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JOHN J. FINNIGAN, JR.
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VIA OVERNIGHT MAIL

October 29, 2004

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

CINERGY
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NOV 01 2004

PUBLIC SERVICE
COMMISSION

Re: Reply Memorandum of The Union Light, Heat and Power Company in Support of
Motion for Extension of Filing Date and Continuation of the Current Rider
AMRP Rates
Case No. 2004-00403

Dear Ms. O'Donnell:

Enclosed please find an original and 12 copies of The Union Light, Heat and Power
Company's Reply Memorandum in the above captioned case.

Please return two Filed-Stamped copies in the enclosed overnight envelope.

If you have any questions, please feel free to contact me at (513) 287-3601.

Sincerely,



John J. Finnigan, Jr.

JJF/sew
Enclosures

cc: Anita Mitchell w/enclosure
Elizabeth Blackford w/enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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NOV 01 2004

In the Matter of the Request of)
The Union Light, Heat and) Case No. 2004-00403
Power Company for Extension)
of Filing Date and Continuation)
of Rider AMRP Rates)

PUBLIC SERVICE
COMMISSION

REPLY MEMORANDUM OF
THE UNION LIGHT, HEAT AND POWER COMPANY
IN SUPPORT OF MOTION
FOR EXTENSION OF FILING DATE
AND CONTINUATION OF THE CURRENT
RIDER AMRP RATES

The Attorney General raises several arguments against ULH&P's motion to extend the "rates effective" date for its next general gas rate case, with a continuation of the current Rider AMRP rates. The Attorney General's arguments are without merit and should be rejected.

First, the Attorney General argues that the Commission previously ruled that ULH&P must file a new general gas rate case with a "rates effective" date of June 1, 2005 in order to continue the Rider AMRP rates; that this order is final and was not appealed by ULHP; and cannot now be changed.¹ This argument has no merit because the Commission has the authority to modify its orders unless and until the order has been suspended or vacated by a court on appeal.

¹ Attorney General's Response to ULH&P's Motion (October 15, 2004) at 1-2.

The Commission retains such ongoing jurisdiction under KRS 278.390, which states:

278.390 Enforcement of orders

The commission may compel obedience to its lawful orders by mandamus, injunction or other proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction, and such proceedings shall have priority over all pending cases. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, *or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.*²

The Commission retains jurisdiction to modify its orders even after an appeal has been taken.³ The Kentucky Supreme Court has stated: “It is as obvious as the acropolis of Athens that an order of the commission continues in force until revoked or modified by the commission or unless suspended or vacated in whole or in part by the Franklin Circuit Court.”⁴ In ULH&P’s previous Rider AMRP proceedings, the Commission has modified the “rates effective” date for ULH&P’s next general gas rate case, even though the Attorney General had already appealed the rate case order that established this schedule.

² KRS 278.390 (Emphasis added.)

³ *Commonwealth ex rel. Stephens v. South Central Bell Telephone Co.*, 545 S.W.2d 927 (Ky. 1976); *Mike Little Gas Co. v. Pub. Serv. Comm’n*, 574 S.W.2d 926 (Ky. App. 1978); *ULH&P v. Pub. Serv. Comm’n*, 271 S.W.2d 361 (Ky. App. 1954); *In the Matter of the Joint Petition of Kentucky-American Water Co., Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., Appollo Acquisition Co. and American Water Works Co., Inc. for Approval of a Change of Control of Kentucky-American Water Co.*, Case No. 2002-00317 (Opinion and Order dated March 13, 2003); *In the Matter of Bethany Christian Mission Center, Inc. v. Holly Creek Production Corp.*, Case No. 98-282 (Opinion and Order dated June 21, 2000).

⁴ *Commonwealth ex rel. Stephens v. South Central Bell Telephone Co.*, 545 S.W.2d 927 (Ky. 1976) at 9-10.

This occurred during the first year of ULH&P's Rider AMRP proceedings, where the Commission ruled that the "rates effective" date for ULH&P's next general gas rate case should be extended to September 1, 2005,⁵ even though the Commission had previously ruled that the "rates effective" date should be June 1, 2005,⁶ and the Attorney General had already appealed that decision to the Franklin Circuit Court.⁷ In the present motion, ULH&P is simply asking the Commission to once again extend the "rates effective" date for its next general gas rate case, as the Commission previously did during the pendency of the Attorney General's appeal of the Commission's original January 31, 2002 Order in Case No. 2001-00092. This is clearly permitted under KRS 278.390, and the Commission previously did so in ULH&P's Rider AMRP proceedings. The Attorney General's argument that the Commission has no power to do so surely must fail.

The Attorney General next argues that the Rider AMRP rates should not be continued if ULH&P files its next general gas rate case with a "rates effective" date after September 1, 2005 because using a forecasted test period and collecting Rider AMRP rates would be "double dipping." This argument is meritless. ULH&P merely proposes to extend the "rates effective" date for its next general gas rate case, and to continue the current Rider AMRP rates until the Commission's final order in such next case. No "double dipping" will occur if ULH&P uses a forecasted test period and if the Commission approves continuing Rider AMRP, because Rider AMRP would be re-set at

⁵ *In the Matter of an Adjustment of Rider AMRP of The Union Light, Heat and Power Co.*, Case No. 2002-00107 (Order dated May 24, 2002).

⁶ *In the Matter of an Adjustment of Gas Rates of The Union Light, Heat and Power Co.*, Case No. 2001-00092 (Order dated March 13, 2002).

zero from the effective date of revised rates in ULH&P's next general rate case, until the Commission's Order in ULH&P's next Rider AMRP proceeding following the rate case, just as the Commission ordered in Case No. 2001-00092.

The Attorney General also argues that the Commission should not extend the "rates effective" date for ULH&P's next general gas rate case and continue current Rider AMRP rates because ULH&P has not established that it cannot file its next general gas rate using existing 2004 budget data. This argument misses the point. Certainly ULH&P could file its next general gas rate case using existing data, but if ULH&P is granted this extension of time, it can use more current data that will become available early in 2005. This would enable ULH&P to establish new rates based on a later forecasted test period, and would enable ULH&P to stay out from filing another general gas rate case for a longer time period, and possibly to not request renewal of Rider AMRP. ULH&P's customers would benefit from the delay in implementing ULH&P's next general gas rate increase and all parties would benefit from any delay in future rate proceedings.

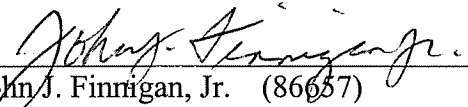
Finally, the Attorney General argues that the Commission should overrule ULH&P's motion on the grounds that Rider AMRP is illegal and, even if Rider AMRP were not illegal, the costs of the Rider AMRP program to customers outweigh any benefits. ULH&P notes that the Commission has considered these arguments on numerous occasions and has consistently rejected these arguments;⁸ therefore, these arguments have no merit.

⁷ *Commonwealth of Kentucky, ex rel. A.B. Chandler, III, Attorney General vs. Pub. Serv. Comm'n*, Civil Action No. 04-CI-01308 (Franklin Circuit Court) (Complaint filed April 5, 2002).

⁸ *See, e.g., In the Matter of an Adjustment of Gas Rates of The Union Light, Heat and Power Co.*, Case No. 2001-00092 (Order dated January 31, 2002).

Based on the foregoing, ULH&P requests that the Commission approve the revised "rates effective" date with continuation of the current Rider AMRP rates, as requested herein.

THE UNION LIGHT, HEAT AND
POWER COMPANY


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CERTIFICATE OF SERVICE

I hereby give notice that on this 29th day of October, 2004, a copy of the foregoing Reply Memorandum of The Union Light, Heat And Power Company in Support of Motion for Extension of Filing Date and Continuation of the Current Rider AMRP Rates on the following party by regular U.S. mail, postage prepaid.



John J. Finnigan, Jr.

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