

ENTERED

APR 21 1993

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

FRANKLIN CIRCUIT COURT
JANICE MARSHALL, CLERK

CIVIL ACTION NO. 92-CI-00850

CITY OF FRANKLIN

PLAINTIFF

v.

ORDER

KENTUCKY PUBLIC SERVICE COMMISSION
and
SIMPSON COUNTY WATER DISTRICT

DEFENDANTS

This action comes before the Court on administrative appeal. Plaintiff appeals from a decision of the Public Service Commission dismissing its complaint against Simpson County Water District for the setting of rates and resolution of a contract dispute. Defendants argue that the PSC's decision was lawful. The facts of this case are as follows: The City of Franklin is located in Simpson County, Kentucky. Franklin established and now operates a municipal water treatment plant pursuant to KRS 96.350. Defendant Simpson County Water District was created pursuant to KRS Chapter 74 and is engaged in the business of selling water wholesale and at retail to customers in Simpson County. Pursuant to contract, Franklin has supplied water to the District since 1967. Beginning in 1986, Franklin sought to increase the amounts it charges the District for water supplied. The District refused to accept the increased rates.

On August 26, 1991, the City filed a complaint in the Simpson Circuit Court, City of Franklin v. Simpson County Water District, 91-CI-184, in which the City sought payment which it alleged was due on rate increases for water provided to the District. The District filed a motion to dismiss the complaint for lack of subject matter jurisdiction, arguing that the PSC had exclusive jurisdiction over the dispute pursuant to KRS 278.040(2) and 278.200. The District contended that the City was subject to PSC regulatory authority by virtue of its having contracted with a utility. On November 12, 1991, the Simpson Circuit Court dismissed the complaint for lack of subject matter jurisdiction, stating that a city that contracts with a utility regulated by the PSC gives up its exemption from regulation and renders itself subject to PSC jurisdiction. The City appealed this decision to the Kentucky Court of Appeals, and the appeal, 91-CA-002675, is pending at this time.

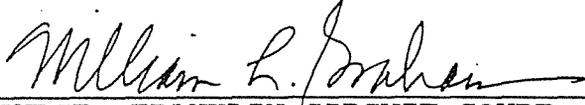
On March 4, 1992, the City filed a petition and complaint with the PSC seeking an order that would increase its water rates to the District, declare purchased water adjustment to the District, and impose a surcharge on the District's water rates to customers in order to recover and pay for the increase in the cost of the water sold to the District. On May 26, 1992, the PSC issued an order dismissing the petition. The PSC stated that it lacked jurisdiction to

regulate the rates charged by the City, and dismissed as to that issue, and also stated that it would hold the issue of the District's rate increase to its customers in abeyance pending the resolution of the case before the Court of Appeals. The City then filed an appeal with this Court.

The City contends that the PSC acted arbitrarily and capriciously when it dismissed their petition. The District maintains that the City has changed its position and seeks relief from the PSC which it opposes in the Court of Appeals. It is apparent that the PSC acted within the bounds of its authority in declining to hear the case on its merits until the Simpson Circuit case was decided on appeal. The Court of Appeals has before it the fundamental question of jurisdiction and the PSC recognized that it would be futile to take up the rate issues presented by this case in the absence of a determination by that court.

Therefore, the PSC's order shall be, and hereby is, AFFIRMED, and this appeal shall be, and hereby is, DISMISSED.

SO ORDERED THIS 21 day of APRIL, 1993.



JUDGE, FRANKLIN CIRCUIT COURT