

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALTERNATIVE FUEL FLEX TARIFF)
OF WESTERN KENTUCKY GAS COMPANY) CASE NO. 89-354

O R D E R

On March 9, 1990, the Attorney General of the Commonwealth of Kentucky, by and through his Utility and Rate Intervention Division ("Attorney General"), filed a motion to dismiss this proceeding. The Attorney General filed another motion on March 22, 1990 requesting that the Commission suspend its Interim Order of February 21, 1990 approving Western Kentucky Gas Company's ("Western") flex tariff on an interim basis. Western filed responses to these motions on March 14, 1990 and March 22, 1990, respectively. Additionally, on March 15, 1990, Kentucky Industrial Utility Customers ("KIUC") filed a request with the Commission to consolidate this case with the general rate case in Case No. 90-013.¹ This Order denies both of the Attorney General's motions and KIUC's request to consolidate.

In support of the motion to dismiss, the Attorney General states that Western failed to give notice pursuant to 807 KAR 5:011, Section 6(3) and Section 8. The Attorney General states

¹ Case No. 90-013, Rate Adjustment of Western Kentucky Gas Company.

that this failure to give notice creates a jurisdictional problem that should necessarily result in dismissal of this case. In support of the motion to suspend, the Attorney General states that everything in this proceeding is unlawful as is previously contended in his motion to dismiss. The motion additionally states that "the interim order should be suspended because it was entered without the consideration of all the evidence as the Attorney General had not yet intervened."

On February 21, 1990, the Commission issued an Interim Order approving Western's proposed flex tariff "on an interim basis pending the final Order of the Commission." The interim Order states, "(t)he issue of Western's proposed recovery methodology should be examined more closely before a final ruling is made. Accordingly, a hearing should be held to give Western the opportunity to support the reasonableness of its (proposed) recovery mechanisms." Western's proposed recovery of revenue shortfalls, resulting from discounted transportation rates, is not addressed in the tariff but rather in Western's cover letter of November 9, 1989. The Commission views the proposed tariff independent of the issue of flow through which is not a tariff issue, but necessarily becomes an issue due to implementation of the flex tariff.

The tariff filing in and of itself does nothing but allow Western to flex down the existing tariff transportation rate. The tariff is neither an establishment of a "new" rate or an increase of an existing rate. KRS 278.180 provides in part that "the

Commission may order the utility to give notice of its proposed rate increase to that utility's customers in a manner set forth in its regulations." Since Western's tariff is not a "proposed rate increase," the customer notice provisions in the Commission's regulations are not applicable. Western's proposed recovery of revenue shortfalls resulting from discounted transportation rates is not contained in the tariff at all and is not "a proposed rate increase." Accordingly, Western was not required to give the notice pursuant to 807 KAR 5:011, Section 6 and Section 8. There is no notice deficiency in this matter and therefore this case should not be dismissed and the Interim Order approving the flex tariff should stand. The fact that the Attorney General had not intervened at the time the Commission entered the Interim Order does not persuade the Commission to suspend its Order.

KIUC's motion to consolidate the remaining issues in this case with Western's rate case pending in Case No. 90-013 is similar to the motion the Attorney General filed on March 8, 1990 which the Commission denied. Likewise, and for the reasons stated in its previous Order, the Commission denies KIUC's request to consolidate the issues in this matter with Western's pending rate case. However, for the convenience of the parties in both cases, the hearing in this matter will be held immediately following the conclusion of the hearing in Case No. 90-013.

IT IS THEREFORE ORDERED that:

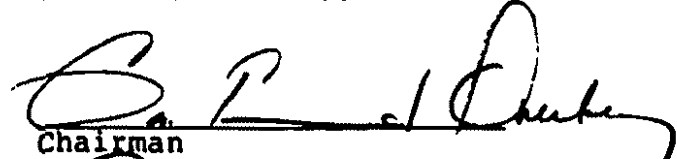
1. The Attorney General's motion to dismiss and the Attorney General's motion to suspend are hereby denied.


2. KIUC's motion to consolidate is hereby denied.

3. The hearing in this matter is hereby scheduled to be held immediately following the conclusion of the hearing on Case No. 90-013 which is scheduled to begin on June 20, 1990.

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

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director