

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GUIDELINES FOR REVISING NON- )  
RECURRING CHARGES OUTSIDE ) ADMINISTRATIVE CASE NO. 275  
GENERAL RATE CASES )

AMENDED ORDER

On March 26, 1984, the Commission issued Administrative Order 275, which established new procedures for approving increases in non-recurring charges for a utility outside a general rate case. On April 16, 1984, the Attorney General filed a "Motion to Revoke" this Order.

As grounds for its opposition to Administrative 275, the Attorney General makes two arguments. First, he argues that since this case arose as a result of the Commission's own investigation, KRS 278.260 then requires a hearing before our Order could be issued since the Order "affects rates." Assuming arguendo that our Order in Administrative 275 was issued pursuant to KRS 278.260, that Order does not "affect the rates" of any utility, i.e., no utility's rate goes up or down because of the March 16, 1984, Order. Instead, it simply establishes a procedure whereby future rate changes may be made by any utility. For this reason, the Attorney General's argument that a hearing

was required to be held before the Order in Administrative 275 could be issued has no merit.

The second argument made by the Attorney General is that the procedures set forth in Administrative 275 cannot be implemented without promulgating a formal regulation as required by KRS 13. KRS 13.080(3) states in relevant part:

"Regulation" means each statement of general applicability issued by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization procedure, or practice requirements of any administrative agency. (Emphasis supplied.)

The Kentucky Court of Appeals has recently held that a statement by an administrative agency of general applicability that implements or interprets a statute and "affects private rights" must be filed as a regulation pursuant to KRS 13.<sup>1</sup> Moreover, HB 334, which became effective on April 13, 1984, requires that all matters relating to "applications" to an administrative agency be codified into regulation form.<sup>2</sup> For these reasons, the Commission agrees with the Attorney General that the procedure for filing changes to non-recurring charges should be promulgated as a regulation. This amendment to 807 KAR 5:011 will, accordingly, be filed with the Legislative Research Commission for publication in the July Administrative Register.

The reasoning of the Commission in adopting procedures for reviewing increases in non-recurring charges outside a general

---


<sup>1</sup>Vincent v. Conn, Ky. App., 503 S.W.2d 99, 101 (1979).


<sup>2</sup>KRS 13A.100.


rate case was set forth in the March 26, 1984, Order. Accordingly, the Commission will not "revoke" that Order as the Attorney General requests but will, instead, simply amend that Order to reflect that the procedures for non-recurring charges will be promulgated in regulation form.

Done at Frankfort, Kentucky, this 14th day of June, 1984.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

\_\_\_\_\_  
Secretary