

Commonwealth Of Kentucky
Court Of Appeals

NO. 93-CA-001072-S

CITY OF FRANKLIN

APPELLANT

V.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
CIVIL ACTION NO. 92-CI-000850

KENTUCKY PUBLIC SERVICE
COMMISSION and SIMPSON
COUNTY WATER DISTRICT

APPELLEES

OPINION

REVERSING AND REMANDING

** ** * * * * *

BEFORE: EMBERTON, HUDDLESTON and JOHNSTONE Judges.

HUDDLESTON, JUDGE. The City of Franklin operates a municipal water treatment plant. The Simpson County Water District purchases water at a wholesale rate from the City under a water purchase agreement. SCWD sells this water to its customers at a retail rate. During 1990 and 1991, Franklin on two occasions raised its wholesale water rates. When SCWD refused to pay the increased rates, Franklin filed suit in Simpson Circuit Court to recover the balance alleged to be due on SCWD purchases. Simpson Circuit Court dismissed the City's suit for lack of subject matter jurisdiction claiming that

the Kentucky Public Service Commission (PSC) has exclusive jurisdiction over the matter according to KRS 278.040(2) and 278.200. Faced with the dismissal of its suit, the City took two separate courses of action. First, it appealed the Simpson Circuit Court decision.¹ The City then brought a petition and complaint against SCWD before the PSC.

In its petition before the PSC, the City sought a declaration that it had the authority to increase its wholesale water rates. The City also sought an order directing SCWD to recover through its retail rates the increase in wholesale water rates and an order imposing a surcharge on SCWD's retail water rates to recover and pay to the City the increased wholesale water costs incurred by SCWD dating from Franklin's rate increases.

The PSC dismissed the City's petition on the ground that it lacked jurisdiction over the rates charged by the City under KRS 278.010. The PSC also dismissed without prejudice the remainder of the City's petition dealing with an adjustment of SCWD's rates. The PSC's order clearly contemplated the refileing of a petition upon the conclusion of the appeal taken from the Simpson Circuit Court's decision. The City appealed the PSC's action to the Franklin (County) Circuit Court which upheld the PSC's order. The City appeals from this decision.

¹ The Court of Appeals, in a split decision, reversed the Simpson Circuit Court holding that the PSC did not have jurisdiction over the dispute between the City of Franklin and SCWD. The Kentucky Supreme Court granted discretionary review and reversed the Court of Appeals. Simpson County Water District v. City of Franklin, Ky., ___ S.W.2d ___ (January 31, 1994). The PSC was not a party to these appeals.

The central question presented by the City of Franklin's appeal is the jurisdiction of the PSC to decide the rate dispute between the City and SCWD. The Supreme Court decided this issue in Simpson County Water District v. City of Franklin, Ky., ___ S.W.2d ___ (January 31, 1994). The Court held that the PSC has jurisdiction over the City of Franklin's dispute with SCWD. It determined that the exemption granted by KRS 278.010(3) to a City is waived when a City contracts with a regulated utility for purposes of rate and service disputes, so that the City becomes subject to the PSC's authority. Consequently, the merits of the dispute between the City of Franklin and the Simpson County Water District can only be decided by the PSC.

The Franklin Circuit Court order affirming the Public Service Commission's order dismissing the City of Franklin's complaint is reversed and this case is remanded to the PSC for further proceedings.

ALL CONCUR.

ATTORNEYS FOR APPELLANT:

Bruce F. Clark
STITES & HARBISON
Frankfort, Kentucky

Timothy J. Crocker
CROCKER & WILKEY
Franklin, Kentucky

ATTORNEYS FOR APPELLEE
KENTUCKY PUBLIC SERVICE
COMMISSION:

Rebecca Woodside Goodman
Frankfort, Kentucky

ATTORNEYS FOR APPELLEE
SIMPSON COUNTY WATER DISTRICT:

Charles E. English, Sr.
Dennis Gaines Penn
ENGLISH, LUCAS, PRIEST &
OWSLEY
Bowling Green, Kentucky