

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RUSSELL D. ALRED)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2008-00142
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

Complainant, Russell D. Alred, initiated the instant proceeding alleging that the fuel adjustment clause of Defendant, Kentucky Utilities Company ("KU"), was unlawful and contrary to Kentucky law. KU subsequently filed an Answer asserting that its fuel adjustment clause is lawfully imposed pursuant to Commission regulation 807 KAR 5:056. At the request of KU, an informal conference was held at the Commission's offices on July 18, 2008 to discuss any potential issues related to the complaint. By Order dated August 11, 2008, a procedural schedule was established providing for one round of discovery and an opportunity for the parties to request a hearing.

During the course of discovery, Complainant filed a motion to voluntarily dismiss his complaint on the grounds that the matter had been resolved by agreement. A telephone conference was then held on September 12, 2008 to discuss the terms of the agreement. Shortly after the telephone conference, Complainant faxed to the

Commission an amended motion to dismiss, requesting that “this case be dismissed with prejudice that this matter has been resolved as the Complainant is satisfied.”

By Order dated November 24, 2008, the Commission directed the parties to file a detailed report setting forth the complete terms of the proposed agreement between the parties. KU filed a response to the November 24, 2008 Order, describing the terms of the agreement. In particular, KU stated that Complainant contacted KU’s counsel by telephone and advised that he intended to withdraw his complaint. Complainant then suggested that KU contribute funds for construction of public playground equipment as a gesture of good will to the community. KU agreed and has contributed funds for the construction of a playground in Complainant’s community. Notwithstanding such contribution, KU states that there has been no formal settlement agreement and that no document memorializing any such agreement exists. KU further states that it or “its agents have not given and will not give Complainant or his agents any consideration, payment, kickback, secret rebate or other similar thing of value in exchange for his dismissal of the complaint.”

KU also points out that the Kentucky Court of Appeals recently ruled in *Kentucky Public Service Commission and the Duke Energy Kentucky, Inc. f/k/a The Union Light Heat and Power Company v. Commonwealth of Kentucky, Ex. Rel. Greg Stumbo*, Case No. 2007-CA-001635-MR (November 7, 2008) that fuel adjustment clauses are lawful. In light of this ruling, KU maintains that the complaint is ripe for dismissal even in the absence of Complainant’s desire to withdraw his complaint.

Although 807 KAR 5:001, Section 12, requires Commission approval of any settlement agreement in a formal complaint proceeding, the Commission agrees with

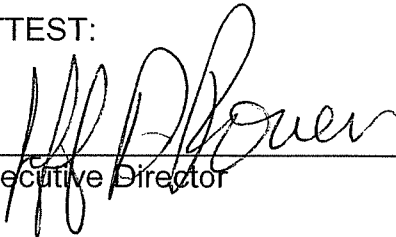
KU that this matter is ripe for dismissal, given the Kentucky Court of Appeals holding in the *Duke* case, and will not make a determination as to the reasonableness of the proposed settlement agreement. In ruling that fuel adjustment clauses are lawful, the *Duke* Court noted that the Kentucky Supreme Court “has specifically recognized with approval the prevailing view that separate rate proceedings for fuel adjustment expenses are valid.”¹ The *Duke* ruling is fatal to Complainant’s claim that KU’s fuel adjustment clause is unlawful and contrary to Kentucky law. The Commission will, therefore, dismiss the complaint as a matter of law.

IT IS THEREFORE ORDERED that the complaint is dismissed with prejudice for failure to state a claim upon which relief could be granted.

Done at Frankfort, Kentucky, this 6th day of March, 2009.

By the Commission

ATTEST:


Executive Director

¹ *Ky Pub. Serv. Comm’n and the Duke Energy Kentucky, Inc. f/k/a The Union Light Heat and Power Co. v. Commonwealth of Kentucky, Ex. Rel. Greg Stumbo*, at 10, citing *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Co.*, 983 S.W.2d 493 (Ky. 1998).

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