

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------|---|----------------|
| GREEN RIVER STEEL CORPORATION |) | |
| |) | |
| Complainant |) | |
| |) | |
| v. |) | CASE NO. 10300 |
| |) | |
| KENTUCKY UTILITIES COMPANY |) | |
| |) | |
| Defendant |) | |

O R D E R

Kentucky Utilities Company ("KU") has applied for rehearing of that portion of the Commission's Order of March 27, 1990 which allows Green River Steel Corporation ("GRS") to terminate its contract for service on 90-days' written notice of termination. As grounds for its application, KU alleges that the Commission's ruling on this issue is contrary to the uncontradicted evidence, is not supported by specific findings, and would impose substantial and unnecessary costs on small users. The Commission denies KU's application, but clarifies our earlier Order.

KU's LCI-TOD rate schedule requires, inter alia, that a customer demonstrating a demand of 5,000 KW or greater will be furnished under contract for a fixed term of 5 years and for yearly periods thereafter, subject to 90-days' notice of termination. The rate schedule also provides that KU may require

a longer, fixed term of contract and termination notice because of conditions associated with a customer's service requirements.

When GRS sought electric service in March 1988 for its steel manufacturing plant in Daviess County, Kentucky, KU determined that GRS should be served on the LCI-TOD rate schedule and that a continuing 5-year notice of termination be a condition of service. GRS refused to accept these conditions. It instead filed a complaint against KU alleging, inter alia, that a continuing 5-year notice of termination was an unreasonable condition of service. The Commission held that as the LCI-TOD rate schedule did not expressly require a continuing 5-year notice of termination, KU bore the burden of demonstrating its reasonableness. The Commission further held that KU had not met this burden.

In its application for rehearing, KU first argues that the Commission erred because the evidence presented in support of the perpetual 5-year notice of termination is uncontroverted and is "substantial and comprehensive proof on this issue."

A party does not satisfy its burden of proof merely by providing uncontroverted evidence. The Kentucky Court of Appeals has noted:

Standing alone, unimpeached, unexplained and unrebutted evidence may or may not be so persuasive that it would be clearly unreasonable for the board to be convinced by it. There are some questions and circumstances in which no evidence is required to support a negative finding.

Energy Regulatory Comm'n v. Kentucky Power Co., 60 S.W.2d 46, 50 (Ky. App. 1980) (citation omitted). See also Citizens Tele. Co. v. Pub. Serv. Comm'n, 247 S.W.2d 510 (Ky. 1952).

The Commission finds KU's evidence unconvincing. KU's witnesses asserted that a continuing 5-year notice is required to avoid permanent and significant economic loss. Despite the significance which KU allegedly attaches to this provision, no mention of a continuing 5-year notice is contained in the LCI-TOD rate schedule. This absence, and the failure of KU's witnesses to explain its absence, undercuts KU's claims about the need and importance of such notice.

The Commission was also not persuaded by the testimony of KU's principal witness on this issue. He testified that the closure of GRS's steel plant in 1985 imposed costs on KU and affected KU's capacity planning. He did not, however, quantify these costs or identify the specific impact which GRS's departure had on KU's capacity planning. This witness also testified as to the costs of postponing the construction of new generating capacity. He stated that the sudden departure of large customers after construction of new generating capacity had begun would leave KU unable to modify its construction plans without significant costs which would have to be passed on to other ratepayers. He never indicated the departing load amount required to postpone or defer construction nor did he explain how GRS's sudden departure, at its present demand load, would affect KU's planning.

In its application for rehearing, KU relies heavily on decisions by the Federal Energy Regulatory Commission and its reviewing federal courts that a five-year continuing notice of termination requirement is fair, just and reasonable. See, e.g., Kentucky Utilities Co. v. FERC, 766 F.2d 239 (6th Cir. 1985). These decisions are readily distinguishable from the case at bar. They involved wholesale customers not retail customers. They based their approval of the 5-year continuing notice in large measure on the potential of KU's wholesale customers to switch electric suppliers on short notice. GRS lacks this ability. Under the Certified Territory Act, KU has the exclusive right to serve GRS. Furthermore, under an agreement between KU and Owensboro Municipal Utility ("OMU"), OMU, the nearest non-jurisdictional electric utility to GRS, is prohibited from serving GRS.

KU next argues that the Commission's Order of March 27, 1990 is defective because it contained no findings of specific evidentiary facts. In that Order, however, the Commission discussed the evidence presented and pointed to specific flaws in KU's arguments and its witnesses' testimony. We are required to do no more. As the Sixth Circuit Court of Appeals has stated, administrative agencies are "not required to supply a comprehensive explanation for the rejection of evidence." Cotter v. Harris, 650 F.2d 481, 482 (6th Cir. 1981.)

Finally, KU argues that the Commission's ruling would impose unnecessary and unreasonable costs on small users. It paints an apocalyptic picture of a massive defection of large users from

KU's system and of small users forced to shoulder the financial burden of excess capacity.

We find this argument to be irrelevant. The sole issue before the Commission is the application of the continuing 5-year notice of termination to GRS. Because the present LCI-TOD rate schedule does not expressly require a continuing 5-year notice from any customer, the Commission's focus must be limited. Its application to other users is not at issue. Furthermore, any consideration of its application to other large users must wait until KU revises its LCI-TOD rate schedule to require such notice from all LCI-TOD customers. Upon the filing of such rate revisions, the Commission will entertain KU's arguments on this issue and solicit the views of all interested parties, such as industrial users and the Attorney General.

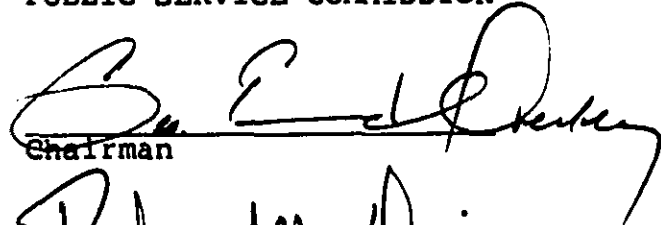
In the alternative to granting its application for rehearing, KU has requested that the Commission clarify our Order of March 27, 1990. After reviewing that Order, the Commission agrees that the Order requires clarification. The Commission never intended to permit GRS to terminate service at any time upon 90-days' notice. The Order is intended to go only to the continuing 5-year notice of termination and is not intended to disturb the fixed term of contract set out in the LCI-TOD rate schedule. Accordingly, the Commission finds that GRS may terminate the present contract for service by providing 90-days' written notice before the expiration of the initial contract term or the annual renewal period.

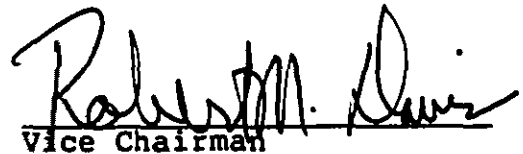
IT IS THEREFORE ORDERED that:

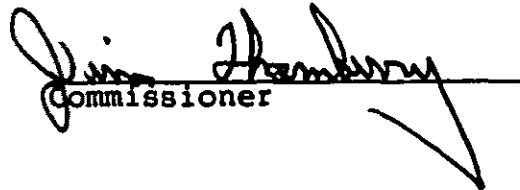
1. KU's application for rehearing is denied.
2. As long as the present contract between KU and GRS for electric service remains in effect, GRS may terminate electric service by providing written notice of termination to KU at least 90 days prior to the expiration of the initial 5-year term or the annual renewal period.
3. All other provisions of the Commission's Order of March 27, 1990 are affirmed.

Done at Frankfort, Kentucky, this 8th day of May, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director