

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RATTLESNAKE RIDGE WATER DISTRICT)	
)	
COMPLAINANT)	
v.)	CASE NO. 2002-00247
)	
CITY OF GRAYSON AND)	
GRAYSON UTILITIES COMMISSION)	
)	
DEFENDANTS)	

O R D E R

On June 24, 2002, Rattlesnake Ridge Water District (Rattlesnake Ridge) filed a formal complaint with the Commission alleging that the city of Grayson and Grayson Utilities Commission (Grayson) are attempting to raise the wholesale cost of water in violation of the terms of a contract between the parties dated August 14, 1983. Rattlesnake Ridge requests that the Commission prohibit the water rate increase until proper notice has been made to the Commission and Rattlesnake Ridge.

In its answer, Grayson alleges that Rattlesnake Ridge is bound by the terms of the contract which requires that Rattlesnake Ridge and Grayson submit to binding arbitration should there be a dispute as to price. Grayson alleges that Rattlesnake Ridge has repudiated the contract by informing Grayson that it no longer needs to purchase water from Grayson.

Grayson asserts two counterclaims. First, Grayson alleges that of the 57 months of the contract, for 44 months Rattlesnake Ridge exceeded the maximum allowable

amount of water under the contract between Rattlesnake Ridge and Grayson. Grayson claims that as a result of the over-consumption, Rattlesnake Ridge owes Grayson \$161,769.80 plus interest. Second, Grayson alleges that Rattlesnake Ridge owes Grayson \$661,769.80 plus interest for improvements Grayson made to its system. Rattlesnake Ridge allegedly agreed in writing to assist Grayson in expanding the capacity of its water treatment plant to meet Rattlesnake Ridge's supply demands.

Grayson requests that the Commission determine whether it has subject matter jurisdiction and, if so, find that the contract is void. Grayson additionally requests that the Commission order Rattlesnake Ridge to pay the aforementioned sums for the expansion of the water treatment plant and the alleged over-consumption of water.

DISCUSSION

In Simpson County Water District v. City of Franklin, 872 S.W.2d 460 (Ky., 1994), the Kentucky Supreme Court held that a city waives its exemption from Commission regulation when it contracts to sell water to a regulated utility. Since the Simpson County Water District decision in 1994, the Commission has required that all contracts for the sale of water between municipalities and jurisdictional utilities be approved by the Commission.¹ To have its rate change approved, a municipality must comply with the procedures set forth in KRS 278.190. Absent compliance with KRS 278.190 and Commission approval, a municipality cannot make changes in the rates it charges a jurisdictional utility. Both parties are free to negotiate whatever terms they think reasonable prior to applying to the Commission for approval of the rate change. No party, however, by contract or other agreement, may obviate Commission jurisdiction

¹ See KRS 278.200.

over rates and services,² and the Commission, therefore, retains the authority and jurisdiction to approve, deny, or otherwise modify any application for a rate change, regardless of the parties previous promises.

Grayson and Rattlesnake Ridge currently do have an approved water purchase contract on file with the Commission. The September 6, 1983 contract between the parties contains an addendum adjusting the rates, to which the parties agreed on October 22, 1990. Grayson filed the contract with the Commission on September 8, 1994, and a Commission stamp dated September 22, 1994 shows acceptance of the contract. This is the only contract between Grayson and Rattlesnake Ridge on file with the Commission and is the filed rate Grayson should charge to Rattlesnake Ridge.

If Rattlesnake Ridge has violated the terms of the filed rate through over-consumption of water, then Grayson may indeed be entitled to collect money due under the filed contract. Grayson at this time, however, has not alleged sufficient facts to allow the Commission to determine if Rattlesnake Ridge did in fact violate the terms of the contract; nor has Rattlesnake Ridge responded. If Grayson wishes to pursue this matter further, it may file with the Commission a more detailed account in a new formal complaint.

The Commission has no contract on file regarding Rattlesnake Ridge s alleged commitment to Grayson to assist in payment for the plant capacity expansion and, therefore, it is not a filed rate as provided by KRS 278.160. Thus, the Commission

² KRS 278.040.

cannot find or declare that Rattlesnake Ridge has any obligation to pay Grayson for the costs of the plant expansion.

The Commission having been sufficiently advised, IT IS THEREFORE ORDERED that:

1. Grayson shall make no changes to the rates that it charges Rattlesnake Ridge until it has complied with Commission orders specifying the manner in which such changes may be made.

2. Rattlesnake Ridge is not obliged to pay for the cost of the plant expansion.

3. This case is dismissed and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 13th day of September, 2002.

By the Commission

ATTEST:


Executive Director