COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE UNION LIGHT, HEAT AND POWER COMPANY FOR APPROVAL OF ITS PROPOSED ECONOMIC DEVELOPMENT RIDERS	))))	CASE NO. 2004-00253

O R D E R

The Union Light, Heat and Power Company ("ULH&P"), on June 18, 2004, filed an application for approval of three economic development rate ("EDR") tariffs. The proposed EDR tariffs were: (1) Rider BR, Brownfield Redevelopment Rider; (2) Rider ED, Economic Development Rider; and (3) Rider UR, Urban Redevelopment Rider. The Attorney General of the Commonwealth of Kentucky ("AG") is the only intervenor in this proceeding. Pursuant to the AG's request, a procedural schedule was established for the filing of written comments on the proposed tariffs. The AG subsequently filed comments in opposition to the proposed tariffs and ULH&P filed response comments. At the request of ULH&P, an informal conference was held on November 19, 2004. In addition to the parties, the Kentucky Cabinet for Economic Development attended at the request of ULH&P.

Based on the issues discussed at the informal conference, ULH&P amended its application on December 10, 2004 to consolidate Riders ED and BR into a new Rider DIR, Development Incentive Rider, and to revise Rider BR. The primary features of the amended riders are to require (1) special contracts for each customer to be served under the riders and (2) the riders to be conditional upon the customer continuing to take service for a specified period of time subsequent to the rate discount period. The

AG then filed written comments opposing the amended EDR tariffs and ULH&P filed reply comments in support of the tariffs. The case now stands submitted for decision.

BACKGROUND

In Administrative Case No. 327 ("Admin. 327"),[1] the Commission established guidelines for EDRs, which, as the name implies, are intended to promote economic development efforts by offering rate, or other incentives, to utility customers. One of the guidelines established in Admin. 327 was that EDRs should be offered by special contract rather than by general tariffs. Another of the guidelines was that the length of a contract should be at least twice the length of the incentive period set out in the contract. In its initial application, ULH&P proposed to depart from these guidelines, a departure as to which the AG and Commission Staff both expressed concern.

The motivation for EDRs, as set out in Admin. 327, is to provide "incentives to new large commercial and industrial customers to locate facilities in Kentucky and to existing large commercial and industrial customers to expand their operations, thereby bringing much needed jobs and capital investment into Kentucky."[2] A number of utilities have filed EDR contracts in conformity with the Admin. 327 guidelines, although none of those contracts are still in effect.

DISCUSSION

One of the guidelines set forth in Admin. 327 was that EDR rates should be offered through special contracts negotiated directly with the customer, rather than

[1] An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities, Order dated September 24, 1990.

[2] *Id.,* Finding No. 1, at 25.

being offered through a tariff. By utilizing a special contract, a utility would be better able to determine the extent to which an incentive rate was truly needed to secure a new customer or an expansion by an existing customer. Use of a special contract would, thus, reduce the potential that an incentive rate would be given to a customer who intends to locate or expand within the utility's territory regardless of an incentive rate.

ULH&P's request to establish EDR tariffs is based on its belief that there have been significant changes in circumstances since the 1990 decision in Admin. 327. The most significant of those changes, according to ULH&P, is today's widespread use of the Internet by customers to research utilities' available tariffs. The absence of a tariffed incentive rate might discourage a new or existing customer from making further inquiry, particularly when utilities in other states do have incentive rate tariffs. ULH&P further states that its proposed EDR tariffs are similar to those offered by its affiliates in Ohio and Indiana, and the tariffs are needed to ensure that ULH&P is not at a competitive disadvantage with those adjacent service territories.

The proposed Economic Development Program contained in ULH&P's amended Rider DIR, provides that eligible loads must be a minimum of 1,000 kilowatts ("kW") at a single delivery point and that the customer employ, at minimum, an additional 25 full-time equivalent employees per 1,000 kW and make a capital investment of $1 million per 1,000 kW of new load. Under the proposed Urban Redevelopment Program, also in amended Rider DIR, a qualifying new customer would locate in an existing building of at least 25,000 square feet, which has been unoccupied or remained dormant for at least 2 years and would have a minimum load of 500 kW at one delivery point. Under Rider

DIR, qualifying customers' total bills for electric service, less any rate adjustment riders on the applicable standard service tariff, would be reduced by 50 percent for 12 months. Customers would be required to take service at the same or greater demand and usage levels for at least 2 years following the 12-month period in which their bills were reduced as described above.

Rider BR, as amended, would be available to customers locating in a qualified brownfield redevelopment area as defined by Kentucky or federal law. Customers on Rider BR would have the demand charge component of their bills reduced by 50, 40, 30, 20, and 10 percent, respectively, during years 1 through 5 of the period they are on the rider. Customers, under the amended rider, would be expected to take service from ULH&P for 3 years following the 5-year period in which they would receive a demand charge discount.

Under ULH&P's amended EDR riders, customers must enter into special contracts and they must continue to take service for a specific period of time subsequent to the discount period. In his January 18, 2005 comments on the amended application, the AG claims that Rider DIR, which allows ULH&P to rebill a customer, under certain conditions, 2 years after the discount period, for usage during the discount period at its standard tariff rates, would be in conflict with KRS 278.225. That statute provides that "All service supplied by a utility shall be billed within two (2) years of the service. No customer shall be liable for unbilled service after two (2) years form the date of the service, unless the customer obtained the service through fraud, theft, or deception."

The AG also claims that Riders DIR and BR run afoul of KRS 278.170 by granting reduced rates to parties not designated in that statute to receive reduced rates. Therefore, the AG argues, the proposed EDR tariffs are illegal. The AG states that although utilities may create reasonable classes of service under KRS 278.170(1) and may charge reasonable rates under KRS 278.030, that does not form a basis on which to grant free or reduced rates to individuals within those classes.

ULH&P responds to the AG by stating that there is no conflict with KRS 278.225. ULH&P argues that this statute applies only to situations where a utility has failed to render a bill for service. Under its proposed EDR tariffs, ULH&P claims that it will render a timely bill for service and the customer will agree at the outset that its receipt of the incentive rate is conditioned upon taking service for a number of years after the incentive rate has expired. If the customer fails to satisfy this condition, ULH&P will then rebill the customer at the otherwise applicable non-incentive rates.

ULH&P counters the AG's objection regarding KRS 278.170, stating that the Commission can authorize service at reduced rates for economic development purposes. ULH&P cites the economic development guidelines approved in Admin. 327 as recognition by the Commission of its authority to approve such rates.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that economic development rates can be a very useful incentive to attract, and encourage the expansion of, large commercial and industrial facilities which create new jobs and invest capital in Kentucky, or locate in designated areas.

As noted by ULH&P, our existing economic development guidelines were developed almost 15 years ago in Admin. 327. Since that time, regional wholesale

electric power markets have developed and many states have authorized large commercial and industrial customers to choose their electric supplier. Although ULH&P's electric rates are relatively low in the Midwest region, competition is fierce for customers that will bring new jobs and invest capital. Similarly, incentives are often needed to encourage customers to locate in urban redevelopment or brownfield sites.

Although the Commission determined in Admin. 327 that economic development rates should be offered by special contract rather than by a tariff, ULH&P's amended EDR tariffs are consistent with that guideline. ULH&P's tariffs condition the incentive rates on the negotiation of a customer-specific contract, which should all but ensure that incentives will be offered only when necessary. In addition, ULH&P has shown that its proposed economic development incentive rates are designed to recover the variable costs of serving the new or expanded load and make a contribution to its fixed costs. With the incentive rates designed in this manner, the other customers of ULH&P will be expected to benefit from the new or expanded load during the incentive period.

ULH&P's proposal, specifically those aspects which target urban and brownfield redevelopment, reflects an innovative approach to promoting and assisting economic development efforts in Northern Kentucky. The Commission commends ULH&P for its willingness to take an active role in these efforts.

The Commission shares the AG's concern that ULH&P's EDR tariffs could run afoul of KRS 278.225. In the event that a customer's consumption decreased 1 to 2 years after the incentive period, ULH&P's attempt to rebill for service during the incentive period could result in a claim that the 2-year statutory limitation on billing was being violated. Rather than having to decide this issue now in the abstract, the

Commission finds that minor revisions to the EDR tariffs will eliminate the issue. Under those revisions, as set out in Appendix A to this Order, rather than ULH&P rebilling the customer to eliminate the incentive rate, the customer would be required to pay, for a specified time after the incentive period, a minimum bill based on the customer's level of consumption during the incentive period.

The Commission does not agree with the AG's argument that economic development rates can be approved only if they pass muster under the provisions of KRS 278.170(2) and (3), which specify the conditions for a utility to grant free or reduced-rate service. To the contrary, utilities are expressly authorized by KRS 278.030(3) to:

> [E]mploy in the conduct of its business suitable and reasonable classifications of its service, patrons and rates. The classifications may, in any proper case, take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.

There is nothing illegal or unreasonable about creating a special class consisting of customers who locate or expand facilities in Kentucky and, by doing so, satisfy minimum job creation and capital investment levels. Similarly, there is nothing illegal or unreasonable about creating a special class consisting of customers who locate within a designated urban redevelopment or brownfield site. These factors clearly fall within the "any other reasonable consideration" for classifying customers under KRS 278.030(3).

IT IS THEREFORE ORDERED that:

1. ULH&P's amended EDR tariff Riders DIR and BR, as modified by the findings herein and as set forth in Appendix A, attached hereto, are approved effective on and after the date of this Order.

2. Within 20 days from the date of this Order, ULH&P shall file its EDR tariff riders as approved herein, showing their date of issue and that they were issued by authority of this Order.

Done at Frankfort, Kentucky, this 19th day of April, 2005.

By the Commission

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2004-00253 DATED April 19, 2005

The following language shall replace the language included in the amended tariff riders proposed by The Union Light, Heat and Power Company.

BROWNFIELD REDEVELOPMENT RIDER
Terms and Conditions

ORIGINAL

The customer shall enter into a Service Agreement with the Company which shall specify, among other things, the voltage at which the customer will be served.

The customer is expected to continue to take service from the Company for a period of three (3) years following the five (5) year incentive period.

REVISED

The customer shall enter into a Service Agreement with the Company which shall specify, among other things, the voltage at which the customer will be served and monthly minimum levels of demand and usage.

The Special Contract shall be in effect for a minimum term of eight (8) years and the customer shall be billed monthly based on the greater of: (a) its actual monthly demand and usage levels; or (b) the minimum monthly demand and usage levels specified in its Service Agreement and Special Contract.

DEVELOPMENT INCENTIVE RIDER
Terms and Conditions

ORIGINAL

Following the effective date of the Special Contract, the customer must maintain a minimum demand in accordance with the Service Agreement and maintain a monthly average load factor of 40 percent. Failure to do so will result in the customer's Special Contract being terminated.

The customer shall continue to take service from the Company at the same or greater demand and usage levels for a period of at least two (2) years following the

twelve (12) month incentive period. Failure to do so will result in the Company rebilling customer under standard service rates for usage during the incentive period.

REVISED

Following the effective date of the Special Contract, the customer must maintain a minimum demand in accordance with the Service Agreement and maintain a monthly average load factor of 40 percent. Failure to do so will result in the customer being billed a minimum bill based on the minimum demand specified in the Service Agreement and a monthly average load factor of 40 percent.

The customer shall continue to take service from the Company at the same or greater demand and usage levels for a period of at least of two (2) years following the twelve (12) month incentive period. The customer shall be billed monthly for two (2) years following the twelve (12) month incentive period based on the greater of: (a) its actual monthly demand and usage levels; or (b) its average demand and usage levels during the twelve (12) month incentive period.