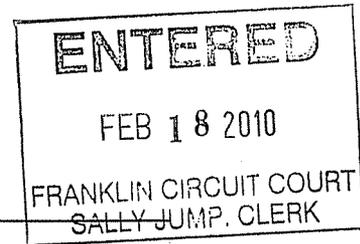


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 08-CI-01669



GALLATIN COUNTY WATER DISTRICT

PETITIONER

vs.

COMMONWEALTH OF KENTUCKY,
PUBLIC PROTECTION CABINET,
PUBLIC SERVICE COMMISSION, and
CARROLL COUNTY WATER DISTRICT NO. 1

RESPONDENTS

OPINION AND ORDER

This matter is before the Court upon Respondent the Public Service Commission's *Motion to Alter or Amend* this Court's Order of September 15, 2009. Pursuant to CR 59.05, this Court may alter or amend a judgment, or vacate a judgment and enter a new one on a motion properly filed by a party within ten days after the entry of a final judgment. Upon review of the parties' briefs and papers, and after being sufficiently advised, this Court hereby **UPHOLDS** its previous Order in part and **MODIFIES** the Order in part, in that the matter is **REMANDED** for further proceedings in accordance with this Opinion.

DISCUSSION

In its *Motion to Alter*, the Public Service Commission ("PSC") focuses largely on the issue of whether or not its September 12, 2008 Order, in fact, established territorial boundaries for water districts and enjoined Petitioner Gallatin County Water District

("Gallatin District") from acting beyond its boundaries. In this respect, the PSC mistakes our discussion of the effect of the Order with a discussion of the express language of the Order. Consistent with this Court's responsibility to ensure that the PSC has acted within the scope of its authority, *Cincinnati Bell Telephone Co. v. Kentucky Public Service Commission*, 223 S.W.3d 829, 836 (Ky. App. 2007), we are concerned with the legal effect of the PSC's actions on the rights and duties of the parties, rather than the specific words chosen by the PSC. Further, the PSC argues that, although it granted the complaint of Respondent Carroll County Water District No. 1 ("Carroll District") – which alleged that Gallatin District was in violation of Chapter 74 and was therefore prohibited from providing water service within Carroll District's territory without approval of the PSC – the PSC nonetheless acted within the bounds of its authority. The PSC bases this argument on an assertion that it acted in accordance with KRS 278.020. While the PSC's authority is broad, that breadth does not entitle the PSC to create a boundary for a water district where the courts have determined a boundary does not exist.

In its Order, the PSC found that Gallatin District's "construction of the water main extension in 2002 and any subsequent construction to connect facilities to [that] extension cannot be considered in the ordinary course." September 12, 2008 Order at 16. The PSC's reasoning included that Gallatin District's actions "clearly involve[d] an extension into Carroll District's general service area," that "[t]he Whitehorse tract falls completely within Carroll District's territorial limits," and that Gallatin District's efforts would "supplant Carroll District as the water service provider in Carroll District's territory." *Id.* The PSC put significant emphasis on its view that "Gallatin District lacks the legal authority to extend service *outside its territorial boundaries.*" *Id.* at 17

(emphasis added). Additionally, the PSC found that “[t]o the extent a water district lacks the legal authority to construct facilities *outside its boundaries* to serve persons *outside those boundaries*, it cannot demonstrate a need for such facilities or an absence of wasteful investment.” *Id.* at 18 (emphasis added). As such, “the construction of facilities to serve *extra-territorial* areas would result in wasteful duplication” *Id.* at 18-19 (emphasis added).

The PSC’s focus, quite clearly, was on the territorial boundaries of water districts. Its belief that Gallatin District was acting *outside* of the boundaries of its district formed the primary foundation for its holding that an extension to serve the Whitehorse tract could not be considered construction in the ordinary course. While the PSC noted Gallatin District’s annexation of the area of Gallatin County in question, it improperly discounted the effect of the annexation, stating that it questioned “the lawfulness of the Gallatin County Judge/Executive’s action.” *Id.* at 19. In fact, the PSC summarily stated that, *even post-annexation*, “Gallatin District’s construction of any facilities to serve the Whitehorse tract involves an extension into Carroll District’s territory,” and thus “cannot be considered construction in the ordinary course, and still requires a Certificate.” *Id.*

The Gallatin Circuit Court has upheld the annexation of the area in question. The Whitehorse tract lies within Gallatin District, and the actions of Gallatin District with respect to the tract *are not extra-territorial*, even if both Gallatin and Carroll Districts have coextensive rights to serve the area. The extension in question is an extension *within Gallatin District’s own district*. The PSC claims it has not created exclusive territories for water districts, yet the reasoning underlying its Order belies this claim.

The Court has not ignored the PSC's statutory authority to investigate and address violations of KRS Chapter 278, nor has it undermined the ability of the PSC to prevent wasteful duplication of facilities. The PSC remains free to act within the scope of its authority; the Court has merely held that the PSC's jurisdiction is not boundless. The involvement of KRS Chapter 74 affects the PSC's authority in that the PSC may not create a water district boundary where the courts have determined there is no boundary. The Court is aware that the Gallatin Circuit Court decision is currently on appeal. Should the courts ultimately rule that the annexation was unlawful, we acknowledge that the PSC may consider the unlawfulness of a water district's actions under Chapter 74 in determining whether an extension is in the ordinary course.

The Court now believes the proper way to remedy the September 12, 2008 Order of the PSC is not only to vacate that Order, but also to remand the matter for further proceedings.

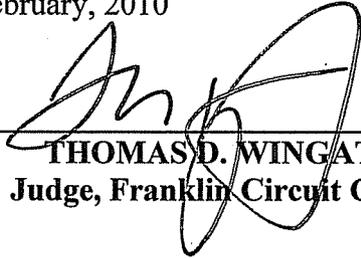
Accordingly, this matter is remanded for a re-hearing on the question of whether the actions of Gallatin District require a certificate pursuant to KRS 278.020. Upon remand, the PSC must acknowledge that the proposed extensions are within Gallatin District. Additionally, the PSC shall acknowledge that Gallatin District and Carroll District, by law, have coextensive rights and duties to serve the area of Gallatin County in question. The Public Service Commission may hold the proceedings in abeyance pending the outcome of the appeal from the Gallatin Circuit Court decision. Alternatively, the PSC may proceed with a hearing on claims limited to matters other than compliance with Chapter 74.

We note briefly that Respondent Carroll District has alleged that the Court erroneously stated that Carroll District had knowledge of Gallatin District's extension into the territory of Carroll District. This allegation is immaterial to the merits of our decision.

WHEREFORE, the September 15, 2009 Order of this Court is **UPHELD** in part and **MODIFIED** in part, in that the matter is **REMANDED** for further proceedings in accordance with this opinion.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 18 day of February, 2010



THOMAS D. WINGATE
Judge, Franklin Circuit Court

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 18 day of February, 2010, to the following:

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Sally Jump, Franklin County Circuit Court Clerk
