

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE TARIFF FILING BY	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	CASE NO.
TO IMPLEMENT KRS 278.214	)	2002-00345

and

AN INVESTIGATION OF THE TARIFF FILING BY	)	
KENTUCKY UTILITIES COMPANY TO	)	CASE NO.
IMPLEMENT KRS 278.214	)	2002-00346

and

AN INVESTIGATION OF THE TARIFF FILING BY	)	
THE UNION LIGHT, HEAT AND POWER	)	CASE NO.
COMPANY TO IMPLEMENT KRS 278.214	)	2002-00348

and

AN INVESTIGATION OF THE TARIFF FILING BY	)	
KENTUCKY POWER COMPANY D/B/A AMERICAN	)	CASE NO.
ELECTRIC POWER TO IMPLEMENT KRS 278.214	)	2002-00349

O R D E R

On September 27, 2002, the Commission entered its Orders in these cases, in each instance suspending a tariff filed in response to the Executive Director's letter directing the filing of a tariff to implement KRS 278.214. Our September 27 Orders also required the filing of certain documents and information to clarify the applicability of the respective tariffs. Louisville Gas and Electric Company, Kentucky Utilities Company, The Union Light, Heat and Power Company ( ULH&P ), and Kentucky Power Company d/b/a American Electric Power (collectively, Utilities ) duly responded to the Orders.

Kentucky Industrial Utilities Customers, Inc. ( KIUC ) has requested, and has been granted intervention, in Case Nos. 2002-00345, 2002-00346, and 2002-00349.

Simply stated, KRS 278.214 prohibits a regulated utility in Kentucky from curtailing or interrupting retail electric service due to an emergency on its transmission system until after it has curtailed or interrupted service to persons who have agreed to receive interruptible service as well as to customers outside its territory. The tariffs filed in these cases do not expressly provide that retail electric service will be afforded the priority mandated by KRS 278.214. In their respective responses to the September 27, 2002 Orders, the Utilities stated that such priority cannot be expressed because the priority mandated by KRS 278.214 is, or may be, preempted by federal law. Thus, the issue in all these cases is whether the filed tariffs cannot express the retail service priority mandated by KRS 278.214 because that statute is, or may be, preempted by federal law. Accordingly, the Commission consolidates these cases for procedural purposes and sets the following briefing schedule for resolution of this issue.

The Commission notes that ULH&P already filed a brief on November 26, 2002, but it may participate in the briefing schedule established herein if it chooses. In addition, a copy of this Order will be sent to the Attorney General s Office so he too may participate in the briefing schedule.

IT IS THEREFORE ORDERED that:

1. No later than March 14, 2003, the Utilities shall file individual or joint briefs on the legal issue of whether their respective tariffs cannot express the provisions of KRS 278.214 because that statute is preempted by federal law.

2. No later than March 28, 2003, KIUC and the Attorney General may file a response brief.

3. A copy of this Order shall be served on the Attorney General.

Done at Frankfort, Kentucky, this 28<sup>th</sup> day of February, 2003.

By the Commission

ATTEST:

  
Executive Director