

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF THE UNION LIGHT,)
HEAT, AND POWER COMPANY FOR AN) CASE NO. 92-346
ADJUSTMENT OF RATES)

O R D E R

On September 16, 1992, The Union Light, Heat and Power Company ("ULH&P") filed its application for authority to increase its rates for gas service by \$8,504,033 and for approval to modify its gas service tariffs. On February 8, 1993, ULH&P, the Intervenors, Attorney General of the Commonwealth of Kentucky, Newport Steel and Citizens Organized to End Poverty in the Commonwealth, filed a Joint Stipulation and Recommendation for the Commission's consideration. Commission Staff was neither privy to the negotiations nor a signatory to the agreement. ULH&P and the parties to the joint stipulation were provided the opportunity to present evidence to support the reasonableness of the agreement at a public hearing held on February 23, 1993.

After consideration of the agreement, the evidence of record and being otherwise sufficiently advised, the Commission finds that the agreement should be rejected in its entirety for the reasons discussed herein.

Parties to a Commission proceeding are encouraged to negotiate a resolution of any or all disputed issues. Public policy favors such action. However, even if acceptable to the parties, any

agreement must be lawful and reasonable when subjected to review by the appropriate governmental authority ultimately charged with the statutory responsibility of approving it. This rule was succinctly stated in Utah Dept. of Administrative Services v. Pub. Serv. Comm'n, 658 P.2d 601 (Utah 1983):

The law has no interest in compelling all disputes to be resolved by litigation. International Motor Rebuilding Co. v. United Motor Exchange, Inc., 193 Kan. 497, 499, 393 P.2d 949, 952 (1978). One reason public policy favors the settlement of disputes by compromise is that this avoids the delay and the public and private expense of litigation. The policy in favor of settlements applies to controversies before regulatory agencies, so long as the settlement is not contrary to law and the public interest is safeguarded by review and approval by the appropriate public authority.

Id. at 613. (Citations omitted) (footnote omitted).

The Commission is charged with the statutory responsibility to set fair, just and reasonable rates for utilities under its jurisdiction. KRS 278.030, 278.040. This responsibility requires balancing the interests of the utility and its shareholders with the interests of its customers. In exercising its authority to set rates, the Commission is bound by law to consider not only the reasonable operating expenses the utility incurs in providing service to its customers but also a reasonable level of return to the utility and its shareholders. At the same time, the Commission must consider the customers' interest in obtaining utility service at the lowest reasonable rate. Any decision entered by this

Commission regarding the rates set forth in the agreement must also be based upon the record created by the parties to the proceeding.

KRS 278.190 provides that at any rate increase hearing, the burden of proof to show that the increased rate is just and reasonable rests with the utility. At the hearing held to determine the reasonableness of the joint stipulation none of the witnesses testifying could identify for the Commission the level of rate base, cost of capital rates, or rates of return which would be generated by the total revenue increase to which the parties agreed.¹ Testimony was produced that indicated the parties had not determined a level of revenues or a reasonable level of operating expenses in arriving at the \$4,875,000 revenue increase agreed to in settlement.

Without any analysis of these issues, which are of seminal importance in a rate case, the joint stipulation and the testimony in support thereof fail to present sufficient information to describe, explain and justify the \$4,875,000 revenue increase agreed to by the parties. The Commission cannot accept settlements based on the naked assertion of the parties that the result is reasonable.

¹ Q: What capital structure and cost of capital rates do you assume are incorporated into this settlement agreement?

A: . . . We did not factor in any specific cost or rate base or rate of return. . . .

Tr. of Evid., ULH&P Witness Marshall, at 10.

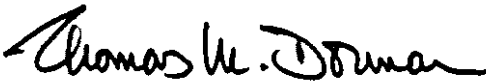
In reviewing the joint stipulation, the Commission is also concerned that issues of first impression have been resolved by the parties without being thoroughly explored by the Commission. Although the joint stipulation states that its provisions are not binding upon the parties or the Commission in future proceedings, our acceptance of certain provisions as reasonable, for instance FASB 106 costs, will be viewed by other utilities who seek to rely on those conclusions in future rate requests as the considered opinion of the Commission. Inclusion of FASB 106 costs was never proposed by any of the participants and the record is devoid of any evidence to support this adjustment. Their inclusion in the agreement is not, alone, sufficient basis for the Commission to accept them as a basis for fair, just, and reasonable rates.

IT IS THEREFORE ORDERED that the joint stipulation and recommendation be and it hereby is rejected in its entirety.

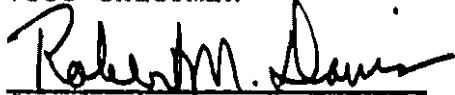
IT IS FURTHER ORDERED that a hearing to consider ULH&P's application for approval to adjust rates be and it hereby is scheduled for April 19, 1993, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky. ULH&P shall give notice of this hearing pursuant to 807 KAR 5:011, Section 5, and shall provide prior to the hearing certification that publication has occurred.

Done at Frankfort, Kentucky, this 24th day of March, 1993.

PUBLIC SERVICE COMMISSION



Vice Chairman



Commissioner

DISSENT OF CHAIRMAN OVERBEY

I agree that the record does not support the inclusion of the FASB 106 costs. Nor would I accept the IT and ICT tariffs as filed.

While I share many, but not all, of the concerns of the majority about other features and terms of the settlement and the possible consequences flowing therefrom, those concerns are not, in my view, sufficient to reject the settlement, absent the inclusion of the FASB 106 costs.

Testimony offered in support of a settlement may not and need not be of the type required to shore up claims/rebuttals typical of a full-blown rate case. The proof offered here was perforce hemmed in by and focused on the issue of whether the settlement was itself reasonable.

Sans the FASB 106 costs (and tariffs as filed) I believe the record supports the contention that the settlement falls within the parameters of reasonableness and ought to be adopted.


George Edward Overbey, Jr.
Chairman

ATTEST:


Executive Director