

SUPREME COURT OF ARKANSAS

Centerpoint Energy, Inc. v. Miller County Circuit Court, Second Division, 370 Ark. 190

258 S.W.3d 336 (2007) · No. No. 06-1294 · Decided June 7, 2007

SUMMARY

The Supreme Court of Arkansas considered a petition for a writ of prohibition concerning a class action alleging fraud, unjust enrichment, and civil conspiracy arising from natural-gas pricing. The court held that the Arkansas Public Service Commission had sole and exclusive jurisdiction over claims relating to Arkansas customers because the alleged damages required evaluating regulated rates, while declining to determine the jurisdiction of Texas regulators over Texas customers. The writ was granted in part and denied in part.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Arkansas                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Robert L. Brown; Jim Gunter; Jim Hannah; Paul E. Danielson                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | Arkansas                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | June 7, 2007                                                                                                                                                                                                                                                                                                                                      |
| DOCKET                | No. 06-1294                                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | writ_granted                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Petition for a writ of prohibition challenging the circuit court's denial of a motion to dismiss a putative class action for lack of subject-matter jurisdiction.                                                                                                                                                                                 |
| STANDARD OF REVIEW    | A writ of prohibition is an extraordinary remedy appropriate only when the lower court is wholly without jurisdiction, no other adequate remedy exists, and the jurisdictional issue is legal rather than factual. Review is confined to the pleadings, and prohibition is not available merely to correct an erroneous exercise of jurisdiction. |
| PRECEDENTIAL VALUE    | Published Arkansas Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                           |
| PARTIES               | Centerpoint Energy, Inc., Centerpoint Energy Resources Corp., Entex Gas Marketing Company, Centerpoint Energy Field Services, Inc., Centerpoint Energy Pipeline Services, Inc. v. Miller County Circuit                                                                                                                                           |

## TOPICS

writ of certiorari   subject matter jurisdiction   administrative law   exhaustion of remedies  
appellate procedure

## PRACTICE AREAS

administrative law   public utilities   appellate procedure   civil procedure   commercial litigation

## QUESTIONS PRESENTED

1. Whether the Arkansas Public Service Commission had sole and exclusive jurisdiction over the claims of Arkansas customers challenging allegedly excessive natural-gas charges.
2. Whether the Arkansas Public Service Commission had jurisdiction over claims involving unregulated affiliates and suppliers whose conduct allegedly affected rates charged by a regulated utility.
3. Whether a writ of prohibition could issue after the circuit court denied a motion to dismiss for lack of subject-matter jurisdiction.
4. Whether the court should determine the Texas Railroad Commission's jurisdiction over Texas customers under Texas law.

## HOLDINGS

1. The Arkansas Public Service Commission has sole and exclusive jurisdiction over the plaintiffs' claims insofar as they concern Arkansas customers because the claims challenge rates and seek damages measurable only by comparing the rates charged with the rates that allegedly should have been charged.
2. The APSC may investigate the conduct of unregulated affiliates of public utilities when that conduct affects rates charged by the regulated utility, and it may provide refunds, billing credits, or other appropriate prospective relief to Arkansas customers.
3. The court declined to adjudicate the jurisdiction of the Texas Railroad Commission over Texas customers under Texas law and denied the writ as to potential Texas class members.
4. A writ of prohibition may issue following a circuit court's denial of a motion to dismiss for lack of subject-matter jurisdiction when the lower court is wholly without jurisdiction.

## KEY QUOTATIONS

*“The commission's jurisdiction to adjudicate public rights does not and cannot, however, extend to disputes in which the right asserted is a private right found in the common law of contracts, torts, or property.”* (at 342)

*“In essence, the plaintiffs are complaining that they are being charged too much for natural gas, and their actual damages can only be measured by comparing the rates they have been charged and the rates they should have been charged absent the alleged fraudulent conduct.”* (at 345)

*“The respondents attempt to disguise their claims by labeling them as common law tort claims, but this court must look beneath the labels and inquire into the true nature of the complaint.” (at 345)*

## FACTUAL BACKGROUND

The plaintiffs alleged that Centerpoint and related entities purchased natural gas for regulated and unregulated affiliates through the same gas-supply personnel. They claimed suppliers sold gas to regulated utilities at above-market prices, which were passed through to Arkansas and other customers under purchased-gas-adjustment clauses, while selling gas to unregulated affiliates at below-market prices. The putative class sought damages and other relief for fraud, unjust enrichment, and civil conspiracy.

## PROCEDURAL HISTORY

Consumers filed a putative class action in Miller County Circuit Court alleging fraud, unjust enrichment, and civil conspiracy arising from allegedly excessive natural-gas costs passed through a purchased-gas-adjustment clause. After the defendants moved to dismiss for lack of subject-matter jurisdiction, the circuit court denied the motion and held that the Arkansas Public Service Commission lacked authority over the asserted common-law claims, claims involving out-of-state class members, and claims involving unregulated defendants. The Supreme Court of Arkansas granted prohibition in part as to Arkansas customers and denied it as to Texas customers and the Texas Railroad Commission.

## DISPOSITION

writ\_granted

## REMAND INSTRUCTIONS

The circuit court is prohibited from exercising jurisdiction over the claims as they relate to Arkansas customers. The writ is denied as to potential Texas class members and the Texas Railroad Commission.

## CASES CITED

- Ulmer v. Circuit Court of Polk County, 366 Ark. 212, 234 S.W.3d 290 (2006)
- Erin, Inc. v. White County Circuit Court, 369 Ark. 265, 253 S.W.3d 444 (2007)
- State v. Circuit Court of Lincoln County, 336 Ark. 122, 984 S.W.2d 412 (1999)
- Cullum v. Seagull Mid-South, Inc., 322 Ark. 190, 907 S.W.2d 741 (1995)
- H.J. Inc. v. Northwestern Bell Telephone Co., 954 F.2d 485 (8th Cir. 1992), cert. denied, 504 U.S. 957 (1992)
- Austin v. Centerpoint Energy Arkla, 365 Ark. 138, 226 S.W.3d 814 (2006)
- Brandon v. Arkansas Public Service Commission, 67 Ark. App. 140, 992 S.W.2d 834 (1999)
- Davis v. Williamson, 359 Ark. 33, 194 S.W.3d 197 (2004)
- QCC, Inc. v. Hall, 757 So. 2d 1115 (Ala. 2000)
- Wilson v. Harlow, 860 P.2d 793 (Okla. 1993)
- The Daily Advertiser v. Trans-La, 612 So. 2d 7 (La. 1993)

- Daaleman v. Elizabethtown Gas Co., 77 N.J. 267, 390 A.2d 566 (1978)
- Jenkins v. Entergy Corp., 187 S.W.3d 785 (Tex. App. 2006)
- Florida Power & Light Co. v. Albert Litter Studios, Inc., 896 So. 2d 891 (Fla. App. 2005)
- State ex rel. Columbia Gas of Ohio, Inc. v. Henson, 102 Ohio St. 3d 349, 810 N.E.2d 953 (2004)
- State ex rel. The Illuminating Co. v. Cuyahoga City Court of Common Pleas, 97 Ohio St. 3d 69, 776 N.E.2d 92 (2002)
- Cincinnati Insurance Co. v. Johnson, 367 Ark. 468, 241 S.W.3d 264 (2006)
- Arkansas Power & Light Co. v. Arkansas Public Service Commission, 275 Ark. 164, 628 S.W.2d 555 (1982)
- Aluminum Company of America v. Arkansas Public Service Commission, 226 Ark. 343, 289 S.W.2d 889 (1956)
- Arkansas Gas Consumers, Inc. v. Arkansas Public Service Commission, 354 Ark. 37, 118 S.W.3d 109 (2003)
- Hatfield v. Thomas, 351 Ark. 377, 93 S.W.3d 671 (2002)
- Modern Laundry v. Dilley, 111 Ark. 350, 163 S.W. 1197 (1914)
- Monroe Auto Equipment Co. v. Partlow, 311 Ark. 633, 846 S.W.2d 637 (1993)
- Jordan v. Circuit Court of Lee County, 366 Ark. 326, 235 S.W.3d 487 (2006)
- Cockrum v. Fox, 359 Ark. 508, 199 S.W.3d 69 (2004)
- Lenser v. McGowan, 358 Ark. 423, 191 S.W.3d 506 (2004)

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