

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE HARBOR AT HARRODS CREEK	)	
CONDOMINIUM ASSOCIATION	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO. 2000-00379
	)	
FOURTH AVENUE CORPORATION - LONG	)	
CORPORATION, JOINT VENTURE D/B/A SHADOW	)	
WOOD SUBDIVISION SEWER SERVICE	)	
	)	
DEFENDANT	)	

O R D E R

On August 14, 2001, the Commission entered a final Order in this case. On August 30, 2001, Complainant ( The Harbor ) filed a Petition for Rehearing and on August 31, 2001, Defendant ( Fourth Avenue ) filed a Petition for Rehearing. On September 19, 2001, the Commission granted Fourth Avenue s Petition for Rehearing in part and denied The Harbor s Petition for Rehearing in whole.

In its Petition for Rehearing, Fourth Avenue presented a letter dated October 12, 2000 from Commission Staff, instructing Fourth Avenue to apply its commercial rate as provided in its tariff to the clubhouse owned by The Harbor. Fourth Avenue argues that the amount of the refund specified in the Commission s Order of August 14, 2001 should be adjusted accordingly.<sup>1</sup> The Commission granted rehearing on the issue,

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<sup>1</sup> In the August 14, 2001 Order issued in this case, the Commission found that Defendant improperly billed a non-tariffed charge in the amount of \$50 per month for the clubhouse. The Commission ordered Defendant to refund the entire amount it had collected for the clubhouse.

finding Fourth Avenue's reliance on the Staff's letter reasonable, and held a hearing on February 26, 2002.

The August 14, 2001 Order required Fourth Avenue to refund the entire amount that it collected for the clubhouse because the \$50 monthly fee was not a tariffed charge and established law prevents a utility from collecting a non-tariffed charge.<sup>2</sup> The same law also binds the utility to charge its filed rate. Commission Staff's October 12, 2000 letter informed Fourth Avenue that the commercial rate is its filed rate, and therefore must be charged. When the amount that would have been charged to the clubhouse using the commercial rate is compared to the \$50 untariffed amount actually billed, The Harbor was under-billed some months and over-billed some months.

A utility is entitled to collect for under-billed service. Thus, Fourth Avenue is entitled to receive an adjustment to the refund to reflect what it was entitled to bill for the clubhouse. However, KRS 278.225 limits the liability of a customer for unbilled service to 2 years from the date of service. Accordingly, The Harbor shall be liable only for any under-billed service rendered in the 2-year period prior to the date of this Order.

A utility is also required to refund any over-collection. The 2-year limitation included in KRS 278.225 does not apply to the refund of over-collections. In its August 14, 2001 Order, the Commission ruled that the 5-year statute of limitations provided for by KRS 413.120(2) should apply for any over-collections made by Fourth Avenue. The complaint filed by The Harbor stopped the running of the statute of

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<sup>2</sup> KRS 278.160(2) states:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

limitations in regard to the over-collections. Therefore, any overcharges paid by the The Harbor during the 5-year period prior to the date the complaint was filed and from the date of the complaint to the present should be refunded to it by Fourth Avenue.

IT IS THEREFORE ORDERED that:

1. The amount of the refund ordered in the Commission's August 14, 2001 Order is adjusted to reflect the findings herein.

2. Within 10 days of the date of this Order, Fourth Avenue shall provide to the Commission the Usage Information Records and billing records prepared by the Louisville Water Company for the clubhouse for the period from July 7, 2001 to the date of this Order.

3. Upon receipt of the aforementioned billing records, the Commission will issue an Order adjusting the refund.

4. Fourth Avenue shall immediately cease collecting any untariffed charges and begin charging all non-residential customers the commercial rate.

Done at Frankfort, Kentucky, this 6<sup>th</sup> day of June, 2002.

By the Commission

ATTEST:

  
Executive Director