

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GLENNIS W. BLAIR)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2007-00502
)	
APPALACHIAN WASTE CONTROL)	
)	
DEFENDANT)	

O R D E R

On December 4, 2007, Glennis W. Blair filed a complaint against Appalachian Waste Control ("AWC") in which he alleges that he should not be required to pay for services that are not available and that he should not be required to pay the same rate as other customers. Based on the following analysis, the Commission denies Mr. Blair's complaint.

BACKGROUND

Mr. Blair has resided in the Neil Price Estates subdivision in Thelma, Kentucky for 35 years. He is a customer of AWC, lives alone, and represented himself during this proceeding.

AWC, a Kentucky corporation, owns 5 small wastewater treatment plants in Johnson County, Kentucky. The plants provide wastewater collection and treatment service to approximately 90 customers, approximately 6 of which are located in the Neil

Price Estates subdivision and are connected to a small package plant. AWC is subject to Commission jurisdiction.¹

The history of AWC's ownership and operations is relatively complex. Gary Keith Fairchild incorporated AWC in 1988. In 2002, Mr. Fairchild attempted to transfer AWC to Lance Bowling d/b/a East Kentucky Waste Control without obtaining prior Commission approval for the transfer. The Commission inquired into whether AWC's transfer from Mr. Fairchild to Mr. Bowling was effective. Because the individuals failed to obtain Commission approval for the transfer, the Commission declared the transfer to be void.² The Commission also found that AWC's sewage treatment facilities had not been operated in accordance with accepted engineering practices. AWC's facilities were not being operated by either Mr. Bowling or Mr. Fairchild.

In December 2006, the Division of Water filed a motion in Franklin Circuit Court for the appointment of a special master commissioner to collect rates and secure an operator for the facility. The court appointed Squire N. Williams, III, a Frankfort attorney, to serve in that capacity.³

On December 28, 2006, the Cabinet requested that the Commission initiate an administrative proceeding pursuant to KRS 278.021 to declare AWC's sewage treatment facilities to be abandoned. During this proceeding, Mr. Fairchild stipulated

¹ KRS 278.040(2); KRS 278.010(3)(f).

² Case No. 2002-00396, Gary Keith Fairchild, et al. Alleged Failure to Comply with 807 KAR 5:071, Section 7(1); KRS 278.020(5) and (6); KRS 278.150(2); and KRS 160(2) at 14 (Ky. PSC Jan. 30, 2007).

³ See *Environmental and Public Protection Cabinet v. Jeffrey Lance Bowling d/b/a East Kentucky Waste Control*, Civil Action No. 05-CI-1007 (Franklin Cir. Ct. Dec. 21, 2006).

that after September 26, 2002, neither he nor AWC had maintained or operated the sewage treatment facilities and that, to the extent that he and AWC had any interest in those facilities, they had abandoned such interest. On December 18, 2007, the Commission issued an Order in which it found that AWC had abandoned its sewage treatment facilities and that the appointment of a receiver was necessary to ensure continued operation of the facilities.⁴ The Commission presently has litigation pending in Franklin Circuit Court for the appointment of a receiver.⁵

After being appointed special master commissioner, Mr. Williams contracted with the Prestonsburg City Utilities Commission (“Prestonsburg”) to operate AWC’s 5 plants. When Prestonsburg began operating the Neil Price Estates plant, the plant was not operating properly and was a pass-through plant. Effluent from homes would flow into the plant, some solids would settle, and eventually the wastewater would build up and flow into the stream without any aeration or chlorination.⁶ Prestonsburg repaired the electrical problems that were preventing oxygen from flowing into the aeration chamber, and it restored the chlorinator to an operable condition.⁷ In addition to the repairs, Prestonsburg pumped out the plant on 3 occasions.⁸

⁴ Case No. 2006-00569, An Investigation into the Condition and Management of Appalachian Waste Control (Ky. PSC Dec. 18, 2007).

⁵ *Pub. Serv. Comm’n v. Appalachian Waste Control, Inc.*, Case No. 08-CI-00331 (filed Feb. 25, 2008 Franklin Cir. Ct.).

⁶ Transcript at 47.

⁷ *Id.*

⁸ *Id.* at 49.

In addition to contracting with Prestonsburg to operate the AWC plants, Mr. Williams filed a rate application after being appointed special master commissioner. Prior to the application, AWC's rate for Neil Price Estate customers was \$5 per month. In the application, AWC sought an increase to \$56.72 per month per customer. Because of the previous ownership problems, Prestonsburg and Commission Staff could only estimate the revenue and expenses for the AWC plants. Accordingly, the Commission permitted Mr. Williams to collect \$56.72 per customer per month subject to refund for a 3-month period.⁹

After the 3-month period ended, AWC filed with the Commission a report on its financial operations during that period. It reported average monthly expenses to be \$11,290.66, which would suggest a rate of \$125.45 per month for each of the 90 customers to be reasonable. Despite this fact, AWC did not seek to amend its application, and the Commission approved the flat rate of \$56.72 per month per customer.¹⁰

Mr. Blair filed this complaint on December 4, 2007. He maintains that he should not be required to pay for services that are not available and that he should not be required to pay the same rate as other customers who have more individuals living in their residences.

⁹ Case No. 2007-00093, Application of Appalachian Waste Control for Adjustment of Rates (Ky. PSC Apr. 27, 2007).

¹⁰ Case No. 2007-00093, Application of Appalachian Waste Control for Adjustment of Rates (Ky. PSC Jan. 28, 2008).

ANALYSIS

Rates and service are two distinct areas under the jurisdiction of the Commission, and they may not be improperly intertwined.¹¹ KRS 278.260 provides that a person may complain about any rate that is unreasonable or unjustly discriminatory or any service that is inadequate or cannot be obtained. Complaints based on rates are governed by KRS 278.270, which gives the Commission the authority to investigate and prescribe just and reasonable rates. Complaints based on service are governed by KRS 278.280, which permits the Commission to issue Orders directing the “just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods” to be used.

The Kentucky Revised Statutes do not permit a customer to withhold payment of a utility’s just and reasonable rate for inadequate service. The customer may complain about service, and if the Commission finds that service is inadequate, the Commission must identify the inadequacy and order the utility to provide adequate service, as per KRS 278.280. If the utility does not obey that Order, it is subject to penalties under KRS 278.990. The utility does not risk a rate reduction from its just and reasonable rate for inadequate service or failing to obey a Commission Order.

Because the statutory scheme demonstrates that the concepts of service and rates must be considered separately, we first look at Mr. Blair’s argument that AWC is providing inadequate service. The poor condition of the plant is not disputed. Mr. Blair offered a video at the hearing to show the plant’s deteriorated condition. Prestonsburg’s

¹¹ See *S. Central Bell Telephone v. Util. Regulatory Comm’n*, 637 S.W.2d 649, 652-54 (Ky. 1982).

Superintendent David Ellis stated that the plant was in “bad condition” and suggested alternatives to solve the wastewater problems facing Neil Price Estates.¹² Commission Staff Engineer Bob Robards also maintained that the plant “was not working properly.”¹³

Nevertheless, Prestonsburg has taken significant steps to improve the condition of the plant.¹⁴ It has repaired the electrical and chlorination systems. It pumped out excess sludge on 3 occasions.¹⁵ In addition, Prestonsburg employees were visiting and performing upkeep on the plant 6 to 8 times per month on average.¹⁶ Accordingly, the Commission finds that AWC – through Prestonsburg, its operator – is providing reasonable service, and we deny Mr. Blair’s complaint as to inadequate service.

Mr. Blair’s argument that he should not have to pay the same rate as a customer with multiple persons living at the customer’s residence has no merit. A flat sewer rate for all customers is not unjustly discriminatory. The Commission has approved a flat rate for a majority of jurisdictional sewer utilities. There are several reasons why a flat rate may be more appropriate than a rate calculated on water usage. First, most of the costs of owning and operating a sewer system are tied to fixed costs of the facility.

¹² Transcript at 47-48.

¹³ *Id.* at 97.

¹⁴ As of the date of the hearing, Prestonsburg was operating AWC’s plants, but its contract was scheduled to end on April 30, 2008. Mr. Ellis testified that Prestonsburg would not be extending the contract, but there were negotiations between Paintsville Utilities and AWC to operate the plant. Because no evidence could be presented on the operations of AWC plants by any entity other than Prestonsburg, the Commission’s ruling must be limited to the AWC plants as they were being operated by Prestonsburg.

¹⁵ Transcript at 49. If Prestonsburg were to pump the aeration plant out more often, the biological processes within the plant may not function properly.

¹⁶ *Id.* at 51.

Although additional costs related to chemicals and sludge-pumping may be incurred with increased volumes of wastewater in the system, these costs are relatively minimal as compared to the cost of the physical facility and its maintenance. Second, the correlation between water usage and sewage usage is inconsistent.¹⁷ For example, water used for animals, lawns, crops, and recreational purposes generally does not reach the sewer system. Third, utility costs may be increased when employees are required to take additional time to calculate a sewer bill based on water usage.¹⁸ Fourth, sewer rates based on water consumption require coordination between the water and sewer utilities.¹⁹ The water utility may bear additional costs in generating a report of water usage, and these costs would be reflected in higher rates for the sewer customers. In addition, because account information is sensitive, the sewer customers would have to grant permission to allow the water utility to give water usage information to the sewer utility. Accordingly, the Commission denies Mr. Blair's complaint related to unjust and unreasonable rates.

IT IS THEREFORE ORDERED that:

1. The complaint of Glennis W. Blair is denied.
2. This case is closed and is removed from the Commission's docket.

¹⁷ See *Iowa v. City of Iowa City*, 490 N.W.2d 825, 832 (Iowa 1992) (referencing utilities that had only 5 percent and 15 percent of the water furnished that was reaching the cities' sewer system).

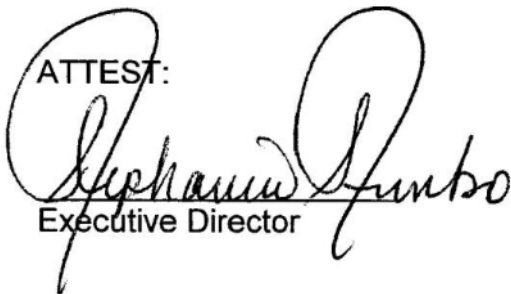
¹⁸ See *In re Sanibel Bayous Util. Corp.*, Order No. PSC-03-0699-PAA-SU, available at <http://www.psc.state.fl.us/library/filings/03/05112-03/05112-03.PDF> (Fla. PSC June 9, 2003)

¹⁹ *Id.*

Done at Frankfort, Kentucky, this 21st day of July, 2008.

By the Commission

ATTEST:


Executive Director