



97-01790
W. W. W. W.

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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September 24, 1997

J. Scott Preston, Esq.
Preston & Holbrook
308 Main Street
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Paintsville, Kentucky 41240-1361

Dear Mr. Preston:

The Public Service Commission acknowledges receipt of your letter of September 9, 1997 regarding its authority to establish certified service territories for natural gas utilities.

Unlike retail electric suppliers for whom the General Assembly has expressly authorized the establishment and enforcement of certified service territories, see KRS 278.016-.018, no statutory authority exists for the establishment of such for natural gas utilities. While the Commission issues certificates of public convenience and necessity to public utilities for the construction of utility facilities, such certificates do not create an exclusive service territory for the public utility.

In Mountain Utilities, Inc. v. Equitable Gas Co., Case No. 91-316 (Apr. 6, 1992), the Commission expressly rejected the contention that a certificate of public convenience and necessity created an exclusive service territory:

A certificate is required before the construction of any utility facilities which are not ordinary extensions of existing systems in the usual course of business. It is intended to prevent the wasteful duplication of utility facilities. It does not establish an exclusive service territory for the applicant utility. The certificates granted to Mountain and its predecessor, in fact, make no mention of an exclusive service territory but merely authorize the construction of a gas distribution system. This Commission is not authorized to establish exclusive service territories for natural gas utilities. See Kentucky Utilities Co. v. Pub. Serv. Comm'n, Ky., 390 S.W.2d 68, 175 (1965) (stating that existing utilities do not "have any right to be free of competition").

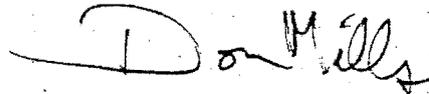
J. Scott Preston, Esq.
September 24, 1997
Page 2

Id. at 3 (footnote omitted). For your reference, a copy of the Commission's Order in that proceeding is enclosed.

Assuming arguendo that the Commission had the statutory authority to establish exclusive territories for natural gas public utilities, the Commission does not have jurisdiction over the retail operations of municipal utilities. See McClellan v. Louisville Water Co., Ky., 351 S.W.2d 197 (1961); Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994). It is therefore without any authority to prohibit a municipal utility from engaging in retail operations in a public utility's "certified territory." See Auxier Water Co. v. City of Prestonsburg, Case No. 96-362 (Apr. 2, 1997).

This letter represents Commission Staff's interpretation of the law. It is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Commission counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Mills". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Don Mills
Executive Director

Enclosure
gw