

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

PADDOCK AT EASTPOINT, LLC, LOUIS K. :
KLEMENZ, AND ST JOSEPH CATHOLIC :
ORPHAN SOCIETY :

:

COMPLAINANTS :

CASE NO. 2004-00293

v. :

LOUISVILLE GAS AND ELECTRIC :
COMPANY :

DEFENDANT :

LOUIS K. KLEMENZ AND
ST. JOSEPH CATHOLIC ORPHAN SOCIETY'S
BRIEF

Comes the Complainants, Louis K. Klemenz and St. Joseph Catholic Orphan Society, by their respective counsel, and file their Brief in response to the Order entered on October 15, 2004.

STATEMENT OF FACTS

Complainants, respectively are the owners of the life estate and a remainder interest in a certain parcel of real estate containing approximately 101 acres (the "Property") in Louisville, Jefferson County, Kentucky. The Defendent, Louisville Gas & Electric Company ("LG&E") has filed a condemnation action to acquire an easement over a portion of the Property. The easement will run approximately 1,849 feet immediately contiguous with the easterly right-of-way of the

Snyder Freeway. The easement is purported to have an approximate width of 80 feet. The purpose of the easement is to provide a right-of-way to extend 138 KV electric transmission lines. Petitioners have heretofore joined in the Petition before the Public Service Commission (“PSC”) to enter an Order requiring LG&E to file an application to extend its 138 KV electrical lines pursuant to KRS 278.020.

LG&E contends that the July 13, 2004 amendment to KRS 278.020 cannot be retroactively enforced.

The PSC by its Order of October 15, 2004 created a briefing schedule to determine whether the July 13, 2004 amendment was remedial.

ISSUE

Complainants contend that the July 13, 2004 amendment is remedial and is controlling with respect to the Petitioner’s proposed extension of certain of its electrical lines.

ARGUMENT

Prior to July 13, 2004, KRS 278.020 granted jurisdiction to the PSC with respect to proposed extensions of services by a utility. The statute includes a defined procedure with respect to a utility extending its service. The procedure includes the application inclusive of requisite information upon which the PSC may render a learned decision.

The Kentucky Court of Appeals in Duerson v. East Kentucky Power Co-Op., Inc., 843 S.W.2d 340(Ky. Ct. Apls. 1992) affirmed the judgment of the Circuit Court. The Kentucky court cited 807 KAR 5:001, §9(3) and noted that the PSC had adopted a regulation defining extensions

in the ordinary course of business. The Court recited that the foregoing statute and regulation were designed to protect the public against exorbitant utility rates emanating from unnecessary and duplicitous power facilities. We submit that the review of the PSC must be based upon whether or not the extension service adversely affects the public health, safety and welfare, as well as facts relevant to rate review.

The July 13, 2004 amendment provided the PSC objective standards upon which the PSC may determine whether an application for a Certificate of Convenience and Need is requisite in order to support an application for the extension of service. It is clear that the July 13, 2004 amendment provides a procedure by which the PSC may determine whether a Certificate of Need and Necessity must be filed. A denial of such procedure would result in a utility having the unqualified right to extend service without being responsive to review by the PSC. A reservation of rights without supporting standards is invalid and unenforceable under Section 2 of the Kentucky Constitution.

In Peabody Co. v. Gossett, Ky., 819 S.W. 2d 33 (1991), the Court held that remedial statutes do not come within the legal conception of a retroactive law or the general rule against the retroactive operation of statutes. In keeping with that decision, it is the position of Complainants that the July 13, 2004 amendment relates to a mode of procedure, i.e., information upon which the PSC may determine whether a certificate is required.

The Kentucky Court of Appeals in Wetzel Miracle v. Riggs, 918 S.W.2d 745 (Ky. App. 3/15/1976) in response to the contention the statute then in issue stated that the amendment set forth a procedure, not a substantive change. We contend that the July 13, 2004 amendment was procedural. It is without question that utilities are a regulated industry. PSC is vested not only with the jurisdiction to review rates but also to review service. Concurrent with its responsibility to

review service, the legislature intended and did enact KRS 278.020 as amended. The purpose was to set forth standards under which the PSC may determine whether a Certificate of Need and Necessity is to be filed prior to the extension of such service.

In Bowling v. Special Fund, Ky., 878 S.W.2d 22 (1994), the court cited Peabody Co., supra. The Court stated that a remedial statute must be so construed as to make it affect the evident purpose for which it was enacted, so that if the reason of the statute extends to past transactions, as well as to those in the future, then it will be applied.

CONCLUSION

Complainants submit that the 2004 amendment was procedural. Chapter 75 (Senate Bill 246) overruled Duerson v. East Kentucky Power Co-op, Inc., 843 S.W.2d 340 (Ky. Ct. App. 1992). Accordingly, the July 13, 2004 amendment is remedial with respect to procedure. Absent the procedure, the PSC would be stripped of power to require that an extension of service by a utility must be supported by an application in which information relevant to the request is to be reviewed by the PSC.

Respectfully submitted,



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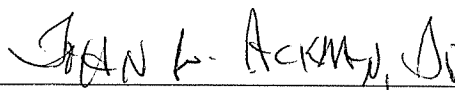
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
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- and -



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CERTIFICATE OF SERVICE

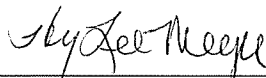
I hereby certify that a true and correct copy of the within Brief on behalf Louis K. Klemenz and St. Joseph Catholic Orphan Society was served this 27th day of October, 2004, by pre-paid first class U.S. mail, to the following:

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