

**WESTLAKE POLYMERS
CORPORATION, WESTLAKE
PETROCHEMICALS
CORPORATION, AND
WESTLAKE STYRENE
CORPORATION**

VERSUS

ENTERGY CORPORATION

*** NO. 2001-C-1582
* COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA**

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**ON SUPERVISORY WRIT DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-13212, DIVISION "G-11"
HONORABLE ROBIN M. GIARRUSSO, JUDGE**

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JOAN BERNARD ARMSTRONG

JUDGE

*** * * * ***

(ON REMAND FROM THE SUPREME COURT OF LOUISIANA)

**(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet
Murray and Judge David S. Gorbaty)**

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REVERSED AND

REMANDED

Relators Westlake Polymers Corporation, Westlake Petrochemicals Corporation, and Westlake Styrene Corporation (“Westlake”) seek review of a judgment by the trial court granting, in part, respondent Entergy

Corporation's ("Entergy") exception of lack of subject matter jurisdiction. The judgment was rendered on July 18, 2001. Westlake filed an application for supervisory writs in this court seeking reversal of the trial court's judgment. We denied that writ application on the showing made. Westlake then filed a writ application with the Supreme Court. The Supreme Court granted that application and remanded the case to us with instructions that there be "briefing, argument and opinion." The parties have been given an opportunity to file supplemental briefs, there has been oral argument, and we now render this opinion.

The instant case arises out of a petition for damages filed by Westlake against defendant Entergy, and other named defendants. Westlake and Entergy entered into a "Memorandum of Understanding" on January 25, 1996. In the memorandum Entergy agreed to be Westlake's exclusive supplier of electricity, for the term of the agreement, to Westlake's facilities in Sulphur, Louisiana. Westlake alleges that an electrical fault resulted in a sudden voltage dip at its manufacturing facility causing substantial damage. The fault also allegedly caused a defective relay, manufactured by Schweitzer, a named defendant, to malfunction and open improperly resulting in complete loss of electricity to Westlake's plant. Westlake alleges as a result they sustained significant property damage, as well as

business interruption losses, including loss of production, and loss of business revenue and profits. Westlake's petition asserted five separate causes of action against Entergy.

The fourth cause of action, and the basis of this writ application, alleged that Entergy's failure to provide uninterrupted service at rates consistent with the parties' original intentions requires rescission and/or reformation of the January 25, 1996 Memorandum of Understanding.

In response to Westlake's petition, Entergy filed exceptions of lack of subject matter jurisdiction and no cause of action. The trial court denied the exception of no cause of action, and granted the lack of subject matter jurisdiction exception. The trial court found Westlake's claim for rescission and/or reformation was within the jurisdiction of the Louisiana Public Service Commission. The trial court also stayed Westlake's remaining claims pending action by the LPSC.

The trial court's granting of the exception of lack of subject matter jurisdiction raises two issues: (1) Whether the trial court erred in ruling the LPSC has exclusive jurisdiction over the claim for contract rescission and/or reformation; and (2) Whether the trial court erred in staying further proceedings on Westlake's other claims pending action by the LPSC on the contract claim.

The Louisiana Constitution Art. IV Section 21 (B) vests jurisdiction over public utilities in general and rates in particular in the Louisiana Public Service Commission. La. R.S. 45:1163 also gives the LPSC the authority to regulate the rates charged and services furnished by public utilities.

The Louisiana Constitution Art. V Section 16 (A) vests in district courts “original jurisdiction of all civil and criminal matters,” unless there is other jurisdictional authorization in the constitution. Central Louisiana Elec. Co., Inc. v. Louisiana Public Service Com’n, 601 So.2d 1383, 1386 (La. 1992) (CLECO).

The Louisiana Supreme Court in CLECO, id, discussed the issue of subject matter jurisdiction between district courts and the LPSC. The court stated:

[The PSC has constitutional and statutory jurisdiction over subject matters, which principally involve the right to fix and regulate rates charged by and services furnished by public utilities. The Legislature has never “provided by law” for the PSC to exercise jurisdiction over subject matters and areas of litigation in which public utilities are involved, such as tort actions and contract disputes. It is therefore necessary at the outset to determine the relief demanded by all parties in order to resolve the subject matter jurisdiction issue.

Entergy, in its opposition to Westlake’s writ application, alleges that

Westlake's contract claim seeks the return of amounts that were allegedly overcharged, as well as the return of "clawback" payments. Entergy cites Daily Advertiser, a Div. of Atmos Energy Corp. v. Trans-La, 612 So.2d 7 (La. 1993), to support its argument that the jurisdiction for the regulation of rates charged by utilities rest exclusively with the LPSC. In Daily Advertiser, the plaintiffs did seek repayment of overcharged rates by a utility, but the claim in the instant case seems to go beyond a desire to recoup excess payments.

In the instant case, there appears not to have been a problem for Westlake with the rate charged by Entergy, as Westlake agreed to pay the rate specified in the memorandum. Moreover, when Entergy then charged a rate different from the agreed upon rate, Westlake also paid that rate. However, the charging of a rate other than the one agreed upon in the contract is now argued by Westlake to be a violation or breach of the agreement. It appears the LPSC does not have the authority to grant a remedy for such a breach. The Second Circuit in Milstead v. Louisiana Power and Light Co., 581 So.2d 1085 (La. App. 2 Cir. 1991), in which a customer of the electric utility sued for breach of contract, held that a claim for damages otherwise arising out of a contract to supply electricity may be instituted in a district court of proper jurisdiction.

For the foregoing reasons, the judgment of trial court granting the exception of lack of subject matter jurisdiction is reversed and this case is remanded for further proceedings.

REMANDED

REVERSED AND