

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF PIKEVILLE, KENTUCKY)
COMPLAINANT)
v.) CASE NO. 95-296
MOUNTAIN WATER DISTRICT)
DEFENDANT)

O R D E R

On November 15, 1995, the complainant, City of Pikeville ("Pikeville"), filed its objections to the expected testimony of the Defendant, Mountain Water District's ("Mountain") witnesses as directed by the Commission in its Order of October 17, 1995. In support of its motion and objections Pikeville states that it initiated this proceeding to enforce its existing contract rate and that the proceeding was not instituted to seek Commission approval for a proposed rate increase. Pikeville further states that Mountain has not requested the Commission abrogate or change the terms of its contract as amended and, accordingly, the sole issue before the Commission is whether Mountain has breached the existing contract in failing to pay an adjusted rate of \$1.77 per 1,000 gallons. Pikeville seeks to have excluded as irrelevant the testimony from Carlos Miller regarding a rate study prepared for Mountain as an alternative to the Umbaugh study referenced in the contract between the parties, Mr. Miller's testimony regarding

alleged deficiencies in the Umbaugh formula and Mr. Miller's testimony as to general rate-making principles. Pikeville further requests the Commission exclude the testimony of Doug Griffin filed by Mountain regarding Mountain's physical plant, the design and operation of the plant, and the plant's interconnections with the Pikeville system. Finally, Pikeville requests the Commission exclude any and all testimony offered by any witness for Mountain that is irrelevant to the issues as framed by its complaint.

Mountain filed its response on November 27, 1995 arguing that the Commission has jurisdiction over the contractual rate by virtue of Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994). According to Mountain, the Commission has no jurisdiction over the breach of contract issue raised by Pikeville, except to the extent of determining whether the rate is fair, just and reasonable.

In Mountain's view, the Commission should require Pikeville to satisfy the minimum filing requirements of 807 KAR 5:001 to support the reasonableness of the rate it seeks to enforce. Whatever rate is adequately supported by Pikeville would then become the fair, just and reasonable rate for Pikeville to charge from this proceeding forward.

Pikeville filed a reply to Mountain's response on November 30, 1995 objecting to Mountain's efforts to transform this proceeding into a rate case before the Commission.

These issues arise as questions of first impression for the Commission since Simpson was decided. Admittedly, the gravamen of Pikeville's complaint is whether Mountain breached and is continuing to breach its contract in failing to pay the contractually adjusted rate. The Commission notes, however, that Mountain filed a counter-claim bringing into issue the appropriate application of the "Umbaugh formula" which is the methodology agreed to by the parties.

The Commission is not bound by either party's characterization of this proceeding. The contract at issue in this proceeding was executed by the parties in 1986 and amended by agreement of the parties in 1990. The question before the Commission is whether the rate in question was adjusted consistent with the contractual agreement of the parties. Necessarily included in that review will be whether the "Umbaugh formula" was correctly applied. If both those questions are answered in the affirmative, the Commission will enforce the contract. If not, modifications to the contractual rate may be necessary.

Based upon the foregoing, the Commission finds that Pikeville's motions should be denied to the extent the testimony relates to the contract and the correct application of factors contained in the Umbaugh formula. Of course, denial of this motion will not preclude objections to the testimony raised at the hearing based upon relevancy or other grounds by either party.

The Commission also finds that it is expedient to the hearing process and fair to both parties to allow additional discovery to occur on the issues as framed herein.

IT IS THEREFORE ORDERED that:

1. The motion of the City of Pikeville and objections to the expected testimony of Mountain's witnesses is denied.

2. The parties shall issue any supplemental interrogatories relating to issues of whether the rate was adjusted consistent with the contract and the appropriate application of the Umbaugh formula no later than January 3, 1996. The parties shall mail or deliver the responses and file a copy with the Commission no later than January 10, 1996.

Done at Frankfort, Kentucky, this 15th day of December, 1995.

PUBLIC SERVICE COMMISSION

Sybil K Breathitt
Chairman

Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director