

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF APPALACHIAN WASTE	)	
CONTROL FOR AN ADJUSTMENT IN RATES	)	
PURSUANT TO THE ALTERNATIVE RATE FILING	)	CASE NO. 2007-00093
PROCEDURE FOR SMALL UTILITIES AND	)	
REQUEST FOR INTERIM RELIEF	)	

ORDER

Appalachian Waste Control, Inc. (“Appalachian Waste Control”) has moved for authority to place its proposed rates into effect immediately. Finding that the utility’s operations will be materially impaired or damaged by any delay in permitting these rates to become effective, we grant the motion but direct that the proposed rates be subject to refund upon the determination of a final rate.

Appalachian Waste Control is a Kentucky corporation that owns 5 small wastewater treatment plants in Johnson County, Kentucky,<sup>1</sup> that provide wastewater collection and treatment service to approximately 65 customers. Appalachian Waste Control’s operation and management of these plants has been the subject of a 4-year Commission investigation.<sup>2</sup> On January 19, 2007, the Commission found that the wastewater treatment plants had not been operated in accordance with Commission

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<sup>1</sup> These wastewater treatment plants are located in Richmond Hills Estate, Paradise Valley, Preston Estates, Neil Price, and Berkshire Development Subdivisions of Johnson County, Kentucky.

<sup>2</sup> Case No. 2002-00396, Gary K. Fairchild; Appalachian Waste Control, Inc.; and Lance Bowling d/b/a East Kentucky Waste Control – Alleged Failure to Comply With 807 KAR 5:071, Section 7(1); KRS 278.020(5) and (6); KRS 278.150(2); and KRS 278.160(2) (Ky. PSC Jan. 19, 2007).

regulations and that an unauthorized transfer of control had occurred. The Commission assessed Appalachian Waste Control, its owner, and its operator each a penalty of \$12,000.00 for the operation violations and a penalty of \$500.00 each for the unauthorized transfer of control.

While the Commission conducted its investigation, the Attorney General and Environmental and Public Protection Cabinet (“EPPC”) were conducting separate investigations into the operation of the wastewater plants. Each year between 2004 and 2006, the EPPC cited the plants for violations of the Division of Water’s water quality administrative regulations. In December 2006, the Attorney General arrested Lance Bowling and his father, David Bowling, for water pollution.<sup>3</sup> The Bowlings were allegedly dumping untreated sewage into the Big Sandy River.

In December 2006, EPPC petitioned the Franklin Circuit Court to appoint a Special Master Commissioner to operate the 5 wastewater treatment plants. On December 21, 2006, Franklin Circuit Court appointed Squire N. Williams, III as Special Master Commissioner to collect rates for the 5 wastewater plants and to pay a contractor that EPPC would obtain to operate the systems. EPPC subsequently contracted with the Prestonsburg City Utilities Commission to operate the wastewater treatment plants on a temporary basis.

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<sup>3</sup> See Press Release, Office of Attorney General, Attorney General Greg Stumbo Announces Arrest Following Overnight Raid of Septic Company Caught Dumping Waste into Big Sandy River (Dec. 20, 2006) (found at <http://ag.ky.gov/news/bigandyriversewage.htm>) (last visited Jan. 10, 2007). See also State Files to Take Over Five Wastewater Plants, Lexington Herald-Leader, Dec. 21, 2006 (found at <http://www.kentucky.com/mld/kentucky/news/local/states/kentucky/counties/clark/16287510.htm>) (last visited Jan. 11, 2007).

The Special Master Commissioner has limited funds in which to pay the Prestonsburg City Utilities Commission for its services. He received \$10,000.00 from a bond that Lance Bowling forfeited as a result of his non-compliance with EPPC and Franklin Circuit Court Orders. His only other source of funding is the monthly rates for wastewater service. Some of the rates have not been adjusted in over 20 years and are low when compared to similarly situated wastewater treatment plants.<sup>4</sup>

On March 30, 2007, the Special Master Commissioner applied to the Commission on behalf of Appalachian Waste Control for authority to assess a monthly rate of \$56.72 for customers of each wastewater treatment plant. The proposed rate increases range from 54 to 1,034 percent.<sup>5</sup> On April 9, 2007, the Special Master Commissioner formally notified the Commission of his intent to place the proposed rate into effect for service rendered on or after April 29, 2007. Prior to this notice, he requested that the Commission not suspend the proposed rate but permit it to become effective subject to refund.

On April 10, 2007, the Commission held a hearing on Appalachian Waste Control's request to place the rate into effect immediately. Present were the Special Master Commissioner; representatives of the EPPC; and Michael Strafford, a customer

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	Preston Estates	Paradise Valley	Berkshire	Neil Price	Richmond Hills
Proposed Rate	\$56.72	\$56.72	\$56.72	\$56.72	\$56.72
Current Rate	\$20.15	\$26.60	\$35.00	\$5.00	\$36.73
Percentage Increase	181.49%	113.23%	62.06%	1,034.40%	54.47%

<sup>5</sup> To ensure the continued operation of the plants, the Special Master Commissioner requested the assistance of Commission Staff to prepare an application for rate adjustment. To assist the Special Master Commissioner, an element of Commission Staff was selected to prepare an application and to assist the Special Master Commissioner in prosecuting the case before the Commission.

of the Preston Estates Subdivision Wastewater Treatment Plant. Testifying at this hearing were Mark Frost, Commission Staff Financial Analyst; David Ellis, manager of the Prestonsburg City Utilities Commission; and the Special Master Commissioner.

The testimony indicated that the proposed rates are based in large measure on cost estimates for maintenance labor, sludge disposal, electric power, and legal expenses. These estimates also include the payment of a \$3,600.00 annual fee to the Special Master Commissioner to compensate him for his services and expenses. Based upon the testimony of Mr. Frost and Mr. Ellis, these estimates may be conservative and appear to have excluded other costs normally included for ratemaking purposes.

The Commission does not question the veracity or truthfulness of the estimates provided. The Prestonsburg City Utilities Commission has no responsibility for the plants. They lie outside of its service area and in a different county. Long-term plans include possibly connecting the wastewater treatment plants to the sewage collection lines of the Paintsville Utilities Commission. The Prestonsburg City Utilities Commission states that it is providing assistance only at the request of the EPPC and seeks only to recover its costs. It estimates that the cost of operating the plants far exceeds \$56.72 per customer per month. Franklin Circuit Court has authorized the Special Master Commissioner to pay a basic fee of \$60.00 per month per customer "for labor plus the cost of any equipment, materials and supplies" to be charged.

Based upon the estimates that the Special Master Commissioner and the Prestonsburg City Utilities Commission have provided, it is clear that Appalachian Waste Control's existing rates are insufficient to meet its expenses and ensure its compliance with state and federal water standards. While Appalachian Waste Control's

existing rates will generate only \$30,276.00 in revenues, its wastewater treatment plants appear to have total annual expenses of \$61,258.00. The Special Master Commissioner has testified that he has no excess funds to cover this deficit. He has already expended all available funds to repair the plants and has no funding source but monthly service rates.

The Prestonsburg City Utilities Commission has noted that it cannot maintain and operate the wastewater plants unless it is compensated for the cost of its services. There is no known party in the wings willing or capable of succeeding the Prestonsburg City Utilities Commission if that entity is unable to continue to provide contract services to the Special Master Commissioner. Given the lack of funding, the estimated level of revenues and expenses, and the lack of other available contractors to operate the plants, the Commission finds that immediate implementation of the proposed rates is necessary to avoid material impairment of Appalachian Waste Control's operations.

While the estimates of Commission Staff and Prestonsburg City Utilities Commission accurately reflect the currently available information, we find that a more accurate estimate of Appalachian Waste Control's expenses will be ascertainable after the utility has experienced several months of actual operation. Accordingly, while we will authorize immediate implementation of the proposed rate, we find such rates should be collected subject to refund and that the Special Master Commissioner should report on the utility's financial operations after operating for 3 months under the proposed rates. Based upon these reports, the Commission can make a final determination as to the appropriate rate for the wastewater treatment plants.

IT IS THEREFORE ORDERED that:

1. Appalachian Waste Control's proposed rate revision is suspended from April 29, 2007 to April 30, 2007. The proposed rate of \$56.72 per month shall become effective subject to refund on April 30, 2007.

2. Appalachian Waste Control shall maintain its records in a manner to permit the Commission to determine the amounts to be refunded in the event a refund is ordered.

3. Appalachian Waste Control shall file with the Commission, no later than August 15, 2007, a report on financial operations for the period from February 1, 2007 through July 31, 2007. This report shall include a detailed accounting of its expenses for this period and a revised statement of its estimated monthly expenses based upon its historical operations for this period.

4. When filing the report described in Ordering Paragraph 3, Appalachian Waste Control shall also file with the Commission any revisions to its proposed monthly rate based upon its historical operations for the period.

Done at Frankfort, Kentucky, this 27<sup>th</sup> day of April, 2007.

By the Commission

ATTEST:



Executive Director