COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FIDELITY CORPORATE REAL ESTATE, LLC COMPLAINANT v. THE UNION LIGHT, HEAT AND POWER COMPANY DEFENDANT	)))))))))	CASE NO. 99-393

O R D E R

Fidelity Corporate Real Estate, LLC ("Fidelity") has brought a complaint against The Union Light, Heat and Power Company ("ULH&P") in which it alleges that the utility unreasonably and unlawfully refused to provide natural gas service under the utility's Rate IT. At issue is whether ULH&P acted unreasonably or unlawfully in refusing to consolidate Fidelity's gas usage at three discrete metering points to permit Fidelity to qualify for service under its Rate IT. Finding that ULH&P's refusal was consistent with the provisions of its filed rate schedule and was neither unlawful nor unreasonable, we deny the complaint.

PROCEDURE

On September 2, 1999, Fidelity brought a complaint against ULH&P in which it alleged that ULH&P had unreasonably discriminated against Fidelity by refusing to provide transportation service to Fidelity under the utility's Rate IT. ULH&P answered the complaint and moved for its dismissal. On February 25, 2000, the Commission denied ULH&P's motion and established a procedural schedule in this matter.

Following discovery in this matter, which was characterized by the parties' repeated requests for continuance, the parties on January 17, 2001, agreed to submit this case on the existing record. They subsequently requested that the Commission refer this matter to mediation. Following an unsuccessful settlement conference held on May 30, 2001, the parties submitted written briefs on their positions. This matter stood submitted for decision on July 16, 2001.

STATEMENT OF THE CASE

ULH&P, a Kentucky corporation, owns and operates a gas distribution system that serves approximately 83,414 customers in Boone, Campbell, Grant, Kenton, and Pendleton counties, Kentucky.[1] It is a utility subject to Commission jurisdiction. KRS 278.010(3)(c); KRS 278.040.

Fidelity, a Massachusetts corporation,[2] is the real estate management subsidiary of FMR Corporation. It owns and operates a campus on Magellan Drive in Kenton County, Kentucky, just northwest of the intersection of Interstate Highway 275 and Kentucky State Route 16. Fidelity or its affiliate companies currently employ approximately 2800 persons at this campus.

The 200-acre campus consists of two office buildings, a print-mail facility, a greenhouse, and several parking structures.[3] Its office buildings, respectively, have 82,110 and 73,094 square feet of space. The print-mail facility has approximately

[1] The Union Light, Heat and Power Company FERC Form No. 2 (2000) at 301.

[2] In its complaint, Fidelity identifies itself as a limited liability company. The records of the Kentucky Secretary of State, however, indicate that it is a corporation organized under the laws of Massachusetts.

[3] Testimony of Lynne Begier at 1.

182,815 square feet of space. Fidelity constructed these buildings and placed them into service in late 1993 and early 1994.[4]

Fidelity has plans to expand its campus. It is currently expanding the print-mail facility to increase its capacity by 25 percent. When the expansion is completed, this facility will employ an additional 500 persons. It is also considering the construction of a new 350,000 square foot office building, which would employ 1500 additional persons.[5]

ULH&P provides natural gas service to Fidelity's campus through two gas transmission mains. A 24-inch transmission main traverses Fidelity's campus and serves Fidelity's print-mail facility. A 2-inch transmission main runs approximately 990 feet from the 24-inch transmission main through the center of the campus to serve Fidelity's two office buildings. Both mains operate at a pressure of 300 pounds per square inch.[6] Service to each office building, the greenhouse, and the print-mail facility is separately metered. ULH&P does not serve any other customers from the 2-inch transmission main. ULH&P began serving the print-mail facility on October 17, 1993 and began service to Fidelity's two office buildings in late 1994.[7] It provides service to these facilities under its Rate GS.

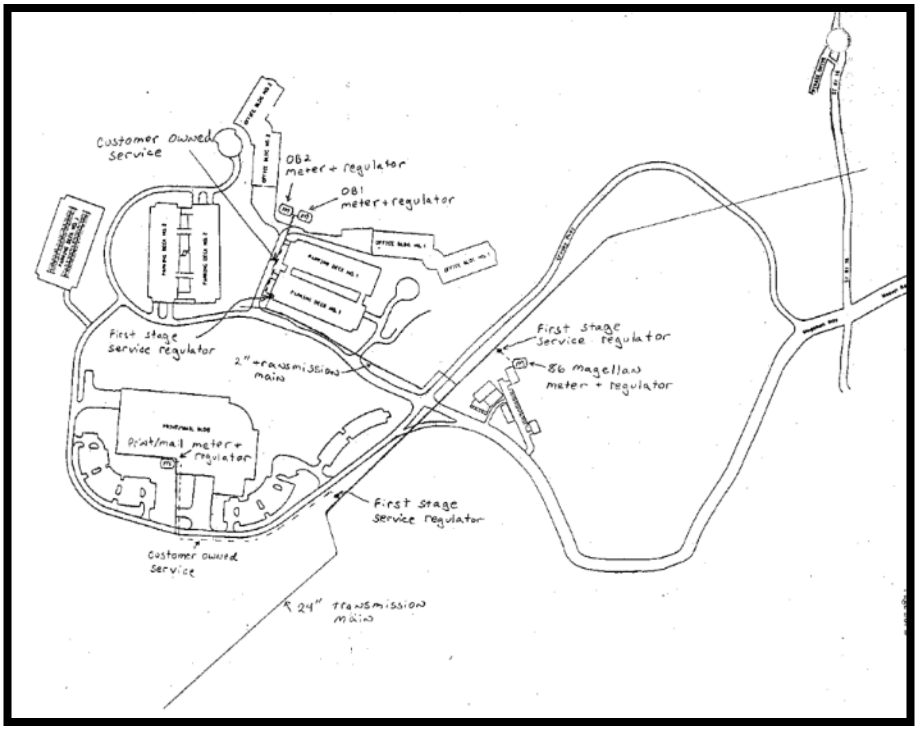
[4] Fidelity's Response to Commission Staff's First Set of Interrogatories and Request for Production of Documents at Item 5.

[5] Id. at Item 6.

[6] ULH&P's Response to Commission Staff's First Set of Interrogatories and Requests for Production of Documents at Item 5.

[7] Id. at Item 2.

Fidelity's Covington Campus



Source: ULH&P's Response to Commission Staff's First Set of Interrogatories, Item 1

In 1999 Fidelity began to investigate taking gas service under ULH&P's Rate IT. Service under Rate IT is curtailable transportation service. Under this service, a customer arranges for delivery of natural gas to ULH&P that is then transported through ULH&P's transmission and distribution system. ULH&P has the right to interrupt temporarily the delivery of natural gas to such customer when necessary to preserve the continuity of gas service to customers receiving service under other rate schedules.[8] Service under Rate IT is available only to customers who use "a minimum of 10,000 CCF per month during the seven consecutive billing periods commencing with customer's first meter reading taken on or after April 1."[9]

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[8] These customers are those served under Rate RS (Residential Service), Rate GS (General Service), Rate FT (Firm Transportation Service), and Rate SS (Standby Service).

[9] ULH&P Tariff Sheet No. 50.2 at 1.

Fidelity found that a switch from Rate GS to Rate IT produces significant cost savings. When constructing its Covington campus, Fidelity installed in each building heating systems capable of operating on either fuel oil or natural gas, and constructed on the site underground fuel oil storage tanks and distribution pipelines.[10] It determined that, based upon its usage from 1996 through 2000, Fidelity would have achieved savings of $155,719 if allowed to receive service under Rate IT.[11] It further determined that, if its natural gas usage were aggregated, it would meet the eligibility requirements of Rate IT.

In May 1999, Fidelity discussed with ULH&P officials service under Rate IT. Asserting that Fidelity's projected summer load would not meet the eligibility requirements of Rate IT, ULH&P rejected Fidelity's request for service.[12] Fidelity subsequently brought its complaint to the Commission.

Based upon its actual usage in 1999 and projections of expected usage resulting from the expansion of its print-mail facility, Fidelity projects annual natural gas usage at its campus will be 300,000 CCF. It further projects monthly natural gas usage of 10,000

[10] Fidelity's Response to ULH&P's First Set of Discovery Requests at Items 3, 4 and 5. This fuel system is also used to operate standby electric generators that are operated when electric service is interrupted or during high-cost electric periods.

[11] Rebuttal Testimony of Robert L. Talbot at 1. There is a significant difference in the cost of interruptible and firm transportation service. While the administrative charges are the same, a Rate IT customer pays $.075 per CCF and a Rate FT customer pays $.2007 per CCF.

[12] See Letter from Michael J. Heath, Account Engineer, The Union Light, Heat and Power Company, to Robert L. Talbot, Vice-President for Corporate Real Estate, Fidelity Corporate Real Estate, LLC (June 1, 1999); Testimony of William A. Ginn at 8.

CCF during the non-peak months of April through October for 2001 and 2002.[13] ULH&P does not dispute these projections, but notes that only the print-mail facility will take sufficient quantity of gas to qualify for Rate IT service.[14]

DISCUSSION

At issue in this proceeding is whether ULH&P's refusal to provide service to Fidelity's campus in its entirety under Rate IT is unlawful and whether the eligibility requirements of Rate IT are unreasonable.

ULH&P bases its refusal to serve Fidelity's campus in its entirety under Rate IT upon the eligibility requirements contained in the Rate IT Schedule. This schedule provides that it is

> [a]pplicable to curtailable transportation service and available to any customer who: (1) signs a contract with the Company for service under Rate IT; (2) utilizes a minimum of 10,000 CCF per month during the seven consecutive billing periods commencing with customer's first meter reading taken on or after April 1; and (3) has arranged for the delivery of gas into the Company's system, or requests Company to purchase and deliver gas, for **customer's sole use at one point of delivery** where distribution mains are adjacent to the premise [sic] to be served.[15]

ULH&P contends that, except for the print-mail facility, none of the delivery points where Fidelity takes natural gas service takes gas at the required minimum. Therefore, ULH&P asserts, Rate IT is not available to those points.

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[13] Fidelity's Response to Commission Staff's First Set of Interrogatories and Request for Production of Documents at Item 7a.

[14] Brief of ULH&P at 3. ULH&P no longer objects to providing natural gas service to the print-mail facility under Rate IT. It continues to oppose providing such service to the other metering points on Fidelity's campus.

[15] ULH&P Tariff Sheet No. 50.2 at 1 (emphasis added).

Fidelity argues the total usage of the Fidelity campus, not the usage of one metering point, is the controlling factor. It notes that "one point of delivery" is not defined within ULH&P's rate schedules and that these schedules do not specifically require the delivery of service through one meter. ULH&P's rate schedule, it argues, requires only that delivery occur "where distribution mains are adjacent to the premise [sic] to be served." In this instance, it notes, delivery is made to one premises – the Fidelity campus.

We are not persuaded by this argument. ULH&P's rate schedules define "the point of delivery" as the "outlet side of [the] Company's pipe where connected to the curb valve."[16] A delivery point is generally recognized as "a place where a buyer's and seller's pipelines are physically connected." Martorano v. Department of Public Utilities, 516 N.E.2d 131, 132 (Mass. 1987). In this case, the record indicates that at least three delivery points exist on the Fidelity campus. Under the provisions of Rate IT, eligibility is based upon the quantity delivered to the delivery point. No provision for aggregating usage at these delivery points is mentioned or permitted.

We find nothing in the record to suggest that ULH&P's refusal to provide service is unlawful. KRS 278.160(1) requires ULH&P to file with the Commission schedules that show the conditions under which it will provide service and the rate for such service. These schedules govern how ULH&P will render service. ULH&P must comply with them. KRS 278.030(2). In this instance, ULH&P correctly complied with those rules when refusing to provide service to Fidelity under Rate IT.

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[16] ULH&P Tariff, Sheet No. 21.1 at 2.

Fidelity also argues that the eligibility requirements for Rate IT are unreasonable and that allowing Fidelity to receive natural gas service under Rate IT will not disrupt or hinder ULH&P's operations. It asserts that the only basis for the usage eligibility requirement is to ensure prompt interruption of a Rate IT customer's service when interruption is necessary to maintain service for non-Rate IT customers and the Rate IT customer refuses to discontinue service when requested to discontinue. It notes that no Rate IT customer has ever refused to voluntarily discontinue gas service when requested and that there is no evidence to suggest that Fidelity is likely to refuse such request. It further notes that, because of Fidelity's campus setting in which all metering points are closely grouped, ULH&P will incur little additional expense if a ULH&P service technician must visit the campus to close the valves that control the flow of natural gas to the campus.

An essential purpose of Rate IT service is load management. Rate IT service allows ULH&P to improve its system load factor and lower the average cost of providing service by permitting ULH&P to add additional annual load without significantly increasing the utility's system peak. A utility must have sufficient capacity to meet its peak demand. Adding additional customers will normally increase system peak and require additional investment. Under Rate IT service, however, ULH&P may interrupt service to Rate IT customers on short notice, thus materially reducing demand on its system and avoiding the need for additional capacity.

Under Rate IT requirements, ULH&P may request Rate IT customers to interrupt their deliveries of natural gas when necessary to maintain service to firm service customers. These requests are made by telephone. The customer, not the utility, then interrupts the service by closing the valves that control the flow of natural gas to its facilities. If the customer refuses to interrupt delivery, ULH&P retains the right to physically discontinue service. ULH&P has installed automatic metering equipment on each Rate IT customer metering site to monitor customer usage.[17] Currently, ULH&P can reduce its system peak day requirements by approximately 14 percent by calling its 18 Rate IT customers and requesting interruption.[18]

ULH&P argues that the reduction of the usage eligibility requirements of Rate IT will make the rate difficult to administer. If use eligibility requirements were liberalized and additional customers were served under Rate IT, ULH&P warns, significant problems in the notification and monitoring of requested interruptions are likely. It estimates the cost of administering the program would also increase significantly.

The Commission shares ULH&P's concerns. Increasing the number of persons eligible for Rate IT will make effective notification and monitoring of Rate IT customer usage more difficult and more costly. Furthermore, if the usage eligibility requirements remained unchanged but usage aggregation were permitted, as Fidelity proposes, the same concerns will exist. While the number of eligible customers might not increase significantly, the number of metering points that must be monitored would increase.

While the Commission recognizes that Fidelity's metering points are closely grouped, we find nothing in the record to suggest that the closeness of metering points renders the existing eligibility requirements unreasonable. Fidelity proposes no definite, discernible standard based on the proximity of meters. The record, moreover, fails to reflect how many other customers have closely grouped metering points or could easily

[17] ULH&P's Response to Fidelity's First Set of Interrogatories and Requests for Production of Documents at Items 13 and 15.

[18] Direct Testimony of William A. Ginn at 5.

and rapidly interrupt service at several metering points. It also fails to reflect how many ULH&P customers would be eligible for Rate IT under a "closely grouped" standard or the effect of such standard on the administration of Rate IT. Although it has the burden of demonstrating that the usage eligibility requirements are unreasonable, Energy Regulatory Commission v. Kentucky Power Co., Ky.App., 605 S.W.2d 46 (1980), Fidelity has failed to do so.

We failed to find any merit to Fidelity's contention that the usage eligibility requirements are unreasonably discriminatory and thus contrary to KRS 278.170.[19] While these requirements discriminate against customers with limited consumption, this discrimination is reasonable. If the distinctions based upon usage at metering points are removed, Rate IT cannot be easily administered, nor its purposes achieved.

We also find no merit to Fidelity's contention that ULH&P's administration of Rate IT "hinders and obstructs Fidelity's ability to effect cost savings to which it is reasonably entitled."[20] The record shows that Fidelity can redesign its internal distribution system to permit the delivery of natural gas through one metering point.[21] Moreover, Fidelity was aware of the usage eligibility requirements of Rate IT when it originally designed its campus, but chose not to design its campus to maximize its potential benefit from

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[19] No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

[20] Brief for Petitioner at 3.

[21] Direct Testimony of John Stenger at 2.

Rate IT.[22] Other ULH&P customers who operate in a campus setting have faced a similar decision and have designed their internal distribution systems to take delivery of natural gas through a single metering point.[23] Fidelity's inability to effect cost savings is in large measure the result of its own decision. We can find no legal basis to afford it preferential treatment to mitigate the effects of that decision.

SUMMARY

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Fidelity has failed to demonstrate by a preponderance of evidence that ULH&P has acted unreasonably or unlawfully in refusing to consolidate Fidelity's gas usage at three discrete metering points in determining Fidelity's eligibility for service under Rate IT.

IT IS THEREFORE ORDERED that Fidelity's request for relief is denied.

Done at Frankfort, Kentucky, this 5th day of November, 2001.

By the Commission

ATTEST:

Executive Director

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[22] See Letter from Von E. Huffaker, Representative, Energy Marketing, ULH&P, to John R. Sheringer, Chief of Mechanical Discipline, KZF Incorporated (Oct. 28, 1992). The usage eligibility requirements of Rate IT have existed since 1990. See ULH&P Tariff Sheet No. 50 (issued Oct. 9, 1990; cancelled Sept. 9, 1993) at 1.

[23] See Fidelity's Response to Commission Staff's First Set of Interrogatories and Request for Production of Documents at Item 7.