

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter Of:

THE REQUEST OF THE UNION LIGHT, HEAT AND )  
POWER COMPANY FOR A FILING EXTENSION )  
AND FOR CONTINUATION OF RIDER AMRP RATES )

CASE NO. 2004-00403

ATTORNEY GENERAL'S RESPONSE TO  
ULHP'S MOTION

The Union Light, Heat and Power Company seeks an extension of six months past the date established in Case Number 2000-00092 to file a rate case should it wish to continue the AMRP program and to continue the Rider AMRP rates in effect until such time as it does file a rate case and get a decision on same. The stated reasons for seeking the delay are to implement new computer programs for Cinergy Services Inc., and to allow for the incorporation of company-wide changes in its budgeting, forecasting and financial reporting processes (the company-wide reference appears to refer to Cinergy, not ULH&P) and, possibly, to utilize a future test year with budgeting data already submitted to management.

The AMRP Rider is illegal, and the Attorney General does not agree to an extension of that Rider. Should ULH&P wish to forfeit the Rider AMRP by failing to file a rate case within the time specified by the Commission, it may do so. In that event, the timing of any subsequent filing is wholly within the discretion of ULH&P.

Even if the Attorney General did not object to the Rider AMRP as illegal, ULH&P specifically sought clarification of the initial Commission Order and was given the directive to

file a case with a rate effective date of June 1, 2005. After establishing that date for filing its next rate case, the Commission went on to say,

...[I]n the event that ULH&P seeks and the Commission approves the continuation of the AMRP Rider in the next gas rate case, the AMRP Rider level established by the third filing effective on June 1, 2004 will remain in effect until the timetable for continued AMRP Rider filings established in the next rate case can be placed into operation.<sup>1</sup>

ULH&P sought and received clear guidelines concerning its obligations should it wish to continue the Rider AMRP rate recovery. Nevertheless, it now seeks to continue that extraordinary rate recovery as if it were just more standard rate recovery while it delays the prescribed filing. ULH&P has had three years to consider its options and to plan for its compliance with the Commission's mandate. The mandate is final. Though that Order was appealed on other grounds, ULH&P did not appeal this requirement and it should not now be changed.

ULH&P suggests as further grounds for granting a delay the fact that it is considering use of a future test year and wants the budgeted information presented to coincide with that presented to its managers. First, it does not commit to a filing using a future test year, but instead, says only that it is considering this option. This alone constitutes no reason to grant a delay. Further, while the Attorney General commends ULH&P for considering movement to a forecasted test year, that move would not warrant continuation of the Rider AMRP. In fact, it militates against it. One cannot set rates based on a future test year looking 18 months into the future and then authorize annual filings to increase those base rates because of expenses actually incurred in the year following the implementation of the base rates without clear double dipping.

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<sup>1</sup> Order on Rehearing dated March 13, 2002, p. 24-25 in Case No. 2001-00092.

Those expenses, albeit budgeted rather than incurred at the time of inclusion in base rate, would already be recovered in the base rates.

Next, ULH&P states that a delay would allow it to use budget data available as of early 2005 rather than that available as of 2004, with an implied contention that only if the data for 2005 is used would the data contain the same assumption and methodologies used by management. There is nothing in this argument that indicates the 2004 data was not that which contains the assumptions and methodologies used by management or that such data would not be as fully compliant with the administrative regulation as the newer data. The very nature of the future test year as described in KRS 278.192(2) is such that the date of filing dictates the parameters of the dates of the data used. There is no question but what a later filing date causes later data to become relevant. This is no ground to grant a delay that includes a continuation of the Rider AMRP.

ULH&P states as grounds for the continuation that no one has objected to the effectiveness of the AMRP program. It is unclear whether this statement means no one has objected that ULH&P is actually and effectively replacing the mains it proposed to replace (after confessing itself that it had lingered far too long without doing mains replacement and thus had allowed a potentially dangerous situation to develop with that inaction) or whether it means no one has objected to the effectiveness of the rate recovery for the accelerated mains replacement.

The annual filings are single-issue rate making that have been limited in scope only to the amount of the added work done and the added rate recovery to be granted for work done. There has been no opportunity to object either to the efficacy of the program or to the efficacy of the recovery. The AG does not advocate that ULH&P should continue unsafe practices. Regardless, there will come a point in the program where safety issues have been primarily resolved through

replacements done-to-date so that continued accelerated replacement for the full ten year period may no longer be efficacious. In Ohio, the Commission designed the companion program to occur over a 15 year period in the first place, not a 10 year period. That design, by spreading the increments over more years, effectively reduced costs by lessening the size of the work force that had to be on the job simultaneously. As the Kentucky program progresses, slowing the pace of replacement may be appropriate for Kentucky.

Certainly no one can argue that the rate as designed has been less than effective in giving shareholders maximum return of and on their investment through its placement of all of the recovered expense in a monthly customer charge. The full cost of the mains replacement would not be included in the customer charge had these assets been allocated like the mains included in base rates. This Rider shifts all risk for recovery of and return on investment from the shareholder to the rate payer. Maximum return has also been given by locking in the return at a rate based on a 1999 test year. Ratepayers have lost out on lowered rates of return that have accompanied the dismal 2000-2002 financial picture. Even small movements in return, when applied to ULH&P's entire rate base, would have offset at least part of the cost of the accelerated mains replacement program. Likewise, by locking in the billing determinants at the level of the 1999 test year, ratepayers have lost out on the reduction in individual contribution to costs that occurs from customer growth and have placed all benefits of growth in the hands of shareholders. These are questions directed to effectiveness of the AMRP Rider. There may be others.

Furthermore, as the mains replacement program continues, each incremental year's additional replacement creates a larger and larger rate base. Consequently, each succeeding year's addition becomes a smaller and smaller percentage of ULH&P's total rate base.

Therefore, each succeeding year's addition has a smaller and smaller impact on the company's finances. At some point, extraordinary rate relief is no longer needed or appropriate.

Finally, ULH&P states that it would avoid confusion to continue the Rider AMRP rates until the expenses are rolled-in to base rates. Bluntly, it is safe to say that ULH&P's customers would appreciate the rate relief that would accompany any interim cessation of the operation of the Rider AMRP more, probably much more, than they would appreciate the elimination of confusion that would accompany any interim continuation of the rate.

ULH&P should be required to abide by the deadlines it sought and received or to accept the consequences of the failure to comply with the Commission's Order of March 13, 2002..

Respectfully submitted,

Gregory D. Stumbo  
Attorney General


A handwritten signature in black ink, appearing to read "Elizabeth E. Blackford". The signature is written in a cursive style with a large initial "E".

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NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 15th day of October, 2004 and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to Counsel for ULH&P at the following address:

HONORABLE JOHN J FINNIGAN JR  
HONORABLE MICHEL J PAHUTSKI  
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