

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BOWLING GREEN)
MUNICIPAL UTILITIES FOR AN INCREASE IN) CASE NO.
WATER AND SEWER RATES TO WARREN COUNTY) 95-044
WATER DISTRICT)

O R D E R

Bowling Green Municipal Utilities ("BGMU") has moved for an informal conference to discuss a procedural schedule in this matter. Its motion has significant implications. The case at bar is the Commission's first attempt to regulate municipal utility rates in over 30 years and presents important questions about how the Commission should exercise the authority bestowed upon it by the Kentucky Supreme Court in Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994).

In Simpson County Water District, 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." Id. at 462. 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.

BGMU is the first municipal utility since the Simpson County Water District decision to apply for an adjustment of its wholesale rates to public utilities. To ascertain the procedures which should be followed to review this application, we need look no further than Simpson County Water District. In that case, the majority 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.

Based on the above, the Commission finds that BGMU should supplement its application for rate adjustment to comply with the requirements of 807 KAR 5:001, Section 10. It further finds that BGMU's motion for an informal conference to discuss a procedural schedule should be granted.

IT IS THEREFORE ORDERED that:

1. BGMU shall within 20 days of the date of this Order comply with the requirements of 807 KAR 5:001, Section 10.

2. BGMU's motion for an informal conference is granted.

3. An informal conference shall be held on April 12, 1995 at 1:30 p.m., Eastern Daylight Time, in Hearing Room 2 of the Commission's offices at 677 Comanche Trail, Frankfort, Kentucky for the purpose of discussing a procedural schedule in this matter.

Done at Frankfort, Kentucky, this 7th day of April, 1995.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:



Executive Director