STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 28th day of January, 1999.

City of Desloge and City of Leadington,	)	
Complainants,	)	
vs.	)	**Case No. WC-99-186**
City of Park Hills,	)	
Respondent.	)	

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

On October 29, 1998, the cities of Desloge and Leadington filed a complaint with the Public Service Commission against the City of Park Hills. The complaint alleges that the City of Park Hills owns and operates a waterworks system that serves the cities of Desloge and Leadington as well as the citizens of Park Hills. It is alleged that on April 6, 1998, the City of Park Hills doubled the water rates for residential customers and tripled the rates for commercial customers who are located outside the city limits of Park Hills. At the same time, Park Hills did not increase the rates charged to its customers who live within its city boundaries. Desloge and Leadington ask the Commission to order Park Hills to file tariffs with the Commission regarding the rates it charges for water service supplied outside the boundaries of Park Hills.

Park Hills responded to the Complaint on December 2 by filing a combined answer and motion to dismiss, accompanied by suggestions in support of the dismissal of the complaint. Park Hills asserts that the Commission lacks jurisdiction to regulate a municipally owned utility. On December 14, Desloge and Leadington responded with suggestions in opposition to Park Hills' motion to dismiss. Desloge and Leadington point to Section 386.250(3), RSMo Supp. 1997, as support for their argument that the Commission does have jurisdiction of this matter. After a careful review of the factual and legal circumstances, the Commission concludes that it does have jurisdiction over the issues raised in the complaint.

FACTUAL BACKGROUND

The cities of Desloge, Leadington and Park Hills are each located in St. Francois County, Missouri. The cities are contiguous and are essentially a single community. Prior to 1975, the citizens of all three cities were served by a privately owned water utility, Lead Belt Water Company (Lead Belt). Lead Belt operated under a certificate of convenience and necessity issued by the Public Service Commission. On October 26, 1973, Lead Belt and the City of Flat River, as the City of Park Hills was then known, filed a joint application with the Commission asking for Commission approval of the sale of Lead Belt to the City of Flat River. Desloge and Leadington intervened in that case and vigorously opposed Flat River's purchase of the water system. The intervening cities argued that the sale of the waterworks to Flat River would put them at risk of rate discrimination by the City of Flat River.

Their fear was that, as a municipality, Flat River would not be subject to regulation by the Public Service Commission. The citizens of the smaller communities surrounding Flat River would not have a vote in determining the affairs of Flat River. The city council of Flat River could set water rates outside the city at whatever amount it chose without oversight from the Public Service Commission and without having to face the wrath of angry voters.

After holding a hearing on the matter, the Commission issued an order in Case No. 17,941 that approved the sale of the water system to Flat River. The Commission was, however, sympathetic to the plight of the surrounding communities that would be served by the water system. The Commission stated that it was not going to order Flat River to file rates for approval by the Commission at that time, but that "at any time that the rates charged by the City of Flat River to its customers outside its city limits exceed those charged to its customers inside the city limits, the Commission will, at that time, order the City of Flat River to file tariffs for the Commission's approval or disapproval by virtue of Section 386.250(7)"[1].

The complaint of Desloge and Leadington alleges that on July 1, 1998, Park Hills implemented a new rate structure, which doubled the water rate for residential customers outside of Park Hills and tripled the rate for business customers outside of Park Hills. Park Hills' answer states that effective May 1, 1998, all residential customers

1 The statutory language now found at section 386.250(3) RSMo was previously found at Section 386.250(7) and is referred to by that citation in quotations from earlier cases.

outside the city limits of Park Hills pay two times the in-town rate and all commercial customers outside the city limits of Park Hills pay three times the in-town rate.

DISCUSSION

Desloge and Leadington argue that the Public Service Commission has jurisdiction over this rate dispute by virtue of Section 386.250(3), RSMo Supp. 1997, which provides as follows:

> The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:
>
> (3) To all water corporations and to the land, property, dams, water supplies, or power stations thereof and the operation of same within this state, except that nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the service or rates of any municipally owned water plant or system in any city of this state **except where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality.** (emphasis added)

Thus, Desloge and Leadington ask that the Commission base its jurisdiction on the exception to the statutory provision that denies the Commission jurisdiction over municipally owned water systems.

Park Hills responded to the argument for Commission jurisdiction by pointing to a 1978 decision of the Missouri Court of Appeals, Kansas City District, Forest City v. City of Oregon, 569 S.W.2d 330 (Mo. App. 1978). The City of Oregon had for many years supplied water to the neighboring community of Forest City at the same rate that it charged to its own citizens. However, the City of Oregon decided to increase the rates charged to residents of Forest City to a rate higher than it charged its own residents. Forest City responded by filing a lawsuit in the Circuit

Court of Holt County against the City of Oregon. Forest City's suit was dismissed by the Circuit Court, and it appealed to the Court of Appeals.

Forest City argued that the Circuit Court should have transferred the case to the Public Service Commission. In response to that argument, the Court of Appeals held that "the Missouri Public Service Commission does not have jurisdiction to regulate the rates charged by Oregon to the City or residents of Forest City." Forest City at 333. The Court of Appeals recognized the language in Section 386.250(3) that would allow the Public Service Commission to take jurisdiction over the inter-city dispute. However, the court examined the history of the statute and concluded that Section 386.250 does not create jurisdiction in the Public Service Commission.

The court's opinion indicates that the 1913 act that created the Public Service Commission granted the Commission specific powers to regulate rates and services of municipally operated public utilities. The court cites a series of Missouri Supreme Court decisions that considered that the Commission had the power to regulate water rates charged by municipal corporations sold beyond its borders. Public Service Commission v. City of Kirkwood, 319 Mo. 562, 4 S.W.2d 773 (1928); Speas v. Kansas City, 329 Mo. 184, 44 S.W.2d 108 (1931). However, in a 1931 case, the Missouri Supreme Court ruled that the statutory grant of power to the Commission to regulate municipally owned utilities was unconstitutional. City of Columbia v. State Public Service Commission, 329 Mo. 38, 43 S.W.2d 813 (1931). The legislature, in 1949, revised the statutes defining the authority of the Public Service Commission to

recognize the prior court decisions by removing the Commission's jurisdiction over municipal utilities. However, Section 386.250(7)(now Section 386.250(3)), which purports to give the Commission authority over municipal sales of water outside city boundaries was left intact. Nevertheless, the court concluded that the legislative and judicial history previously discussed required a holding that the Public Service Commission did not have jurisdiction to regulate the rates charged by the City of Oregon to the City or residents of Forest City.

Desloge and Leadington attempt to avoid the holding in Forest City by pointing out that the statutory provisions that were declared unconstitutional in the 1931 City of Columbia case cited by the Court of Appeal in Forest City are not the statutory provisions now found at Section 386.250(3). Furthermore, the Missouri Supreme Court's finding of unconstitutionality was not based on any deep constitutional problem with the Public Service Commission's regulation of a municipal utility. Instead, the legislative enactment that created the statute was found to violate Missouri's constitution because it did not mention the regulation of municipalities in its title. The statutory provisions now contained in Section 386.250(3) result from a different legislative enactment and do not share the same constitutional infirmity.

Desloge and Leadington also argue that the Forest City decision was repudiated by the legislature when, in 1988, it clarified the jurisdiction of the Public Service Commission by amending Section 386.250 to delete subdivisions 1 through 4 and subdivision 8 while redesignating subdivision 5 through 7 as subdivisions 1 through 3. Desloge and

Leadington argue that the legislature had the opportunity to eliminate the section regarding Commission jurisdiction over municipal water sold outside the city boundaries but did not do so. By reenacting the provision without change, they argue that the legislature repudiated the court's interpretation of that provision in Forest City.

The Commission is persuaded that it does have jurisdiction to hear the complaint of Desloge and Leadington. The strongest argument in favor of the Commission's jurisdiction is the need to provide some measure of protection for the customers of the Park Hills municipal water system who live outside of the city limits of Park Hills. The citizens of Desloge and Leadington find themselves at the mercy of the city of Park Hills. Park Hills has a monopoly on the provision of water to Desloge and Leadington. It is alleged that there is no practical alternative means by which the residents of those two cities could obtain the water that they need. Residents of the City of Park Hills are, of course, subject to the same monopoly in that they have no other choice regarding their water supply. However, water customers who live within the boundaries of Park Hills are protected by the fact that they have the power of the ballot. They could vote out of office a city administration that attempted to charge excessive rates for water supplies. Residents of Desloge and Leadington do not, of course, have the right to vote in Park Hills' elections. Therefore, they do not have the ability to influence the civic affairs of Park Hills.

Of course, merely concluding that Commission jurisdiction would be desirable does not make it so. Dishon v. Rice, 871 S.W.2d 126, 128 (Mo.

App. E.D. 1994). As an administrative agency, the Commission has only those powers that the legislature has chosen to bestow upon it. Pen-Yan Investment, Inc. v. Boyd Kansas City, Inc., 952 S.W.2d 299, 303 (Mo. App. W.D. 1997). The Commission's jurisdiction in this case is found in Section 386.250(3) RSMo, Supp. 1997. By that section, the legislature gives the Commission jurisdiction over all water corporations in the state, except municipally owned water systems. However, the plain language of the statute creates an exception to the exception that allows the Commission to regulate the service and rates provided by municipal water systems to customers outside the corporate limits of such municipalities.

Park Hills correctly points out that the Missouri Court of Appeals in the Forest City case has ruled that the language now found in Section 386.250(3) does not give the Commission jurisdiction in this situation. This Commission does not have the authority to overrule the Court of Appeals even if it believes that a decision of that Court is incorrect. However, the Forest City decision is premised on the assumption that the language of Section 386.250(3) was simply an anachronism that the legislature had never gotten around to repealing. The legislature repudiated that assumption in 1988 when it repealed and reenacted the exception to the limitation on the Commission's jurisdiction. Regarding the construction of statutes, the Missouri Supreme Court has stated that "[t]he primary rule of statutory construction is to ascertain the lawmaker's intent from the language used and, if possible, to give effect

to that intent." May Dept. Stores Co. v. Director of Revenue, 791 S.W.2d 388, 389 (Mo. banc 1990). That court has further stated that:

> In construing statutes to ascertain legislative intent it is presumed the legislature is aware of the interpretation of existing statutes placed upon them by the state appellate courts, and that in amending a statute or in enacting a new one on the same subject, it is ordinarily the intent of the legislature to effect some change in the existing law. If this were not so the legislature would be accomplishing nothing and legislatures are not presumed to have intended a useless act.

Kilbane v. Director of Dept. of Revenue, 544 S.W.2d 9, 11 (Mo. banc 1976) quoting Gross v. Merchants-Produce Bank, 390 S.W.2d 591, 597 (Mo. App. 1965). It must be presumed that the legislature did not enact a meaningless provision. Wollard v. City of Kansas City, 831 S.W.2d 200, 203 (Mo. banc 1992). "Legislative changes should not be construed as useless acts unless no other conclusion is possible." State ex rel. Missouri State Board of Registration for the Healing Arts v. Southworthy, 704 S.W.2d 219, 225 (Mo. banc 1986). The legislature is presumed to have known what it was doing when it reenacted the provisions of Section 386.250(3) in 1988. The language reenacted by the legislature is clear and unambiguous and such language must be given its plain meaning. Brown v. Melahn, 824 S.W.2d 930 (Mo. App. E.D. 1992). When Section 386.250(3) is given its plain meaning, it leads to the conclusion that the Commission does have jurisdiction to hear the complaint brought before it by the Cities of Desloge and Leadington.

IT IS THEREFORE ORDERED:

1. That the City of Park Hill's Motion to Dismiss is denied.

2. That this order shall become effective on February 9, 1999.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray
and Drainer, CC., concur
Schemenauer, C., absent

Woodruff, Regulatory Law Judge