

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SALT RIVER RURAL ELECTRIC COOPERATIVE CORPORATION)	
)	
COMPLAINANT)	
)	
VS.)	CASE NO. 91-222
)	
CITY OF BARDSTOWN)	
)	
DEFENDANT)	

O R D E R

On July 31, 1991 and August 1, 1991, Salt River Rural Electric Cooperative Corporation ("Salt River") filed petitions for rehearing of the Commission's July 9, 1991 Order dismissing Salt River's complaint against the city of Bardstown, Kentucky ("Bardstown") for lack of subject matter jurisdiction. The complaint alleged that Bardstown has installed electric facilities which infringe upon Salt River's territorial boundary as certified by KRS 278.016-278.018, that Bardstown intended to provide retail electric service to customers located within Salt River's certified territorial boundary, and that Bardstown has failed to obtain the requisite Certificate of Public Convenience and Necessity pursuant to KRS 278.020(1). The Commission dismissed Salt River's complaint based on the decision of the Kentucky Supreme Court in City of Georgetown v. Public Service Commission, Ky., 516 S.W.2d 842 (1974).

In its petitions for rehearing, Salt River alleges that the Kentucky General Assembly amended KRS 278.020(1) subsequent to the Court's decision in City of Georgetown and that the effect of the amendment was to grant the Commission jurisdiction to issue certificates of convenience and necessity to cities for utility facilities. The Commission finds no merit in this argument. The amendment to KRS 278.020(1) referred to by Salt River was enacted by the 1974 General Assembly and was approved on March 28, 1974, over eight months prior to the court's December 13, 1974 decision in City of Georgetown. There is no evidence, nor even a claim, that the statute was amended in anticipation of the subsequently issued judicial opinion.

Furthermore, the reasoning underlying the court's decision in City of Georgetown is just as persuasive when applied to the amended version of KRS 278.020(1) as it is to the original version. In City of Georgetown, the court stated that the requirement for a city water utility to obtain a certificate of convenience and necessity "is not supported by the plain intent of the General Assembly which excepted city water systems from the definition of 'utilities', nor by the reasoning that KRS 278.020(1) by implication cancelled out the exemption." City of Georgetown at 845. The 1974 amendment to KRS 278.020(1) did not mention city utility systems. The amendment merely supplemented the term "person" by including "partnership, public or private corporation or combination thereof," all entities that were already included in the definition of "person" as set forth in KRS 278.010(2).

IT IS THEREFORE ORDERED that Salt River's petitions for rehearing be and they hereby are denied.

Done at Frankfort, Kentucky, this 16th day of August, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director