

Both parties to this action were directed by Commission Orders of October 17, 1990 to provide further information to the Commission, and responses were so filed.

DISCUSSION

Although the parties differ in some particulars in their description of the facts which precipitated this Complaint, they are not in dispute over the pertinent ones upon which the Commission bases its decision and which will be briefly summarized.

The Complainants reside in the Coffey Road area of Pulaski County, near a site upon which they allege that toxic chemicals were illegally dumped over a period of years by a nearby industrial company or companies.¹ The toxic materials allegedly permeated the ground water and contaminated the wells in the vicinity. In 1988, state and federal authorities initiated action to compel the companies allegedly at fault to commence a clean-up operation at the site and to provide a safe source of drinking water to the affected citizens. Following communications between the state and federal EPA, industry representatives, and local officials, an agreement was reached whereby one of the companies, American Laundry Machinery, Inc. ("American Laundry"), would

¹ This matter is currently in litigation in the U.S. District Court, Eastern District of Kentucky, London Division; CI No. 89-155; Clyde P. Luttrell, et al. v. Cooper Industries, et al.

provide \$68,000 to pay for the extension of Pulaski No. 2's water lines to serve the affected citizens. The lines were built and the Complainants have been served by Pulaski No. 2 since late December 1988.

The gravamen of the Complaint is that the \$68,000 provided by American Laundry is not inuring to the benefit of the Complainants, but has instead constituted a windfall to Pulaski No. 2. The Complainants allege in their October 29, 1990 response to the Commission's data request that the monthly rates established by Pulaski No. 2 include an identifiable sum of money designed to pay for the cost of utility property in existence before the system was extended to the Coffey Road area. If that identifiable portion of the rate was adequate to pay for the cost of utility facilities before the Coffey Road customers tapped on, then, by paying the same rate for water service as all other customers, the Complainants reason that they will, in fact, be paying for the Coffey Road distribution system as well, with the \$68,000 contribution resulting in a windfall to Pulaski No. 2.

In its Answer, Pulaski No. 2 denied that the \$68,000 payment to extend the line resulted in a windfall to the district, and asserted that any damages which the Complainants may have incurred as a result of the contamination of their wells is an issue to be resolved in the pending litigation with American Laundry. Pulaski No. 2 also stated that a reduction in rates for the Complainants would discriminate against its remaining customers and act to their detriment.

FINDINGS

KRS 278.170, which prohibits a utility from discriminating as to rates or service, reads in pertinent part as follows:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person . . . or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

In order to establish differential rates for customers of utilities, the Commission must find a rational basis for classifying the customers differently. The Complainants herein do not allege that they are not receiving "like and contemporaneous service under the same or substantially the same conditions" as other customers of Pulaski No. 2.

In addition, there is no evidence that Pulaski No. 2 received a windfall from the \$68,000 provided to it to build lines to the Coffey Road citizens. All of the money was used to construct the extension, placing the utility in the same circumstances as if it had received a grant from a federal agency to construct the line. No doubt the \$68,000 was beneficial to the water district in that it was not required to incur debt to construct the line. It also benefitted the Complainants by providing them with a safe supply of water without requiring them to advance the funds to build the extension. Customers of a utility who are fortunate enough not to have to pay for an extension of service to them due to grant money are certainly not offered a lower rate than other customers of the utility. It is recognized in rate-making that new customers

benefit from plant previously in service which is fully paid for and to which they made no contribution.

The Complainants are seeking a lower rate due to circumstances which constitute a collateral matter not related to the service they are receiving. That collateral matter is one for the Complainants to pursue against those they allege have harmed them, and, indeed, most of the Complainants herein are parties to an action for damages in federal court. The other customers of the water district should not be penalized by being subjected to discriminatory rates when the Complainants' problem is with the companies allegedly involved, not with the water district.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. The Complainants' allegation that they are being penalized by paying the same rate for water service as all other residential customers of Pulaski No. 2 is without merit.

2. The Complainants' request that, as an adversely affected class, rates be established for them at 50 percent of the rate applicable to other residential customers and that the rate remain at the 50 percent level for the next 30 years, is in conflict with KRS 278.170 and should be denied.

3. The rates prescribed for residential customers in Pulaski No. 2's filed tariff are the fair, just, and reasonable rates for the Complainants herein.

4. The Complainants have submitted no evidence that Pulaski No. 2 has violated any Commission statutes or regulations.


5. The Complainants have failed to state a claim upon which the Commission may grant relief.

6. A hearing in this matter is not necessary in the public interest or for the protection of substantial rights, and this Complaint should be dismissed without a hearing.


IT IS THEREFORE ORDERED that the Complaint herein be and it hereby is dismissed with prejudice.

Done at Frankfort, Kentucky, this 31st day of January, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director