

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF GOSHEN)
UTILITIES, INC., FOR (1) AN)
ADJUSTMENT OF WATER SERVICE)
RATES AND CHARGES AND SEWAGE) CASE NO. 7797
RATES AND (2) APPROVAL OF THE)
PURCHASE AGREEMENT OF)
CARDINAL HARBOUR SANITATION)

AND

THE COMPLAINT OF DOUGLAS H.)
MORRIS, ET AL., AGAINST) CASE NO. 8151
GOSHEN UTILITIES, INC.)

SUPPLEMENTAL ORDER

On July 27, 1981, the Commission issued its Order in the above-captioned proceeding which reduced the rates approved by the Utility Regulatory Commission for this utility on September 26, 1980. On July 6, 1981, United Goshen Homeowners (complainants in case No. 8151) filed certain "submission motions" to this Commission. Our Order of July 27, 1981, inadvertantly failed to specifically address the complainants' request (by motion) that any rate reduction ordered should be made retroactive to September 26, 1980, and a refund ordered to all customers of Goshen for the difference in the new rates that became effective July 27, 1981.

As a public utility, Goshen Utilities, Inc. is subject to the rate jurisdiction of the Public Service Commission. Utility

ratemaking is a legislative function which is exercised in this state by the legislature's agent, the Public Service Commission. Thus, when this Commission sets utility rates, it is acting in a legislative capacity, and, unlike a court of law, this agency has no power to go back and remedy past action that may later have been found to be unjust or unreasonable. 1/ This principle was eloquently summarized by Mr. Justice Holmes in Prentiss v. Atlantic Coast Line, 211 U.S. 226, 53 L.Ed. 150, 158-159 (1908):

[A] judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative, not judicial, in kind * * *. (Emphasis supplied). 2/

For this reason, the complainants' motion to have the rates established by our Order of July 27, 1981, made retroactive to September 26, 1980 (with a refund of the difference) must be rejected.

As to the possible argument that the Attorney General's timely filed application for rehearing of the September 26, 1980 Order might have some bearing on this "retroactive" issue, the

1/ The only exception to this rule is that an agency may correct a clerical error clear on the face of the order retroactive to the date of the original order. Mike Little Gas Co., Inc. v. PSC, Ky. App., 574 S.W.2d 926 (1978).

2/ Accord: Transcontinental & Western Air, Inc. v. CAB, 336 U.S. 601, 93 L.Ed. 911 (1949).

Commission offers this response. K.R.S. 278.410 gives any party to a proceeding before this Commission 20 days to file either an application for rehearing of a PSC order, or a complaint in the Franklin Circuit Court for review of said PSC order. However, the mere filing of an application for rehearing (or even a complaint in court) does not serve to stay the effectiveness of the PSC's order. This is clear from the provisions of K.R.S. 278.410(3), which states that "[i]njunctive relief may be granted by the circuit court in the manner and upon the terms provided by law." Thus, a party seeking to stay the effectiveness of any order of this Commission pending further review, must seek an injunction in the circuit court. The Attorney General did not do this at the time it filed its application for rehearing of the rate established by the Commission's Order of September 26, 1980, and Goshen was thus lawfully entitled to charge those rates until July 27, 1981.

For the reasons set forth above, the motion of United Goshen Homeowners to have the rates established by the Commission's Order of July 27, 1981, made retroactive to September 26, 1980, is hereby denied. All other motions raised by the Homeowners in their pleading of July 6, 1981, were fully covered in the Commission's Order of July 27, 1981.

Done at Frankfort, Kentucky this 10th day of August, 1981.

PUBLIC SERVICE COMMISSION

Marlin M. Vob
Chairman

Did not participate
Vice Chairman

Ann Harpau
Commissioner

ATTEST:

Secretary