

to 569 customers and wholesale water service to Jeffersonville. Montgomery District has no water production facilities and purchases its total water requirements from the city of Mount Sterling, Kentucky ("Mount Sterling").

In 1992 Montgomery District and Jeffersonville entered a Water Purchase Agreement which provided for a "flow-through arrangement." Under the terms of this agreement, Montgomery District purchases Jeffersonville's total water requirements from Mount Sterling and then resells this water to Jeffersonville at cost plus a surcharge of 5 cents per 1,000 gallons. The parties are to review the surcharge every five years and "adjust upward as required based upon demonstrative costs."

On April 2, 1996, Montgomery District applied for a rate adjustment to its retail service rates. The Commission docketed this application as Case No. 96-118. In its application, Montgomery District did not propose an adjustment to the rate charged Jeffersonville. Commission Staff reviewed the proposed rate adjustment and, in its Staff Report on the application, recommended that changes be made to Montgomery District's wholesale rate. More specifically, Commission Staff recommended that the existing rate of \$1.60 per 1,000 gallons of water be increased to \$1.88 per 1,000 gallons, or approximately 18 percent. When no objections were made to Commission Staff's recommendations, the Commission adopted the recommended rate on July 10, 1996.

On September 2, 1997, Jeffersonville filed a formal Complaint with the Commission against Montgomery District. In its Complaint, it contends that, as a result of the Water Purchase Agreement, Montgomery District may only charge Jeffersonville a rate that is 5 cents above its cost. Jeffersonville alleges that Montgomery District is in breach of the Water Purchase Agreement and requests that the Commission direct Montgomery District

to comply with the terms of the Agreement. It does not allege that the present rate is unreasonable, only that the rate is contrary to the Water Purchase Agreement.

Having reviewed the Complaint, the Commission finds that it fails as a matter of law to state a prima facie case and should be dismissed.² That the parties have contracted for a certain rate does not immunize the agreed rate from modification. The Commission has "the right and duty to regulate rates and services, no matter what a contract provided." Board of Education of Jefferson County v. William Dohrman, Inc., Ky.App., 620 S.W.2d 328, 329 (1981). See also National Southwire Aluminium Co. v. Big Rivers Electric Corp., 785 S.W.2d 503, 517 (1990) ("Kentucky law generally holds utility contracts are subject to rate changes ordered by the PSC, no matter what the contracts provide."). In light of the Commission's Order of July 10, 1996 directing Montgomery District to charge Jeffersonville a rate that differed from the contract rate, the Commission finds no basis to conclude that Montgomery District has acted improperly or unlawfully.³

IT IS THEREFORE ORDERED that Jeffersonville's Complaint is dismissed and is removed from the Commission's docket.

² On January 22, 1998, the Commission ordered Jeffersonville to, inter alia, to submit a written memorandum on the following issue: "Why, based upon the holding of Board of Education of Jefferson County v. William Dohrman, Ky.App., 620 S.W.2d 328 (1981), Jeffersonville's Complaint should not be dismissed for failure to state a cause of action?" Jeffersonville failed to respond to this Order.

³ This decision does not address whether the reasonableness of the rate that Montgomery District currently charges Jeffersonville for water service. The Commission has initiated a separate proceeding to investigate that issue. See Case No. 97-400, An Investigation of the Wholesale Water Service Rate of Montgomery County Water District No. 1 (Oct. 1, 1997).

Done at Frankfort, Kentucky, this 9th day of April, 1998.

PUBLIC SERVICE COMMISSION

B. J. Helton
Chairman

[Signature]
Vice Chairman

[Signature]
Commissioner

ATTEST:

[Signature]
Executive Director