

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation)
into Services Provided by Buckeye) Case No. 85-574-WW-COI
Lake Park Company.)

OPINION AND ORDER

The Commission, coming now to consider the above-entitled matter, and having determined that this matter should proceed directly to Opinion and Order, hereby issues its Opinion and Order in this matter.

APPEARANCES:

Mr. Anthony J. Celebrezze Jr., Attorney General for the state of Ohio, by Mr. Keith A. Ganther, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43266-0573, on behalf of the Staff of the Public Utilities Commission of Ohio.

Mr. John J. Carlin, Buckeye Lake Park Company, P.O. Box 116, Buckeye Lake, Ohio 43008, on behalf of Buckeye Lake Park Company.

OPINION:

This case came about as a result of the filing of an informal complaint by a customer of Buckeye Lake Park Company's (Buckeye Lake) water system. Because the Commission's records did not reflect that Buckeye Lake was a certificated water company, the Commission's staff conducted an investigation of Buckeye Lake to determine whether the water service provided by the company falls within the scope of the Commission's jurisdiction over public utilities pursuant to Sections 4905.02 and 4905.03(A)(8), Revised Code. Once sufficient information had been gathered to conclude that Buckeye Lake may be subject to Commission jurisdiction, the Commission, by Entry dated May 14, 1985, directed Buckeye Lake to file with the Commission a written explanation as to why it believed its water system is not a public utility subject to the Commission's jurisdiction. On May 30, 1985, Buckeye Lake filed a letter with the Commission, explaining that it provides water, only as an accommodation, to some dwellings on Buckeye Lake Park properties, and should, therefore, not be considered a public utility.

By Attorney Examiner's Entry dated November 4, 1985, this matter was scheduled for public hearing on December 5, 1985, and publication of legal notice was ordered pursuant to Section 4905.26, Revised Code. Publication of legal notice was made in The Advocate, a newspaper of general circulation in Licking

County, Ohio, and the public hearing was held as scheduled. No customers of the water system appeared at the hearing.

The statutory definition of a waterworks company is found in Section 4905.03(A)(8), Revised Code, which states in relevant part as follows:

- (A) Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:

.

- (8) A waterworks company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state; ...

This section, read in conjunction with Section 4905.02, Revised Code, controls whether or not the Commission has the jurisdiction, under Sections 4905.04 and 4905.05, Revised Code, to regulate Buckeye Lake's waterworks operation. Section 4905.02, Revised Code, reads in part as follows:

'public utility' includes every corporation, company, copartnership, person, or association, their lessees, trustees, or receivers, defined in section 4905.03 of the Revised Code, ... but excepting such other public utilities as operate their utilities not for profit, ... (Emphasis added).

Jim Donnell, Chief of the Water and Sewer Section of the Commission's Compliance Division (Compliance), was the first witness to testify at the hearing (Tr. 5-21; Staff Ex. 1). Mr. Donnell testified that, on March 13, 1985, MacArthur Wagner, the liaison between Compliance and the Commission's Public Interest Center (PIC), notified him of an informal complaint received by PIC with regard to Buckeye Lake's water system. Subsequently, on March 15, 1985, Mr. Donnell, along with Mr. Wagner and Mr. Carl Green of Compliance, met with the customer who placed the informal complaint and toured the water system in question. The witness stated that, on March 20, 1985, the three of them went back to Buckeye Lake, inspected the system, and spoke with John J. Carlin, the president, general manager, and majority stockholder of Buckeye Lake. Mr. Donnell reported that Mr. Carlin owns the Buckeye Lake subdivision, and that the residents who have built homes within that subdivision lease the land from Mr. Carlin.

According to the witness, there are 99 lots in the Buckeye Lake subdivision, occupied by 72 dwellings, and of those dwellings, there are 53 residential dwellings on the water system, with the remaining dwellings maintaining private wells. Residents pay to Mr. Carlin an annual flat fee (\$250 at the time of hearing) for using the water system, since there are no meters at the customers' residences.

With regard to the physical plant, Mr. Donnell described the water mains for the Buckeye Lake area as being two to six inches wide and buried four to eight feet below the earth's surface. There are apparently no engineer's drawings indicating the location of the water mains in the streets. Thus, water leaks would be difficult to locate, according to Mr. Donnell, unless the water surfaces, making the leak easy to locate. Mr. Donnell stated that Richard Hammond, the Licking County Sanitation Engineer, takes water samples of the water system as required by the Ohio Environmental Protection Agency (Ohio EPA), while G.M. Baker and Son performs all of the maintenance on the system's one well pump.

Mr. Donnell observed that Buckeye Lake's Articles of Incorporation designate the park as a corporation for profit. However, he indicated that, during the March 20, 1985 investigation of Buckeye Lake, Mr. Carlin stressed to him that the water company was not in business to make money, but merely to accommodate the park residents. The witness testified that Buckeye Lake's water system is the only water system serving the subdivision, and that while there are other water companies in the area, they are eight to ten miles away. Finally, Mr. Donnell noted that Mr. Carlin had indicated that he would not continue to accommodate the Buckeye Lake subdivision with water should he be forced to become regulated by the Commission.

Also testifying on behalf of the staff was Carl Green, whose responsibility in Compliance includes the investigation of water and sewer complaints (Tr. 22-29; Staff Ex. 4). Mr. Green was a member of the Commission's investigative team during both visits to Buckeye Lake in March 1985. The witness testified that, during their second visit, on March 20, 1985, he received a list of the water system's operating expenses and total investment in the plant and equipment from Mr. Carlin. While Mr. Green was unsure as to the year for which the aforementioned list was made, he estimated that it was an annual report made between 1983 and 1985. When comparing the water company in question to other like water facilities, the witness stated that Buckeye Lake's operating expenses for its system are relatively low. Mr. Green further stated that the monies earned by the water system did not appear to contribute to the officers' expenses or salaries. Based upon his review of the accounting figures, Mr. Green expressed the opinion that the system was not operating at a profit.

Mr. Carlin testified at the hearing on Buckeye Lake's behalf (Tr. 30-79). According to the witness, the majority of the residences in the Buckeye Lake subdivision are permanent year-round homes. Mr. Carlin stated that he provides water service only to residents located on the property he owns in the Buckeye Lake subdivision. The witness noted, however, one isolated case in which water is provided to a resident on property which abuts the Buckeye Lake property. Such provision was made because the resident reportedly had no other means by which to obtain water. Mr. Carlin stated that there are a number of residents in the subdivision who have their own wells, and indicated that if a resident's well were to go dry, the resident would be allowed to tap into the company's water system.

Mr. Carlin noted that the waterline, as well as everything on the resident's lot, belongs to the resident. The water company has shut-off valves at every customer's lot line and, if it becomes necessary to shut off the water in order to make repairs, the customer is notified. He added, however, that if a portion of the pipeline located on a customer's lot should freeze, it would be the customer's responsibility to have it fixed.

According to Mr. Carlin, there are three pipelines leading from the water system's pump house. The witness verified Mr. Donnell's report of the pipes' dimensions and depths and stated that, while there is currently no map of the system's water mains and laterals, one is being drawn up. Mr. Carlin further acknowledged that problems with the waterlines are discovered either by a report from a resident or an inspection by the water system's employees, and that repairs are made accordingly.

When asked at the hearing about several letters submitted to the Ohio EPA concerning low pressure complaints with regard to Buckeye Lake's water system, Mr. Carlin responded that he had no knowledge of such complaints because all complaints are handled by Mr. Hammond, the County Sanitation Engineer. The witness postulated that the low pressure problems probably are the result of either everyone using the water simultaneously or the system being shut off in order to have a leak repaired.

Mr. Carlin expounded on the financial background of Buckeye Lake's water system. According to Mr. Carlin, the company's directors receive no salaries or dividends in connection with the water system, while the system's employees receive monthly salaries. The witness identified Staff Exhibit 4 as a one year account for the water system, which was obtained from the company's books, for some time between 1980 and 1984. The statement includes the employees' salaries, as well as all other expenses associated with the water system, for a total of \$12,356.63 in

operating expenses. Similarly, Mr. Carlin testified that Staff Exhibit 5 was an accounting statement for 1984, which indicated a total of \$12,809.52 in operating expenses for that year. Both exhibits quoted the company's total investment in the water system's plant and equipment as being \$95,000.

Mr. Carlin testified that Buckeye Lake sends out bills for property rental once a year, and that those residents who are on the water system are assessed a flat annual water usage fee at that time. The water usage fee at the time of hearing was \$250. There are no additional fees associated with water usage; the company does not charge a fee for tapping into the system, for maintaining the waterline to a customer's lot, or for disconnecting from the system. The \$250 customer usage fee was derived by an analysis at the end of the fiscal operating year. The expenses for the system are figured out and then the fee is adjusted to cover the expenses. According to Mr. Carlin, the only time the fee is raised is when the company is found to be losing money. Mr. Carlin remembered that there was one year when the water system came out ahead, but he was quick to add that this is not the norm. Mr. Carlin emphasized that Buckeye Lake is not in the water business to make a profit and that the sole purpose of the water fees is to cover the system's expenses.

Mr. Carlin intimated at the hearing that he would sell the waterworks portion of Buckeye Lake if the Commission were to decide that Buckeye Lake is a public utility under the Commission's jurisdiction, because he is not interested in being in the public utility business. He stated that he is adverse to turning the water system into a separate not-profit corporation, because he believes that would place an encumbrance on the future development of the property.

CONCLUSION:

After thoroughly reviewing the testimony and exhibits of record in this proceeding, in conjunction with Sections 4905.02 and 4905.03(A)(8), Revised Code, this Commission concludes that the water operations of Buckeye Lake Park Company do not fall within the Commission's jurisdiction. Section 4905.02, Revised Code, makes public utilities which operate on a not-for-profit basis exempt from Commission regulation. Although the articles of incorporation for Buckeye Lake reflect that entity as being a for-profit corporation, the evidence of record clearly indicates that the waterworks operation is merely an accommodation to the residents of the park and is being run as a non-profit venture. The annual flat water usage fee charged by Mr. Carlin is derived through a year by year determination of the minimal amount necessary to charge customers in order to cover the system's expenses. No additional fees are charged for tapping into the

water system, maintaining the waterlines to customers' lots, or for disconnecting from the system. Based upon the above, the Commission concludes that Buckeye Lake's water system is not subject to this Commission's regulatory jurisdiction, and that this case should be dismissed and closed of record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- 1) Following the filing of an informal complaint by a customer of Buckeye Lake Park Company's water system, the Commission's staff conducted an investigation of Buckeye Lake to determine whether the water service provided by the company falls within the purview of the Commission's jurisdiction over public utilities.
- 2) As directed by the Commission's Entry dated May 14, 1985, Buckeye Lake filed a written statement on May 30, 1985, explaining why it believes its water system is not a public utility subject to the Commission's jurisdiction.
- 3) Notice of the proceeding and the public hearing was published in The Advocate, a newspaper of general circulation in Licking County, Ohio.
- 4) The public hearing was held as scheduled on December 5, 1985, at the offices of the Commission.
- 5) The Compliance Division inspections, on March 15 and 20, 1985, revealed that Mr. John Carlin owns the Buckeye Lake property and that residents lease the land from him.
- 6) There are 72 residential dwellings in Buckeye Lake, 53 of which are on the water system, while the remaining dwellings maintain private wells.
- 7) Residents of Buckeye Lake who use the water system pay the company an annual flat fee for water usage, which is derived from an annual determination as to the minimal amount necessary to cover the water system's expenses. There are no tap-in fees, disconnection charges, or waterline maintenance charges.

- 8) Buckeye Lake's waterworks system is run on a not-for-profit basis and, therefore, under Section 4905.02, Revised Code, is not subject to the jurisdiction of the Commission.

ORDER:

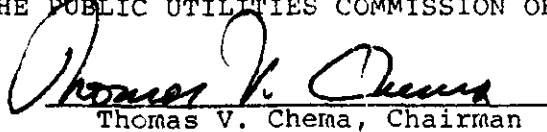
It is, therefore,


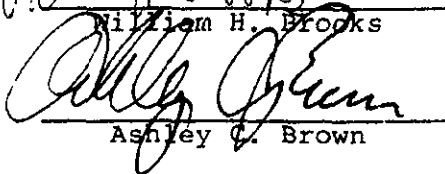
ORDERED, That Buckeye Lake Park Company should not be carried on this Commission's role of public utilities. It is, further,

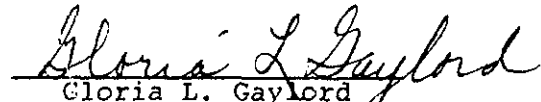

ORDERED, That this case be dismissed and closed of record. It is, further,

ORDERED, That copies of this Opinion and Order be served upon Buckeye Lake Park Company and all other parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas V. Chema, Chairman


William H. Brooks

Ashley C. Brown

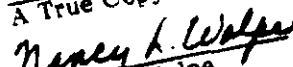

Gloria L. Gaylord

Alan R. Schriber

RHF/CMTP/plg

Entered in the Journal

NOV 25 1988

A True Copy


Nancy L. Wolpe
Secretary