

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF WILLIAMSBURG )  
 )  
 ) COMPLAINANT )  
VS. ) CASE NO. 94-443  
 )  
CUMBERLAND FALLS HIGHWAY WATER DISTRICT )  
 )  
 ) DEFENDANT )

O R D E R

This matter involves a dispute over the rate which the City of Williamsburg, Kentucky ("Williamsburg") charges Cumberland Falls Water District ("Cumberland Falls") for water service. On May 4, 1994, Williamsburg notified Cumberland Falls of its intent to increase its water service rate from \$1.50 per 1,000 gallons to \$2.40 per 1,000 gallons effective July 1, 1994. When Cumberland Falls refused to pay the higher rate, Williamsburg brought this action to obtain Commission approval of that rate. Cumberland Falls moved for dismissal of Williamsburg's complaint.

In Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460, 462 (1994), the Kentucky Supreme Court held that a city, which includes a city-owned utility, waives its exemption from Public Service Commission regulation "when it contracts with a regulated utility upon the subjects of rates and service." To implement this decision, the Commission ordered municipal utilities providing wholesale utility service to a public utility to file their existing contracts and schedules of wholesale rates. Administrative Case No. 351, Municipal Utilities (Ky. P.S.C. Aug. 10, 1994).

All municipal utilities, except Williamsburg, have complied with this Order. The Commission has accepted the contracts and schedules as filed as the lawful rates of the affected utilities. As a result, the contractual relationships between most municipal utilities and their wholesale customers have not been materially affected.

Williamsburg's complaint raises an important question about the procedures which the Commission should follow in reviewing municipal utility requests for rate adjustments. To answer these questions, we need look no further than Simpson County Water District.

In Simpson County Water District the Kentucky Supreme Court found that

where contracts have been executed between a utility and a city, . . . KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to PSC rates and service regulation.

Id. at 462.

KRS 278.200 provides:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.

This statute, which applies by its terms to contracts, franchises and agreements with cities, is permissive except to the extent that it instructs the Commission to hold a hearing before taking any

action which changes an existing "contract, franchise or agreement" and requires that the hearing be held "in the manner prescribed by this chapter [KRS Chapter 278]."

Viewing the Simpson County Water District decision together with KRS Chapter 278, a uniform method of exercising the Commission's jurisdiction over cities becomes apparent. Where a city applies for approval of a rate contrary to that which would be established under an existing agreement with a utility, or where a utility complains of implementation of a rate or service contrary to an existing agreement with a city, the Commission is in effect being requested to change or abrogate the underlying agreement. To do so, the Commission must first hold a hearing "in the manner prescribed" by KRS Chapter 278. The manner prescribed by Chapter 278 for holding a hearing on a proposed rate increase is set forth in KRS 278.190 and presupposes compliance with the applicable rules of procedure set forth in Commission Regulation 807 KAR 5:001. To the extent that these regulations impose burdens which are onerous in a particular situation, either the city or the utility may seek permission to deviate from the requirement by showing good cause. See 807 KAR 5:001, Section 14.

Where either a city or a public utility seeks the enforcement of a rate established pursuant to an existing contract, the Commission's jurisdiction is founded upon KRS 278.260. In addressing that complaint, the Commission's rules of procedure, Commission Regulation 807 KAR 5:001, are applicable.

Consistent with the Commission's Order in Administrative Case No. 351 and KRS 278.160, contracts and rate schedules filed with the Commission shall control the rates and conditions of service of


the parties. Changes to those currently on file with the Commission shall be made in accordance with KRS 278.180 and Commission Regulation 807 KAR 5:011.

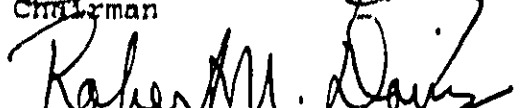
In the current case, Williamsburg has ~~no~~ rates or contracts on file with the Commission. It seeks an adjustment of rates in effect when the Simpson County Water District decision became final. A complaint brought against Cumberland Falls pursuant to KRS 278.260 is not the proper avenue to seek such an adjustment. Williamsburg's proper course is to apply for a rate adjustment in accordance with the procedures set forth in KRS 278.190 and Commission Regulation 807 KAR 5:001, Section 10. The Commission finds that, as Williamsburg's complaint is not the proper method for seeking a rate adjustment, it should be dismissed.

IT IS THEREFORE ORDERED that Williamsburg's Complaint is dismissed.

Done at Frankfort, Kentucky, this 11th day of April, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director