. The motion fails to show good cause to justify such an expansion of this case. The motion is essentially a complaint against Hayfield, but as such it falls short of establishing a prima facie case. It includes only vague and general allegations, rather than specific facts to show that Covered Bridge and Hayfield are so interrelated that they may legally be considered as one entity.

The Staff Report in Hayfield s rate case, Case No. 97-457, noted that upon connecting Hayfield to Covered Bridge, the Hayfield plant would be taken out of service.

Hayfield would then only be providing collection service, which is not subject to Commission regulation under the recent decision in Boone County Water and Sewer District v. Public Service Commission, Ky., 949 S.W.2d 588 (1997). That Staff Report was adopted by the Commission's October 9, 1998 Order in that case and Countryside Homeowner's raised no objection to the nonjurisdictional nature of Hayfield as a collection system.

While the Commission shares the concerns raised by Countryside Homeowner's that a sewer utility could spin off its collection system to avoid regulation, the Kentucky Supreme Court definitively ruled in Boone County that:

It is logical to conclude that the legislature did not mention collection and transmission of sewage because the legislature intended that these operations not be regulated by KRS Chapter 278. If the legislature had wanted activities pertaining to sewage collection and transportation to be regulated by the Public Service Commission, it would have specifically so stated in Chapter 278 of the Kentucky Revised Statutes. The legislature did not do so.

However, even assuming the Commission has the authority to disregard the spin-off of sewer collection facilities for the sole purpose of avoiding regulation, there is no allegation here that Hayfield closed its treatment plant for that reason. To the contrary, the Commission's records show that as early as 1990 an expansion was proposed at Covered Bridge which would eliminate the Hayfield treatment plant.<sup>3</sup> In addition, the

---

<sup>3</sup> Commission Case No. 93-275, Covered Bridge Utilities, Inc.'s Application for a Certificate of Public Convenience and Necessity, Exhibit A thereto. Attached hereto as Appendix A.

Natural Resources and Environmental Protection Cabinet encouraged Hayfield to close its treatment plant and connect to Covered Bridge long before the decision in Boone County.<sup>4</sup>

In summary, the Commission finds that Countryside Homeowner s has shown neither a special interest in the limited issues in this case nor that its intervention is likely to present issues or develop facts that will assist in our consideration of this case. Rather, the issues sought to be raised by Countryside Homeowner s will unduly complicate this show cause case. Therefore, intervention will be denied, as will the requests to consolidate and to enjoin Hayfield from collecting any fees other than those approved in Case No. 97-457 for what is now only a sewer collection system.

IT IS THEREFORE ORDERED that Countryside Homeowner s motion to intervene, to consolidate this show cause case with Case Nos. 97-455 and 97-457, and to enjoin Hayfield from collecting fees not approved in Case No. 97-457 is denied.

Done at Frankfort, Kentucky, this 6<sup>th</sup> day of May, 1999.

By the Commission

ATTEST:

---

Executive Director

---

<sup>4</sup> Case No. 93-275, Transcript of April 25, 1994 Hearing, Exhibit A thereto. Attached hereto as Appendix B.

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 99-079 DATED MAY 5, 1999

APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 99-079 DATED MAY 5, 1999