

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF RATES OF )  
LESLIE COUNTY TELEPHONE ) CASE NO. 9430  
COMPANY, INC. )

O R D E R

On March 14, 1986, the Attorney General filed its Supplemental Request for Information seeking inter alia Federal and state income tax returns for 1982-1985 for Clear Path Co., Inc. ("Clear Path") and all Clear Path payroll records, payroll tax reports, equipment ledgers, and any other documentation which supports the invoices from Clear Path to Leslie County Telephone Co. ("Leslie") by invoice for 1982-1985. An informal conference was held on March 19, 1986, at which this request was reviewed by the parties. Leslie orally objected to the provision of this information and on March 31, 1986, filed its written objection to supplying the information based on relevancy.

On April 8, 1986, during the hearing on Leslie Co's rate application, the Attorney General moved the Commission to consider requiring Leslie to file the requested data concerning Clear Path and filed a Memorandum of Law in support thereof. The Commission heard arguments from all parties on the motion at the hearing.

DISCUSSION

The record is clear that the owners and directors of Leslie are also the owners of Clear Path. Thus, the usual presumption

that transactions between different entities are at "arms length" cannot be applied. Clear Path's transactions with Leslie must therefore be closely scrutinized, since they involve dealings between a regulated utility and a non-regulated, but affiliated, interest.

The Commission's obligation is to determine the reasonable level of expenses to be included when setting Leslie's rates. Various methods can be used to ascertain the reasonableness of charges of an affiliate to a regulated firm.<sup>1</sup> Of these methods, two options are not available to the Commission. One option, comparing prices of Clear Path and prices of other firms for the same services, cannot be utilized because no bids on the entire Leslie system have been obtained. Another option, comparing Clear Path's prices to Leslie with that of Clear Path's prices to other, unregulated and unaffiliated firms, cannot be utilized because Clear Path does not provide services to other firms.

Another method by which the reasonableness of these charges can be gauged is to examine the actual costs, including a reasonable return, of Clear Path in providing right of way service to Leslie. This information is precisely that information which the Attorney General seeks. The Commission is of the opinion that this information is relevant and necessary to the determination of the appropriate level of right-of-way expenses which should be allowed for rate-making purposes. KRS 278.190 places the burden

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<sup>1</sup> Gellhorn and Pierce "Regulated Utilities" (1982) at pp. 163-164.

of proof on Leslie in a rate proceeding. In reviewing this information, the Commission will not be regulating Clear Path -- its prices will be unaffected. The Commission will only examine the appropriate regulatory issue of the reasonableness of a utility's operating expense. The doctrine of res judicata does not apply in this case because the Commission did not expressly address the reasonableness of Clear Path's charges in Case No. 9002, Leslie's last rate case.

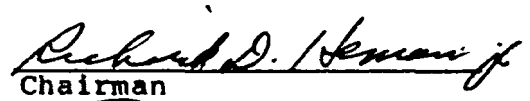
#### FINDINGS AND ORDERS

The Commission, having considered the data request, response, memorandum of law, arguments of the parties and being advised, FINDS that the tax and cost information sought by the Attorney General in its Supplemental Request for Information, Items (2)(f) and (j), dated March 14, 1986, concerning Clear Path should be provided since it is both necessary and relevant to a determination of the reasonable level of right of way expenses in this rate proceeding.

IT IS THEREFORE ORDERED that Leslie shall provide the information sought by the Attorney General's Supplemental Request for Information, Items (2)(f) and (j), dated March 14, 1986, within 10 days from the date of this Order. In recognition of the volume of documents which this material may represent, Leslie may avail itself of the offer made by the Attorney General to come to Leslie's offices to review documents.

Done at Frankfort, Kentucky, this 14th day of April, 1986.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary