



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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June 12, 1991

Hon. Timothy J. Crocker
Crocker & Wilkey
126 West Kentucky Avenue
P. O. Box 305
Franklin, Kentucky 42135-0305

Dear Mr. Crocker:

The Commission received on May 20, 1991 your letter requesting an opinion regarding the Public Service Commission's jurisdiction to resolve a dispute between the City of Franklin ("City") and the Simpson County Water District ("District").

According to your letter, the City supplies water wholesale to the District. The City has apparently increased rates to the District by ordinance, an increase which the District has refused to pay. The District asserts that an increase in the wholesale rate charged the District by the City must first receive the approval of the Commission. You state that it has always been your understanding that, pursuant to statute, the City did not need Commission approval of any of its rates.

You are correct that the City, as a municipal utility, is specifically exempted by KRS 278.010(3) from Commission jurisdiction. (See also McClellan et al. v. Louisville Water Co., et al., (1961) 351 S.W.2d 197; Foley v. Kinnett et al., (1972) 486 S.W.2d 705; and City of Georgetown v. Public Serv. Comm'n (1974) 516 S.W.2d 842.) As the city is exempt from Commission jurisdiction, the Commission has no authority to regulate its rates.

KRS 278.015 provides a mechanism whereby a water district may pass through an increase in its wholesale supplier's rates without the necessity of a full-blown rate proceeding. That statute allows a water district to increase its rates commensurate with its wholesale supplier without prior approval by the Commission in order to avoid the financial loss caused by the regulatory lag inherent in a normal rate case. Within 20 days after a water district increases its rates, however, it must file its revised tariff with the Commission, together with a copy of the notice from its wholesale supplier showing the increase in the rates charged to the utility, along with other information necessary for the Commission to approve

Hon. Timothy J. Crocker
June 12, 1991
Page 2

the filing. The Commission must approve such a purchased water adjustment within 30 days after the application is filed.

It is unclear from your letter what grounds the District relies upon to support its position that the City must obtain Commission approval for an increase in rates. As stated above, pertinent statutes and case law appear to be clear on this matter; nonetheless, if the District relies upon other legal authority, it is welcome to submit its position to the Commission for consideration. However, if the City and District are unable to resolve this matter informally, it does not appear that the Commission could provide an official forum in which to entertain the dispute. KRS 278.260 endows the Commission with jurisdiction over complaints as to the rates or service of any utility. However, the City is not a utility within the definition of KRS Chapter 278, and it is clear that the statute would logically apply only to utilities over which the Commission has jurisdiction.

I hope this information has been of assistance to you. If you have any further questions, please do not hesitate to contact Kathleen B. Dorman, Staff Attorney, at 502/564-7347.

Sincerely,



Lee M. MacCracken
Executive Director

LMM/mdk