

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTH SHORE WATER WORKS COMPANY	)	
	)	
COMPLAINANT	)	
	)	
vs.	)	CASE NO. 2002-003
	)	
CITY OF GREENUP, KENTUCKY	)	
	)	
DEFENDANT	)	

ORDER

South Shore Water Works Company ( South Shore ) has brought a formal complaint against the city of Greenup, Kentucky ( Greenup ) in which it alleges that Greenup unlawfully refuses to provide water service. Finding that the Complaint fails to state a *prima facie* case, the Commission, on its own motion, dismisses the Complaint.

Administrative Regulation 807 KAR 5:001, Section 12(4), requires the Commission to review each formal complaint upon its filing to determine whether the complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief. If a complaint fails to establish a *prima facie* case, it may be dismissed.

In its Complaint, South Shore alleges that, on April 7, 1998, it applied to Greenup for water service. Greenup accepted the application and then amended its own applications to state and federal agencies for grants to finance an expansion to its water distribution system to include water distribution mains to serve South Shore. Greenup

subsequently obtained the necessary grants and constructed the proposed extension. In November 2001, South Shore and Greenup began discussions regarding the rates for the proposed water service. Unable to obtain South Shore's agreement on rates and unwilling to submit its proposed rates to the Commission, Greenup terminated discussions and declined to provide water service to South Shore. South Shore requests that the Commission compel Greenup to provide such water service.

These allegations do not establish a *prima facie* case for Commission jurisdiction over the dispute. Kentucky courts have generally held that all operations of a municipally owned utility whether within or without the territorial boundaries of the city are exempt from Commission jurisdiction. McClellan v. Louisville Water Co., Ky., 351 S.W.2d 197, 199 (1961). See also City of Mount Vernon v. Banks, Ky., 380 S.W.2d 268, 270 (1964) ( In the operation of a water plant a municipal corporation is not under the jurisdiction of the Public Service Commission. ). The exception to this exemption occurs when a municipal utility contracts to provide utility service to a utility. Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460, 463 (1994) ( [W]here 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. ).

As Greenup is a city of the fifth class that owns and operates a water treatment and distribution system,<sup>1</sup> the Commission generally has no jurisdiction over Greenup's provision of water service. McClellan. While the Commission would possess

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<sup>1</sup> See KRS 81.010(5). For a description of Greenup's water treatment and distribution system, see Water Resource Development Commission, Water-Resource Development: A Strategic Plan (Oct. 1999) at App. B-FIVCO Area Development District, at 23-25.

jurisdiction over Greenup's rates and service to South Shore if a contract for water service between the two entities existed, the Complaint fails to demonstrate the existence of any contract between the two entities. South Shore provides only copies of unexecuted contracts and correspondence relating to possible contract terms.<sup>2</sup> These do not establish a *prima facie* case that a contract exists. In the absence of a contract, the Commission has no jurisdiction in this matter.

Accordingly, the Commission HEREBY ORDERS that South Shore's Complaint is dismissed without prejudice.

Done at Frankfort, Kentucky, this 11<sup>th</sup> day of January, 2002.

By the Commission

ATTEST:

  
Executive Director

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<sup>2</sup> In its Complaint, South Shore alleges that an agreement was entered with Greenup on April 7, 1998. The agreement to which the Complaint refers is merely an unexecuted copy of South Shore's application for water service.