COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE UNION LIGHT, HEAT AND POWER COMPANY'S MOTION FOR EXTENSION OF FILING DATE AND CONTINUATION OF ITS CURRENT RIDER AMRP	))))	CASE NO. 2004-00403

O R D E R

On November 10, 2004, the Commission directed the parties to submit within five days any request for a public hearing in this matter. On November 15, 2004, The Union Light, Heat and Power Company ("ULH&P") requested a hearing. In a subsequent telephone conference with the Attorney General ("AG") and Commission Staff, it clarified its request as a request for oral arguments. The AG objects to a hearing for the sole purpose of hearing oral arguments.

The AG advances two grounds in opposition to ULHP's request. First he argues that the Commission lacks the authority to hold hearings solely to hear oral argument as "[h]olding a hearing for the purpose of something other than the taking of evidence does not appear to be legislatively contemplated for the Commission's function as a fact finding body." AG's Objection to ULH&P's Request for Oral Argument at 2. He further argues that the oral arguments are outside of the scope of the Commission's Order of November 10, 2004 and would not promote administrative economy.

We find no authority for the AG's position that this agency is without the authority to hear oral arguments. The AG has failed to provide any support for his position. To the contrary, Kentucky courts have long recognized the Commission as a quasi-judicial

body with quasi-judicial powers. See Simpson County Water Dist. v. City of Franklin, Ky., 872 S.W.2d 460, 465 (1994) ("The PSC [Public Service Commission] acts as a quasi-judicial agency using its authority to conduct hearings, render findings of fact and conclusions of law and utilizing its expertise in the area and to the merits of rates and service issues."). See also Energy Regulatory Commission v. Kentucky Power Co., Ky., 605 S.W.2d 46 (1980); Frankfort Kentucky Natural Gas Co. v. City of Frankfort, 276 Ky. 199, 123 S.W.2d 270 (1938). Moreover, they have recognized that the "right to be heard by counsel upon the probative force of the evidence adduced by both sides, and upon the law applicable thereto" is a necessary component to of any hearing. Mayfield Gas Co. v. Public Service Commission, Ky., 259 S.W.2d 8, 10-11 (1953) (emphasis added).[1]

As to the AG's second argument, we find that oral arguments are within the scope of our November 10, 2004 Order. The purpose of any hearing is to ensure that all factual and legal issues are fully developed and explored. The presentation of oral arguments in this matter is likely to advance that purpose and to aid the Commission's understanding of the issue. They are therefore in the interest of administrative economy.

[1] The AG's position also conflicts with KRS Chapter 13B, which governs the procedures of most administrative agencies. KRS 13B.080(4) requires that parties be permitted to present evidence and argument "to the extent necessary for the full disclosure of all relevant facts and issues." While the Commission is exempt from the provisions of KRS Chapter 13B, the statute is clear evidence that the General Assembly intended that administrative agencies entertain oral arguments.

Having considered the pleadings and being otherwise sufficiently advised, the Commission finds that ULH&P's request should be granted and that oral arguments be held in this matter.

IT IS THEREFORE ORDERED that:

1. ULH&P's request for oral arguments is granted.

2. The parties shall present oral argument to the Commission on December 6, 2004, at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky on the following issues:

a. The merits of ULH&P's request to amend the filing date of its next general rate adjustment application;

b. The Commission's authority to amend the required date for filing such application as the Order that specifies the date is currently the subject of an action for review before Franklin Circuit Court;[2]

c. The Commission's authority to amend, by our Order of May 24, 2002 in Case No. 2002-00107,[3] the required date for filing an application for ULH&P's next general rate adjustment application.

3. Each party shall have 30 minutes to present its argument.

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[2] In our final Order on rehearing in Case No. 2001-00092, the Commission directed ULH&P to time the filing of its next rate case so that the new rates proposed in that case would become effective on and after June 1, 2005. On April 5, 2002, the AG brought in Franklin Circuit Court an action for review of that Order. Commonwealth of Kentucky v. Public Service Commission, Civil Action No. 02-CI-00499 (Franklin Cir. Ct. Ky.).

[3] Case No. 2002-00107, An Adjustment of Rider AMRP of The Union Light, Heat and Power Company.

4. ULH&P shall have the right to open and close oral argument. Prior to its opening argument, it shall advise the Commission of the portion of its allotted time that it is reserving for rebuttal.

Done at Frankfort, Kentucky, this 2nd day of December, 2004.

By the Commission

ATTEST:

Executive Director