

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

C & L BUILDERS)	
)	
COMPLAINANT)	
v.)	CASE NO. 2000-00460
)	
OLDHAM COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

On February 12, 2002, the Commission entered a final Order in this case wherein it denied Complainant's petition for an Order compelling Defendant to extend water service to Complainant's proposed subdivision. On March 6, 2002, Complainant filed a Petition for Rehearing on three issues. On March 14, 2002, Defendant filed a Response to Complainant's Petition for Rehearing.

In its Order of February 12, 2002, the Commission found that [i]n the absence of conclusive evidence from either witness regarding contamination, the risk still exists. Therefore, since the risk still exists, it is unreasonable to require Oldham County to make an extension of service that might result in contamination of its wells and a significant financial burden on Oldham County's customers.¹ Now Complainant claims that [s]ubsequent to the conclusion of the hearing, additional evidence has developed that could not with reasonable diligence have been presented at the July 11, 2001

¹ Order of February 12, 2002 at 10.

hearing.² This additional evidence consists of the recommendations of the Water Supply Advisory Team Oldham County, Kentucky 1 (WSAT).

On or about August 11, 2001, the Oldham County Fiscal Court created WSAT in response to Defendant s presentation of its Wellhead Protection Plan. WSAT gathered and reviewed information pertinent to Defendant s Wellhead Protection Plan, including interviewing expert witnesses and stakeholders in Defendant s proposed Wellhead Protection Area. WSAT concluded that, with certain limitations, the use of septic systems within the Wellhead Protection Areas would be acceptable and would not lead to significant contamination of Defendant s wells. WSAT issued its recommendations on or about February 5, 2002. It is clear from the date of WSAT s recommendations that this evidence would not have been available for the July 11, 2001 hearing through the exercise of due diligence.

Defendant argues that it, and not WSAT, is responsible for the quality of water in its system and for developing a water supply plan. Moreover, Defendant argues that it has not approved or adopted WSAT s recommendations because they do not contain plans to protect the aquifer.

Defendant argues that its denial of service was reasonable because of its concern about nitrate contamination of its wells, a concern, Defendant claims, WSAT s recommendations support. Defendant claims that WSAT s recommendations for development would, if allowed, lead to an estimated nitrate contamination level of 4.86 parts per million (ppm). Defendant claims that this 4.86 level is close to halfway to the maximum contamination level of 10 ppm that leads to undrinkable water. Moreover, at

² Petition for Rehearing of C & L Builders, Inc. at 2.

10 ppm, Defendant would be obligated to either shut town the contaminated well or install a treatment plant at great expense to its customers.

Complainant contends that certain information regarding nitrate levels in Defendant s wells, and relied upon by Defendant in its post-hearing brief, were incorrect due to laboratory error. Complainant claims that the nitrate levels were significantly higher than all other nitrate samples, and, therefore, should be reexamined by the Commission. Defendant maintains that even if a laboratory error occurred, it is irrelevant because the Commission did not mention the specific lab results in its final Order and a single lab error would do nothing to change the basis for the Commission s conclusion.

Complainant also claims that Defendant has agreed to extend service to two residences to be located in the Wellhead Protection Area. Complainant claims that this is discriminatory. Defendant disagrees, claiming that service to one of the residences is contingent upon his residence falling outside a Wellhead Protection Area and service to the second residence is contingent upon the installation of an advanced septic system.

DISCUSSION

On its face it appears that the evidence proffered by Complainant regarding WSAT s recommendations is not only relevant in regard to nitrate contamination levels, but also could not have been presented at hearing even through the exercise of reasonable diligence. WSAT s recommendations may contain evidence that could materially alter the outcome of this case particularly in regard to nitrate contamination levels. Moreover, Defendant, apparently, approved service to a residence located within the Wellhead Protection Area contingent upon the resident s use of an advanced septic system. The record demonstrates that Defendant previously had insisted that

Complainant install a package treatment plant. If an advanced septic system is acceptable for use in the Wellhead Protection Area, Defendant should have informed Complainant of this option. Defendant denied service unless Complainant installed a package treatment plant, which would appear to be unreasonable conduct if another option existed. Its failure to do so warrants further investigation.

SUMMARY

Based on the issues presented in the petition for rehearing and the evidence of record and being advised, the Commission is of the opinion that a rehearing should be granted for the purposes of reconsideration of the issues raised by Complainant in its petition.

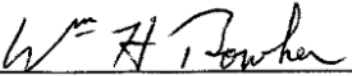
IT IS THEREFORE ORDERED that:

1. Complainant's petition for rehearing is granted on the issues of WSAT's recommendation, the alleged laboratory errors and Defendant's extension of service to others located within the Wellhead Protection Area.
2. A procedural Order will follow the issuance of this Order.

Done at Frankfort, Kentucky, this 26th day of March, 2002.

By the Commission

ATTEST:

Deputy 
Executive Director