

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR CONDITIONAL APPROVAL)
OF AN AGREEMENT TO SERVE BY KENTUCKY) CASE NO. 93-348
POWER COMPANY)

O R D E R

By Order dated January 4, 1994, the Commission granted Kentucky Power Company's ("Kentucky Power") motion to hold this case in abeyance pending resolution of litigation among the parties in the Lewis Circuit Court. The issue being litigated there was whether the Vanceburg Utilities Commission ("Vanceburg") has an exclusive service territory for its electric operations at St. Paul, Kentucky.

On June 3, 1994, Grayson Rural Electric Cooperative Corporation ("Grayson") filed a motion requesting that this case be reactivated, citing the Supreme Court's recent decision in Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994). Grayson argues that the decision in Simpson County stands for the proposition that the Commission has exclusive jurisdiction under KRS 278.200 to regulate a contract between Vanceburg and Kentucky Power respecting rates and service, including a determination of Vanceburg's claim to an exclusive service territory.

Kentucky Power opposes Grayson's motion claiming that the Simpson County distinguishes between the rates and service of a

city-owned utility as supplier to a jurisdictional utility and the right to serve and service territory of a city-owned utility. While the rates and service issues are within the Commission's exclusive jurisdiction, Kentucky Power maintains that the territorial issues are not.

Based on the motion and being otherwise sufficiently advised, the Commission finds that the decision in Simpson County did not abrogate the prior existing judicial holdings that the issues of a city-owned utility's right to serve and service territory are within the exclusive jurisdiction of a circuit court, not the Commission. In City of Georgetown v. Public Service Commission, Ky., 516 S.W.2d 842 (1974), the Court held the Commission lacked jurisdiction to resolve boundary disputes between a city-owned utility and a jurisdictional utility due to the exclusion of a city-owned utility from the definition of a jurisdictional utility set forth in KRS 278.010(3).

In now determining that the rates and service of a city-owned utility are subject to Commission jurisdiction to the extent of a contract with a jurisdictional utility, the Simpson County Court held that,

"We find that where contracts have been executed between a utility and a city, such as between the City of Franklin and Simpson County Water District, KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption [under KRS 278.010(3)] and is rendered subject to PSC rates and service regulation."

Simpson County at 463. Significantly, the City of Georgetown decision was cited and distinguished by the Court in Simpson

County, rather than being overruled. Noting that it was a territorial dispute involved in City of Georgetown, the Court said, "[T]he issue therein affected neither rates nor service as it does in this case." Simpson County at 464.

The Commission also recognizes that the Lewis Circuit Court, by opinion entered March 31, 1994, similarly interprets Simpson County in holding that it is the proper forum to adjudicate the territorial boundary rights of Vanceburg.

IT IS THEREFORE ORDERED that Grayson's motion to reactivate this case is denied.

Done at Frankfort, Kentucky, this 18th day of July, 1994.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:



Executive Director