

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF THE GAS RATES OF THE )      CASE NO.  
UNION LIGHT, HEAT AND POWER COMPANY )      2005-00042

O R D E R

On September 14, 2005, The Union Light, Heat and Power Company (“ULH&P”) moved for interim Commission approval of a new Accelerated Mains Replacement Program (“AMRP”) Rider to take effect with the first billing cycle in October 2005. The proposed AMRP Rider would be subject to refund and would remain in effect until ULH&P implements the new general gas rates to be established in this case. The proposed AMRP Rider rates would remain at the same level as ULH&P’s current AMRP Rider rates.<sup>1</sup> ULH&P states that if the Commission grants its requested relief, it would refrain from placing its proposed general gas rates in effect subject to refund for October 2005. ULH&P, however, reserves the right to place its proposed general gas rates into effect subject to refund beginning in November 2005.

In support of its motion, ULH&P states that the current AMRP Rider produces annual revenues of approximately \$4.5 million, which is substantially less than the proposed \$14.0 million increase in general rates that ULH&P seeks. ULH&P contends that the Commission has jurisdiction to approve new AMRP Rider rates because those rates would be lower than the full increase ULH&P has the legal right to place into effect

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<sup>1</sup> The current AMRP Rider rates are scheduled to expire at the end of the September 2005 billing cycle.

and because the Commission has already held a hearing on ULH&P's pending rate increase. ULH&P argues that implementing a new AMRP Rider now would avoid customer confusion that would likely occur since ratepayers would see a decrease effective October 1, 2005, due to the current AMRP Rider expiring, followed immediately by placing its proposed rate increase into effect, which would then be decreased in the future if a refund of those rates were necessary. ULH&P states that its customers should not be subjected to such volatile rate-making treatment.

The Attorney General ("AG") opposes ULH&P's request. He continues to challenge the lawfulness of the AMRP Rider. He further states that the Commission previously refused to grant the requested relief in Case No. 2004-00403.<sup>2</sup>

ULH&P elected to file the current general gas rate application utilizing a forecasted test period. The forecasted period is from October 1, 2005 through September 30, 2006. In its application, ULH&P noted that the current AMRP Rider would terminate shortly before the beginning of the forecasted test period. The AMRP Rider was incorporated into ULH&P's proposed rates for the forecasted test period. ULH&P further proposed that if the Commission approved the continuation of the AMRP Rider, the next filing to set the AMRP Rider would not be filed until March 2008. The Commission's March 21, 2005 Order in this case suspended ULH&P's proposed general gas rate increase for 6 months, through September 30, 2005, and established that briefs in this case would be due no later than September 21, 2005.

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<sup>2</sup> Case No. 2004-00403, The Union Light, Heat and Power Company's Motion for Extension of Filing Date and Continuation of Its Current Rider AMRP Rates, final Order dated January 27, 2005.

The Commission finds that ULH&P's motion to implement a new AMRP Rider effective with the first billing cycle in October 2005 should be denied. In Case No. 2001-00092,<sup>3</sup> the Commission authorized the AMRP Rider for a 3-year period. In Case No. 2004-00403, the Commission concluded that it could neither extend the filing date for the next general gas rate case nor continue the AMRP Rider beyond the originally authorized 3-year period due to the AG's actions for judicial review of our Orders in Case No. 2001-00092. Although ULH&P attempts to distinguish its current requested relief from that requested in Case No. 2004-00403 we find nothing to distinguish the current request from ULH&P's previous request. ULH&P has not demonstrated any change in circumstances since our Order of January 27, 2005 in Case No. 2004-00403 to warrant a different result. Consequently, we again find that the AG's action for review of our Orders in Case No. 2001-00092 deprives the Commission of jurisdiction to consider ULH&P's motion.

Assuming that we had jurisdiction to consider ULH&P's motion, the result would remain unchanged. ULH&P has offered no authority to support its position that the Commission may authorize on an interim basis and subject to refund any rates other than those which we suspended at the outset of this case. ULH&P has cited no statute, regulation, or previous Commission decision in which the rates to be collected subject to refund at the end of a suspension period were anything less than the utility's proposed rates. Likewise, ULH&P has cited no authority in support of its position that, if the AMRP Rider were continued for October 2005, it could still put its proposed rates into

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<sup>3</sup> Case No. 2001-00092, Adjustment of Gas Rates of The Union Light, Heat and Power Company, final Order dated January 31, 2002.

effect subject to refund in November 2005. KRS 278.190 is quite clear on the options a utility has at the end of a suspension period – it may put its proposed rates into effect subject to refund or it may not. There is no phase-in or gradual implementation provided for at the end of the suspension period.

As to ULH&P's contention that customer confusion will result if the requested relief is denied, we are not persuaded that such confusion will occur nor that it is sufficient to justify the requested relief.

IT IS THEREFORE ORDERED that ULH&P's motion is denied.

Done at Frankfort, Kentucky, this 29<sup>th</sup> day of September, 2005.

By the Commission

ATTEST:



Executive Director