

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SANDY VALLEY WATER DISTRICT	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO. 96-161
	)	
CITY OF PRESTONSBURG AND	)	
PRESTONSBURG CITY'S UTILITIES	)	
COMMISSION	)	
	)	
DEFENDANTS	)	

O R D E R

The City of Prestonsburg ("Prestonsburg") and the Prestonsburg City's Utilities Commission ("Utilities Commission") have moved for dismissal of Sandy Valley Water District's ("Sandy Valley") Complaint. Prestonsburg asserts that the Commission lacks jurisdiction over it and that the Complaint fails to state a claim upon which relief can be granted. The Utilities Commission moves to dismiss upon the ground that the Commission lacks jurisdiction over the rates and charges in issue. Sandy Valley has responded to the motion. Prestonsburg and the Utilities Commission have replied to Sandy Valley's response.

We deny Prestonsburg's Motion to Dismiss. Prestonsburg contends that, as it is not a party to the March 19, 1981 Contract between the Utilities Commission and Sandy Valley, Sandy Valley lacks any basis for a claim against it. Prestonsburg, however, has failed to demonstrate that it lacks any direct control over the operations of the Utilities

Commission. While contending that the Utilities Commission is an independent body which may sue and be sued in its own name, Prestonsburg has cited no supporting legal authority for its contention. The Commission has yet to find such legal authority.<sup>1</sup> Until the relationship between Prestonsburg and the Utilities Commission is clearly established, Prestonsburg should remain as a party to this proceeding.

As to the Utilities Commission's Motion to Dismiss, we also deny. In its Complaint, Sandy Valley seeks two different forms of relief. First, it seeks review of the Utilities Commission's existing rates and a prospective adjustment of those rates to levels which it believes "fair, just and reasonable." Second, Sandy Valley seeks enforcement of the 1981 Contract and refund of all charges assessed in violation of that Contract. The Utilities Commission concedes that the former is clearly within the Commission's authority. The latter involves a contract dispute which the Kentucky Supreme Court has determined is within the Commission's exclusive jurisdiction to resolve. See Simpson County Water District v. City of Franklin, Kentucky, Ky., 872 S.W.2d 460 (1994).

IT IS THEREFORE ORDERED that:

1. Prestonsburg's Motion to Dismiss Sandy Valley's Complaint is denied.
2. The Utilities Commission's Motion to Dismiss Sandy Valley's Complaint is denied.

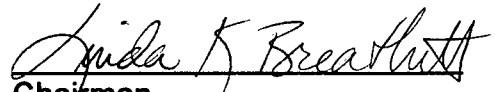
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<sup>1</sup> When Prestonsburg has discovered such legal authority, it may present that legal authority to the Commission and renew its motion to dismiss.

3. Prestonsburg and the Utilities Commission shall satisfy the matters complained of or file a written answer to Sandy Valley's Complaint within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 2nd day of April, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director