

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF PURCHASE PUBLIC SERVICE)	
CORPORATION FOR A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY –)	2008-00346
WASTEWATER TREATMENT LAGOON)	
CONSTRUCTION)	

O R D E R

On April 3, 2009, the Commission entered an Order, attached hereto as the Appendix, in which it found that prima facie evidence existed that Purchase Public Service Corporation (“Purchase”) violated KRS 278.020(1) by its construction of facilities without first obtaining a Certificate of Public Convenience and Necessity. It also found that prima facie evidence existed that several of Purchase’s board members—Don Elias, Kevin Murphy, Richard Nash, Richard Burnley, Melissa Rowland, Kevin Leonard, Greg Pruitt, and Gary Carlton—aided and abetted Purchase’s failure to comply with KRS 278.020(1). The Commission identified these individuals based on the Secretary of State’s on-line records.

At a May 13, 2009 informal conference, Commission Staff inquired about Purchase’s board members who were serving during the period currently under investigation. Purchase provided a list of board members for its 2008 and 2009 fiscal years. That list reveals several board members who were not listed as board members on the Secretary of State’s on-line records, but who should be a part of this proceeding.

Based upon the foregoing and being otherwise sufficiently advised, the Commission finds that:

1. Prima facie evidence exists that Purchase violated KRS 278.020(1) by its construction of facilities without first obtaining a Certificate.

2. Prima facie evidence exists that David Ramey, Jeff Howard, Bobby Sirls, Doug Harnice, Van Newberry, Arthur Byrn, Larry Elkins, Clyde Elrod, Jody Brown, and Matt Bing, as members of Purchase's board of directors, aided and abetted Purchase's failure to comply with KRS 278.020(1).

3. On April 24, 2009, Purchase and other board members named in the show cause Order of April 3, 2009 filed a response to the show cause Order.

4. David Ramey, Jeff Howard, Bobby Sirls, Doug Harnice, Van Newberry, Arthur Byrn, Larry Elkins, Clyde Elrod, Jody Brown, and Matt Bing should have an opportunity to respond to the show cause Order.

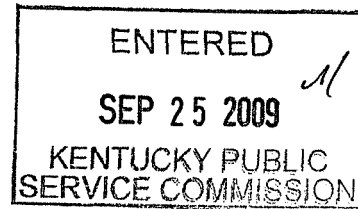
IT IS THEREFORE ORDERED that:

1. David Ramey, Jeff Howard, Bobby Sirls, Doug Harnice, Van Newberry, Arthur Byrn, Larry Elkins, Clyde Elrod, Jody Brown, and Matt Bing are made parties to this case.

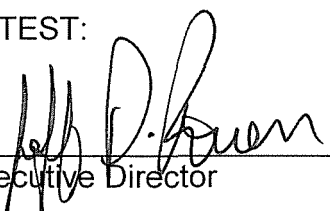
2. David Ramey, Jeff Howard, Bobby Sirls, Doug Harnice, Van Newberry, Arthur Byrn, Larry Elkins, Clyde Elrod, Jody Brown, and Matt Bing shall each show cause in writing, within 10 days of the date of this Order, why he or she should not be assessed a penalty pursuant to KRS 278.990(1) for aiding and abetting Purchase's failure to obtain a Certificate prior to beginning construction of the lagoon wastewater facility.

3. If the individuals listed above do not file responses within the designated time period, each will be deemed to have adopted Purchase's response filed on April 24, 2009.

By the Commission



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2008-00346 DATED **SEP 25 2009**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF PURCHASE PUBLIC SERVICE)
CORPORATION FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY –) CASE NO. 2008-00346
WASTEWATER TREATMENT LAGOON)
CONSTRUCTION)

ORDER

Purchase Public Service Corporation ("Purchase"), a corporation organized pursuant to KRS Chapter 273,¹ owns and operates facilities in Graves, Marshall and McCracken counties that are used in the collection and treatment of sewage.² It is a utility subject to Commission jurisdiction.³

The records of the Kentucky Secretary of State⁴ indicate that Don Elias, Kevin Murphy, and Richard Nash are officers of Purchase and that Richard Burnley, Melissa Rowland, Kevin Leonard, Greg Pruitt, and Gary Carlton are members of Purchase's Board of Directors.

KRS 278.020(1) prohibits any person, partnership or private corporation, or combination thereof, from beginning construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010 until

¹ Kentucky Secretary of State Business Services, [http://apps.sos.ky.gov/business/obdb/\(S\(mekrzpede3mp3d45hihbu145\)\)/showentity.aspx?id=0253307&ct=09&cs=99999](http://apps.sos.ky.gov/business/obdb/(S(mekrzpede3mp3d45hihbu145))/showentity.aspx?id=0253307&ct=09&cs=99999) (last visited Mar. 19, 2009).

² *Annual Report of Purchase Public Service Corporation d/b/a Cardinal Group to Kentucky Public Service Commission for the Year Ending December 31, 2007* at 1.

³ KRS 278.010(3).

⁴ Kentucky Secretary of State Business Services, *supra* note 1.

such person has obtained from the Commission a certificate that public convenience and necessity require such construction.

On August 20, 2008, Purchase tendered an application for a Certificate of Public Convenience and Necessity ("Certificate") to construct a lagoon treatment facility in the Hollifield Subdivision of Graves County, Kentucky. Because the application failed to conform to 807 KAR 5:001 and 807 KAR 5:071,⁵ the Commission did not accept it for filing until September 19, 2008, when Purchase supplemented its initial filing.

On November 6, 2008, while the Commission was still reviewing the application, Purchase notified the Commission in writing to advise that it had proceeded to construct the treatment facility without obtaining a Certificate, that the treatment facility had been completed, and that the new facility had begun operations.⁶

Based upon the foregoing and being otherwise sufficiently advised, the Commission finds that:

1. No Certificate should be issued for utility facilities already constructed.⁷
2. *Prima facie* evidence exists that Purchase violated KRS 278.020(1) by its construction of the proposed facilities without first obtaining a Certificate.
3. *Prima facie* evidence exists that Don Elias, Kevin Murphy, and Richard Nash, as officers of Purchase, aided and abetted Purchase's failure to comply with KRS 278.020(1).

⁵ Letter from Ryan Gatewood, Director of Filings, Kentucky Public Service Commission, to Mark Davis, Purchase Public Service Corporation (Sep. 2, 2008).

⁶ Letter from Jennifer Beck Walker, Executive Director, Purchase Area Development District, to Stephanie Stumbo, Executive Director, Kentucky Public Service Commission (Nov. 3, 2008).

⁷ *See* Case No. 2001-00178, *The Application of Big Sandy Water District for a Certificate of Public Convenience and Necessity to Construct an Improvement Project* (Ky. PSC Dec. 20, 2001); Case No. 1999-00237, *The Application of Kentucky Turnpike Water District for a Certificate of Public Convenience and Necessity to Construct a Water Main Extension* (Ky. PSC Oct. 20, 1999).

4. *Prima facie* evidence exists that Richard Burnley, Melissa Rowland, Kevin Leonard, Greg Pruitt, and Gary Carlton, as members of Purchase's board of directors, aided and abetted Purchase's failure to comply with KRS 278.020(1).

IT IS THEREFORE ORDERED that:

1. Purchase's application for a Certificate is denied.
2. Purchase shall show cause in writing, within 20 days of the date of this Order, why the Commission should not penalize Purchase, pursuant to KRS 278.990(1)⁸, for failing to obtain a Certificate prior to commencing construction of its lagoon treatment facility.
3. Purchase shall be represented by an attorney in further developments of this case.⁹

⁸ KRS 278.990(1) provides:

Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

⁹ The Commission advises Purchase that no person may engage in the practice of law in Kentucky without first obtaining a license to practice. The practice of law is:

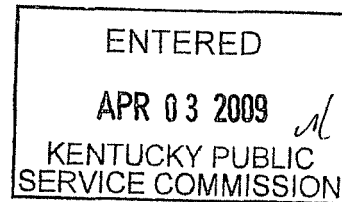
[A]ny service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.

SCR 3.020. It includes the representation of a corporation before a state administrative agency. Kentucky State Bar Ass'n v. Henry Vogt Mach. Co., 416 S.W.2d 727 (Ky. 1967).

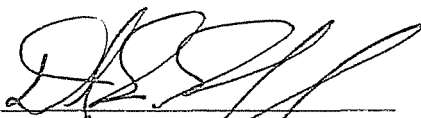
4. Don Elias, Kevin Murphy, Richard Nash, Richard Burnley, Melissa Rowland, Kevin Leonard, Greg Pruitt, and Gary Carlton are made parties to this case.

5. Don Elias, Kevin Murphy, Richard Nash, Richard Burnley, Melissa Rowland, Kevin Leonard, Greg Pruitt, and Gary Carlton shall each show cause in writing, within 20 days of the date of this Order, why he or she should not be assessed a penalty pursuant to KRS 278.990(1) for aiding and abetting Purchase's failure to obtain a Certificate prior to beginning construction of the lagoon wastewater facility.

By the Commission



ATTEST:



Executive Director

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