

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MALLARD)	
POINT DISPOSAL SYSTEMS,)	
INC. FOR AN ADJUSTMENT OF)	CASE NO. 2003-00284
RATES PURSUANT TO THE)	
ALTERNATIVE RATE FILING)	
PROCEDURE FOR SMALL UTILITIES)	

O R D E R

On October 2, 2003, Intervenor Winston Faircloth (Faircloth) filed a motion to compel responses to the data request Faircloth served upon Mallard Point Disposal Systems, Inc. (Mallard Point) pursuant to the Commission s Order of August 21, 2003. On October 6, 2003, Intervenor Marvin Baker (Baker), by counsel, filed a motion to compel responses to the data request Baker served upon Mallard Point pursuant to the Commission s Order of August 21, 2003. Mallard Point filed responses to both Faircloth and Baker on September 26, 2003. In addition, Intervenor Angela Beall (Beall) has moved the Commission to disallow certain expenses for lack of documentation.

Both Faircloth and Baker complain that Mallard Point refused to respond or failed to respond fully to many of their discovery requests. On October 9, 2003, Mallard Point filed a response to Baker s motion to compel, stating that it answered all requests except those that it considers irrelevant and that it has provided all documents in its possession.

By Order dated October 6, 2003, Case No. 2003-00283 was consolidated with Case No. 2003-00284. That Order also amended the procedural schedule to afford the parties more time in which to file and respond to supplemental data requests. As noted in that procedural schedule, Commission Staff was directed to prepare and submit a Staff Report on or before November 15, 2003 setting forth its findings and recommendations pertaining to Mallard Point's rate adjustment request. Due to the pending Staff Report and the comments or objections thereto, if any, the date of the formal hearing has not been scheduled.

First, we consider Beall's filings of September 10, 2003 and October 3, 2003 requesting the Commission to disallow certain expenses contained in Mallard Point's application for failure to file supporting documentation. In its response of October 9, 2003, Mallard Point stated that Commission Staff had assisted in the rate application, pursuant to 807 KAR 5:076(3), and that the Staff properly calculated Mallard Point's expenses. While Commission Staff assists in the preparation of applications, such assistance does not guarantee that the figures furnished to Staff are accurate. The utility has the burden of proof to show that the requested change of rate is just and reasonable. KRS 278.190 (3).

The Commission acts as a quasi-judicial agency and as such is required to render its own finding of facts and conclusions of law as to the merits of rates and service issues upon the conclusion of any hearing or submission of any case to the Commission for a decision. Consequently, the motion of Beall as to the disallowance of items contained in the application will be passed to the merits and ruled upon in a final Order rendered by the Commission in this case.

Next, we take up the issues raised by Intervenor Faircloth. Intervenor Faircloth requests that Mallard Point be compelled to respond to Question Nos. 1, 6, 8, 15, 16, 17, 18, 21, 23, and 30, as contained in the filing of August 28, 2003. Based upon the questions, the answers, and objections of Mallard Point, the Commission finds as to each question:

Question No. 1. Mallard Point should identify fully the person or persons who signed and filed the annual report.

Question No. 6. At this time, the Commission will not compel further answer to this question. The subject may be expanded upon in supplemental questions.

Question No. 8. The objection by Mallard Point is sustained.

Question No. 15. The objection by Mallard Point is overruled; however, the point is moot as the question has been answered.

Question No. 16. The labor for entities other than the jurisdictional utility is not relevant in this matter. The question is answered.

Question No. 17. We consider the question answered in the response to Question No. 15.

Question No. 18. We consider the question answered.

Question No. 21. We consider the question answered.

Question No. 23. The motion to compel is granted. Mallard Point shall prepare and file a list in response to the question.

Question No. 30. The objection by Mallard Point is sustained.

Next, we take up the issues raised by Intervenor Baker. Intervenor Baker requests that Mallard Point be compelled to respond to Question Nos. 5 and 6 and to

produce documents as requested in Baker s Request Nos. 2, 3, 4, 7, 8, and 11 in the filing of August 28, 2003. Based upon the questions, the requests for documents, and the answers and objections of Mallard Point, the Commission finds as follows:

We find both Question No.5 and Question No.6 irrelevant to the issues before the Commission, and the objection of Mallard Point is sustained.

As to the production of documents, Mallard Point has clarified its ambiguous previous answer by stating that the documents referred to in Request Nos. 2, 3, 4, 7, 8, and 11 in fact do not exist and cannot be produced. Without ruling on the relevance of any of the documents requested by Baker, we consider Mallard Point s response complete.

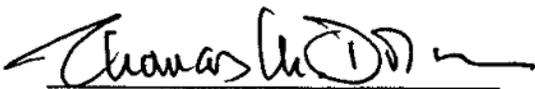
The Commission, having been sufficiently advised, HEREBY ORDERS that:

1. The motion of Beall as to the disallowance of items contained in the application is passed to the merits and final Order rendered by the Commission in this case.
2. The motion of Intervenor Faircloth to compel discovery responses from Mallard Point is granted in part and denied in part.
3. On or before October 24, 2003, Mallard Point shall file its responses to the questions of Intervenor Faircloth consistent with the findings contained in this Order.
4. The motion of Intervenor Baker to compel answers and to produce documents is denied.

Done at Frankfort, Kentucky, this 16th day of October, 2003.

By the Commission

ATTEST:


Executive Director

Case No. 2003-00284