

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BETHANY CHRISTIAN MISSION CENTER, INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 98-282
)	
HOLLY CREEK PRODUCTION CORPORATION)	
)	
DEFENDANT)	

O R D E R

On July 28, 1999, the Commission found that Bethany Christian Mission Center, Inc. ("Complainant") had been overbilled \$23,674 from January 1994 through December 1997 by Holly Creek Production Corporation ("Holly Creek"). The Commission ordered Holly Creek to refund \$23,674 to Complainant. Holly Creek was also ordered to prepare a plan setting forth Holly Creek's proposal for making the refund of \$23,674 over a 3-year period. On August 17, 1999, Holly Creek filed a motion to reconsider the Commission's Order of July 28, 1999, and the Commission denied the motion on August 27, 1999.

The Commission found that on September 27, 1999, in paragraph 4(a) and (b) of a letter addressed to the Commission, Holly Creek submitted its plan for repayment, subject to the ruling of the Franklin Circuit Court on its appeal of the Commission's Order. The plan submitted by Holly Creek notes that the Commission's Order of

July 28, 1999 is on appeal to the Franklin Circuit Court and that Holly Creek will make no refunds until “after Holly Creek has exhausted its all [sic] appeals.”

On April 7, 2000, Franklin Circuit Court dismissed the action brought by Holly Creek for review of the Commission’s Order. Holly Creek then appealed the decision of Franklin Circuit Court to the Kentucky Court of Appeals.

On September 25, 2000, Complainant filed with the Commission a motion to disapprove Holly Creek’s plan and requested that the Commission order an immediate refund of the \$23,674 overpayment. We find that the motion requesting the Commission to modify its Order of July 28, 1999 by requiring an immediate refund is not timely. KRS 278.400 requires any party to apply for a rehearing with respect to any of the matters determined in an Order within 20 days after service of the Order. The motion to modify the July 28, 1999 Order by requiring an immediate refund is denied; however, we will consider whether the plan filed by Holly Creek is responsive to the requirement to refund within a 3-year period.

First and foremost, the July 28, 1999 Order of the Commission is still in effect. That Order has not been revoked or modified by the Commission, nor has the Order been suspended or vacated, in whole or part, by any court.

Holly Creek has submitted a plan for repayment to Complainant of the overbilled amount over a 3-year period. However, Holly Creek stated in its plan that it will not make any payment until after it has exhausted all its appeals. The Franklin Circuit Court has ruled adversely on Holly Creek’s complaint and request for injunctive relief by dismissing its action for review.

The Commission finds that Holly Creek's plan to delay refund payments until all appeals of the Commission's Order of July 28, 1999 are exhausted is unacceptable. The clear intent of the Order is that the 3-year refund period commence on the date of the Order and that Holly Creek shall repay the entire \$23,674 within the 3-year period ending August 1, 2002. Fourteen months of the 3-year period ending August 1, 2002 have now passed. Holly Creek's initial payment must therefore be sufficient to void its arrearages.

IT IS THEREFORE ORDERED that:

1. The motion of Complainant to modify the Commission's Order of July 28, 1999 by requiring an immediate refund of the \$23,674 is denied.
2. Holly Creek shall refund the \$23,674 as ordered by the Commission in its July 28, 1999 Order, said payments to begin immediately and the entire amount to be refunded by August 1, 2002.

Done at Frankfort, Kentucky, this 16th day of October, 2000.

By the Commission

ATTEST:

Deputy Wm H. Fowler
Executive Director