

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GENERAL ADJUSTMENTS IN ELECTRIC AND)
GAS RATES OF LOUISVILLE GAS AND) CASE NO. 8924
ELECTRIC COMPANY)

O R D E R

On February 21, 1984, Louisville Gas and Electric Company ("LG&E") filed a motion to both define and limit the issues in this case. With respect to the request to define the issues, LG&E argues that the Commission's previously enunciated issues were broad, non-specific generalizations which fail to satisfy due process notice requirements. LG&E supports its request by citing the decisions in URC v. Kentucky Water Service Co., Ky. App., 642 S.W.2d 591 (1982) and PSC v. Warren County Water District, Ky. App., 642 S.W.2d 594 (1982), and the Report on Due Process Issues by Robert G. Schwemm ("Schwemm Report").

On February 27, 1984, the Attorney General's Office ("AG"), an intervenor herein, filed a response in opposition to the motion to define issues. The AG argues that the decisions in Kentucky Water Service Co. and Warren County Water District contain neither recommendations nor specific suggestions regarding due process procedures to be followed by the Commission. With respect to the Schwemm Report, the AG points out that

the report's suggestions are tempered by the realism of the Commission's small staff, heavy caseload, short suspension period and a system that works reasonably well. (Schwemm Report, p. 4.) The AG further argues that such a list could preclude the exploration of newly discovered issues.

The Commission is in agreement with the AG that an issues list is not required to satisfy minimum due process requirements. However, the Commission is cognizant of both longstanding due process arguments espoused by regulated utilities and the suggestions contained in the Schwemm Report. In order to achieve a more expeditious resolution of cases and to afford due process protections that exceed judicially prescribed minimums, the Commission previously adopted a policy to implement, when feasible, an issues list. This procedural device neither inhibits the development of subsequently discovered issues nor relieves a utility from its statutory burden of proof.

The second part of LG&E's motion requests that the Commission exclude from consideration the issue presented in the testimony of Paul D. Lawson on behalf of Airco Carbide, a division of the BOC Group ("Airco"). The issue is Airco's request for the Commission to reduce, from 28.5 MW to 4 MW, Airco's firm demand obligation contained in its electric service contract. LG&E argues that this service contract is the product of negotiations with Airco and is subject to Commission approval, but not Commission renegotiation. LG&E further claims that Airco's request is merely an indirect attempt to receive the rate reduction which it was unable to secure in a previous rate proceeding.

On February 27, 1984, Airco filed a response alleging that regulatory guidance was necessary to resolve this issue because its service contract had been approved by the Commission and LG&E has failed to express any intent to renegotiate it.

The Commission is of the opinion and hereby finds that a service contract, signed by a utility and its customer and approved by the Commission, represents the product of mutual negotiation and, except as to rates, is not subject to modification by the Commission.

Although the Commission makes no findings with respect to the merits of Airco's proposed modification, the importance of this issue to Airco is fully recognized. Consequently, the Commission finds that LG&E should commence good faith negotiations with Airco to determine if a mutual renegotiation can be achieved.

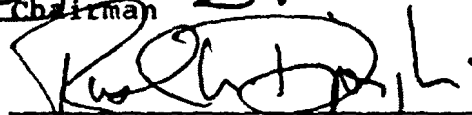
IT IS THEREFORE ORDERED that LG&E's motion to define the issues be and it hereby is granted to the extent that the Commission has determined that it is feasible in this proceeding.

IT IS FURTHER ORDERED that LG&E's motion to limit the issues be and it hereby is granted and LG&E is ordered to commence negotiations with Airco regarding its service contract.

Done at Frankfort, Kentucky, this 12th day of March, 1984.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary