

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY)
POWER COMPANY d/b/a AMERICAN)
ELECTRIC POWER TO ASSESS A)
SURCHARGE UNDER KRS 278.183 TO)
RECOVER COSTS OF COMPLIANCE) CASE NO. 96-489
WITH THE CLEAN AIR ACT AND)
THOSE ENVIRONMENTAL)
REQUIREMENTS WHICH APPLY TO)
COAL COMBUSTION WASTES AND)
BY-PRODUCTS)

O R D E R

On June 5, 1997, Kentucky Power Company d/b/a American Electric Power ("Kentucky Power") filed a motion to stay that portion of the Commission's May 27, 1997 Order that requires Kentucky Power to file a revised tariff setting forth the terms of the environmental surcharge as approved by that Order. Kentucky Power states that it will either request rehearing or file an appeal and the time for doing either has not yet passed. Arguing that once the administrative process is finally concluded the terms of the tariff might differ from those approved on May 27, 1997, Kentucky Power seeks relief from the requirement to now file a tariff conforming to the environmental surcharge approved by the Commission. Alternatively, Kentucky Power requests the effective date of the surcharge be delayed until June 30, 1997 and the Commission provide that if the environmental surcharge is ultimately modified, the modifications will be implemented with interest retroactively to June 30, 1997.

Kentucky Industrial Utility Customers ("KIUC") filed a response in opposition to Kentucky Power's motion, citing KRS 278.390 and Case No. 92-493¹ for the proposition that neither a petition for rehearing nor an appeal operates as a stay of a Commission Order.

Based on the motion and being otherwise sufficiently advised, the Commission finds that Kentucky Power has failed to show good cause sufficient to stay the requirement to file a revised tariff conforming to the environmental surcharge approved by the May 27, 1997 Order. It is not uncommon in Commission proceedings for the affected utility or an intervenor to request rehearing or file an appeal. The fact that further administrative proceedings may or will be held which could result in future changes to an approved tariff does not justify suspending the effectiveness of an approved tariff.

The Commission notes that Kentucky Power voluntarily chose to initiate this case to implement an environmental surcharge. Despite the six month statutory review period established by KRS 278.183(2), Kentucky Power designated its proposed tariff to be effective on December 31, 1996, which was only 34 days into that six month period. Thus, it appears that Kentucky Power wanted to implement its surcharge tariff with all deliberate speed until it became cognizant of the Commission's modifications to the tariff. Neither a utility's nor an intervenor's dissatisfaction with a Commission decision is

¹ Case No. 92-493, an Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause Of Kentucky Utilities Company from November 1, 1993 to April 30, 1994.

sufficient cause to suspend the decision pending further administrative proceedings or implement future modifications on a retroactive basis.

The Commission further finds KIUC's citation to Case No. 92-493 to be inapplicable. In that case the utility did not request a stay of the Commission's Order but merely ignored it because the time to request a rehearing had not yet expired. The utility was advised by letter from the Commission's Executive Director that there was no automatic stay of a Commission Order during the time to file a rehearing. However, KRS 278.390 specifically authorizes the Commission to modify its orders, and in this instance Kentucky Power has requested such a modification. Thus, the decision herein is based on the merits of Kentucky Power's motion.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion is denied.
2. Kentucky Power shall file within 7 days of the date of this Order its revised tariff sheets as required by the May 27, 1997 Order. In the event that the tariff sheets are not filed as ordered, such inaction shall be deemed to be an abandonment of the request to implement an environmental surcharge which will result in a revocation of the May 27, 1997 Order and a dismissal of this case.


Done at Frankfort, Kentucky, this 20th day of June, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner