

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SANDY VALLEY WATER DISTRICT)	
)	
COMPLAINANT)	
)	
VS.)	CASE NO. 94-407
)	
PRESTONSBURG CITY'S UTILITIES COMMISSION)	
)	
DEFENDANT)	

O R D E R

This matter involves a dispute over the rate which Prestonsburg City's Utilities Commission ("Prestonsburg") charges Sandy Valley Water District ("Sandy Valley") for water service under a written contract. Under the terms of that contract, Prestonsburg may charge a rate of \$1.35 per 1,000 gallons of water. Sandy Valley alleges that Prestonsburg unilaterally raised that rate to \$1.77 per 1,000 gallons in 1988. It further alleges that, although Prestonsburg's action was contrary to the contract, Sandy Valley acquiesced and paid the higher rate.

Sandy Valley further alleges that Prestonsburg increased its rate to \$2.12 per 1,000 gallons in May 1993 and began billing the district at that rate in August 1994. Sandy Valley refuses to pay the increased amount and filed a formal complaint against the municipal utility. It requests, inter alia, that the Commission declare the rate of \$1.35 per 1,000 gallons to be the lawful rate which Prestonsburg may charge or, in the alternative, that the

Commission set a new wholesale water rate for Prestonsburg. Prestonsburg has not yet been directed to file an answer.

In Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460, 462 (1994), the Kentucky Supreme Court held that a city, which includes a city-owned utility, waives its exemption from Public Service Commission regulation "when it contracts with a regulated utility upon the subjects of rates and service." To implement this decision, the Commission ordered municipal utilities providing wholesale utility service to a public utility to file their existing contracts and schedules of wholesale rates. Administrative Case No. 351, Municipal Utilities (Ky. P.S.C. Aug. 10, 1994).

Most municipal utilities have complied with this Order. The Commission has accepted the contracts and schedules as filed as the lawful rates of the affected utilities. As a result, the contractual relationships between most municipal utilities and their wholesale customers have not been materially affected.

Sandy Valley's complaint presents important questions about the procedures which the Commission should follow in addressing complaints against a municipal utility. It is one of the first complaints brought by a public utility against a municipal utility since the Simpson County Water District decision. To ascertain the procedures which should be followed to review this complaint, we need look no further than Simpson County Water District.

In Simpson County Water District, the Kentucky Supreme Court found that

where contracts have been executed between a utility and a city, . . . KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation.

Id. at 462.

KRS 278.200 provides:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.

This statute, which applies by its terms to contracts, franchises and agreements with cities, is permissive except to the extent that it instructs the Commission to hold a hearing before taking any action which changes an existing "contract, franchise or agreement" and requires that the hearing be held "in the manner prescribed by this chapter [KRS Chapter 278]."

Viewing the Simpson County Water District decision together with KRS Chapter 278, a uniform method of exercising the Commission's jurisdiction over cities becomes apparent. Where a city applies for approval of a rate contrary to that which would be established under an existing agreement with a utility, or where a utility complains of implementation of a rate or service contrary to an existing agreement with a city, the Commission is in effect being requested to change or abrogate the underlying agreement. To

do so, the Commission must first hold a hearing "in the manner prescribed" by KRS Chapter 278. The manner prescribed by Chapter 278 for holding a hearing on a proposed rate increase is set forth in KRS 278.190 and presupposes compliance with the applicable rules of procedure set forth in 807 KAR 5:001. To the extent that the regulations impose burdens which are onerous in a particular situation, either the city or the utility may seek permission to deviate from the requirement by showing good cause. See 807 KAR 5:001, Section 14.

Where either a city or a public utility seeks the enforcement of a rate established pursuant to an existing contract, the Commission's jurisdiction is founded upon KRS 278.260. In addressing that complaint, the Commission's rules of procedure, 807 KAR 5:001, are applicable. Sandy Valley's complaint will require the Commission to exercise its jurisdiction in this manner.

Based on the above, the Commission finds that Sandy Valley's complaint should be handled in accordance with the procedures set forth in Commission Regulation 807 KAR 5:001, Section 12.

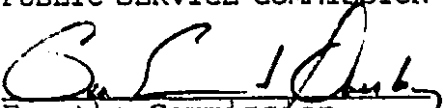
IT IS THEREFORE ORDERED that:

1. Prestonsburg shall satisfy the matters complained of or file a written answer to the complaint, a copy of which is appended, within 10 days from the date of service of this Order.

2. Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 6th day of April, 1995.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:



Executive Director