

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DOE VALLEY UTILITIES, INC.	)	
FOR A CERTIFICATE OF CONVENIENCE AND	)	CASE NO.
NECESSITY FOR CONSTRUCTION AND	)	2002-00353
FINANCING AN UPGRADE TO WATER	)	
TREATMENT FACILITIES	)	

O R D E R

On May 23, 2003, Doe Valley Utilities, Inc. ( Doe Valley ) filed an application pursuant to KRS 278.400 for a rehearing of the Order entered on May 1, 2003. That Order denied Doe Valley's application for financing and for a Certificate of Public Convenience and Necessity ( CPCN ) to construct the proposed water treatment facilities.

On May 22, 2003, the Applicant filed a letter from Bank One, Kentucky, NA ( Bank One ) stating that Doe Valley was relieved from the obligations of the guarantee agreement to Bank One. Also filed was a Deed of Release, releasing Doe Valley from the mortgage dated December 13, 2002. This filing cannot properly be considered a request for rehearing pursuant to KRS 278.400. It is in the nature of a request to amend the applicant's petition to eliminate the issue of Doe Valley's financing of the proposed project. These documents were also included in the applicant's Motion for Rehearing filed on May 23, 2003.

Issues concerning the identity of the entity or entities financing the project seem to have confused all parties. The initial application stated that the financing was solely

done by the Doe Valley Property Owner s Association, Inc. ( POA ) and that Doe Valley would not bear any obligation for the financing. However, it later became apparent that Doe Valley had obligated itself to the financing by execution of a mortgage with Bank One. The application was amended to state that Doe Valley had in fact pledged its assets to guarantee the obligations of the POA and to request approval of that obligation. Now, evidence has been filed to show that Doe Valley has now been released from that obligation.

While this evidence is relevant to the issue of financing, it is not newly discovered evidence or evidence that could have been offered previously. It is, in fact, new evidence based upon events occurring after our Order of May 1, 2003. The evidence eliminates the question of financing for Doe Valley. However, it does not change the ultimate outcome of the case. The basic problems with the project itself, as discussed in our previous Order, remain. There is nothing new in the request for rehearing to convince us that Doe Valley can support its application for the CPCN.

We now consider the motions filed by the Intervenor. The motions pertaining to discovery have been rendered moot by reason of the denial of the application for the CPCN and financing as contained in our Order of May 1, 2003. However, we will address the Intervenor s motions filed on May 2, 2003 and May 22, 2003 as to the request for sanctions and refunds against both Doe Valley and the POA. The Intervenor urges us to impose sanctions upon both Doe Valley and the POA and to order the POA to refund certain assessments. The record does not reflect that Doe Valley assessed any fee or charged any untariffed rate to its customers. The record

does show that all funds collected were by way of an assessment imposed by the POA upon its membership.

The Commission's powers are purely statutory. Pursuant to KRS 278.010, the Commission can only regulate utilities rates and services. The action urged by the Intervenor is in excess of the statutory power of the Commission. We have no power to approve or disapprove the actions of the POA in its dealings with its members. Public Service Com'n of Kentucky v. Attorney General of Com., Ky.App., 860 S.W.2d 296 (1993).

Next, the Intervenor urges us to apply sanctions to Doe Valley and the POA pursuant to KRS 278.990. KRS 278.990 is a penalty statute, the enforcement of which is not within the scope of this case.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. The application for rehearing is denied.
2. The motions of Intervenor are denied.
3. The Commission reaffirms its Order of May 1, 2003 requiring Doe Valley to submit a written summary as to its status and position on resolving its source of supply deficit within 90 days from the date of that Order.

Done at Frankfort, Kentucky, this 4<sup>th</sup> day of June, 2003.

By the Commission

ATTEST:

  
Executive Director

Case No. 2002-00353