

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AUXIER WATER COMPANY)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 96-362
)	
CITY OF PRESTONSBURG AND)	
PRESTONSBURG CITY'S UTILITIES)	
COMMISSION)	
)	
DEFENDANTS)	

O R D E R

Auxier Water Company ("Auxier") has moved to hold this proceeding in abeyance or, in the alternative, to dismiss its Complaint without prejudice. The Defendants have submitted a response in opposition to the motion. Having considered the motion and response thereto, the Commission denies the motion.

On July 25, 1996, Auxier filed with the Commission a complaint against the Defendants. Auxier sought an adjudication of: (1) its rights under a water supply contract with the Prestonsburg City's Utility Commission ("Utility Commission"); (2) the reasonableness of the Utility Commission's current wholesale water rate; (3) the reasonableness of certain conditions of service, including the quantity of water available for purchase; (4) the Utility Commission's obligation to continue service; and (5) the Utility Commission's right to serve areas not lying contiguous with Prestonsburg's city boundaries.

Upon the Defendants' motion, the Commission on April 2, 1997, dismissed that portion of Auxier's complaint that dealt with the Utility Commission's right to serve certain areas. The Commission found that it lacked jurisdiction to address that issue. On May 23, 1997, Auxier brought an action for review of the Commission's Order of April 2, 1997. Its action is currently pending before Franklin Circuit Court.¹

Auxier now moves to hold this proceeding in abeyance pending a final ruling on its action for review. In support of its motion, Auxier contends that the territorial issue is an integral part of its Complaint. Auxier asserts that the Commission cannot establish the appropriate quantity of water which the Utility Commission is to make available to Auxier until the full extent of Auxier's service territory is known. All issues, it asserts, must be resolved simultaneously.

The Commission has previously recognized that "absent unusual circumstances . . . a complainant is entitled to be the master of his case and should have the right to determine how it is presented to the Commission." Case No. 90-108, Americoal Corp. v. Boone County Water and Sewer Dist. (Ky.P.S.C. Aug. 21, 1991) at 2. The Commission also recognizes that Defendants are entitled to a prompt resolution of complaints brought against them.

Based upon its review of the procedural history of this case, the Commission finds no reason to grant Auxier's motion. Granting the motion at this stage of these proceedings would unduly prejudice the Defendants. Auxier was long ago aware of its

¹ Auxier Water Company v. City of Prestonsburg, No. 97-CI-00824 (Franklin Cir. Ct. Filed May 23, 1997).

need to simultaneously resolve all issues raised in its complaint and the complications posed by the Commission's Order of April 2, 1997. It took no action to have these proceedings held in abeyance and instead engaged in extensive discovery. Despite several opportunities to raise its need for simultaneous resolution of all issues, Auxier remained silent until the eve of the deadline for the filing of written testimony. As a result, the Defendants have incurred significant costs to prepare their defense.

The Commission, moreover, is not convinced that the judicial proceedings will be quickly resolved. Although eight months have elapsed since Auxier brought its action for review, the action remains at a preliminary stage. Assuming a prompt decision from Franklin Circuit Court, appeals of the Franklin Circuit Court's decision may leave the Commission proceeding in abeyance for several years.

For similar reasons, the Commission finds that dismissal of the Complaint without prejudice is inappropriate. Discovery had been completed. Written testimony is due shortly. Both parties have already incurred significant costs to prepare their cases. This case has come too far not to reach resolution.

IT IS THEREFORE ORDERED that:

1. Auxier's Motion to Hold Proceeding in Abeyance or, in the Alternative, to Dismiss without Prejudice is denied.
2. Ordering Paragraph 3 of the Commission's Order of November 20, 1997 is vacated.

3. On or before January 20, 1998, each party shall file with the Commission in verified form the direct testimony of each witness whom it expects to call at the formal hearing.

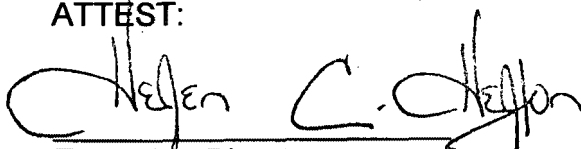
4. All other provisions of the Commission's Order of November 20, 1997 remain in full force and effect

Done at Frankfort, Kentucky, this 14th day of January, 1998.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director