

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE ENVIRONMENTAL)
SURCHARGE MECHANISM OF KENTUCKY)
POWER COMPANY FOR THE SIX-MONTH)
BILLING PERIODS ENDING DECEMBER 31, 2002,)
DECEMBER 31, 2003, JUNE 30, 2004,)
DECEMBER 31, 2004 AND DECEMBER 31, 2005,)
AND FOR THE TWO-YEAR BILLING PERIODS)
ENDING JUNE 30, 2003 AND JUNE 30, 2005)

CASE NO. 2006-00128

Attorney General's Petition for Rehearing

The Commission entered its Order on January 31, 2007. That Order made no provision for the collection of any part of the environmental surcharge subject to refund nor to record keeping that would allow for refunds should the Attorney General and the Kentucky Industrial Utility Customers win the argument that the collection of the environmental surcharge costs of Ohio Power Company and Indiana & Michigan allocated to Kentucky Power Company under the Capacity Settlement Charge of the Interconnection Agreement is unlawful. That issue is now pending before the Kentucky Court of Appeals on appeals brought by the Attorney General and KIUC and cross-appeals brought by Kentucky Power Company.

Previously, when continuing objections are made in subsequent cases before the Commission to collections made in connection with issues pending on appeal, the Commission has ordered that while the appeal is being taken those collections are to be made subject to refund and has also ordered the utility to maintain its records so as to allow tracking of the interim collections. See, *In the Matter of: An Examination by the Public Service Commission of*

the Environmental Surcharge Mechanism of Kentucky Utilities Company as Billed from August 1, 1994 to July 31, 1996 at pages 5-6 where the PSC said:

On July 28, 1995, the Franklin Circuit Court entered a judgment on the appeal of the Commission's Order in Case No. 93-465 establishing an environmental surcharge for KU. The Court vacated that portion of the Order allowing KU to recover the current cost of environmental expenditures incurred before January 1, 1993, and remanded the case to the Commission. The judgment has been appealed to the Kentucky Court of Appeals by KU, the Commission, and others.

KU recommended that the Commission not incorporate the environmental surcharge into base rates at this time because of the ongoing judicial review. KU suggested that this case be held open until the conclusion of all appeals and the determination of refunds, if any. The Commission could then incorporate the environmental surcharge costs into base rates. KU indicated that this procedure would not affect its ability to make refunds if required at the conclusion of the appeals since it is maintaining the necessary records to identify the amounts paid by each customer.

The Commission finds that the surcharge should not be incorporated into base rates until the appeals are concluded. Further, it is not necessary to leave this case open for what may be an indefinite period of time. This Order, like the prior KU surcharge review Orders, will be made subject to refund. Upon termination of the appeals, the issues of refunds and incorporating the surcharge into base rates will be addressed.

The Commission utilized a similar process in three Union, Light, Heat and Power Company cases for amounts being collected in connection with the Rider AMRP, a tariff whose lawfulness has been challenged on appeal. See, Case Number 2002-00107, *In the Matter of An Adjustment of Rider AMRP of the Union Light, Heat and Power Company* August 30, 2002 at page 13 where the Commission says:

The AG has appealed the Commission's decision in Case No. 2001-00092 authorizing the AMRP Rider to the Franklin Circuit Court. The outcome of that appeal is not known at this time. Sound public policy requires that the Commission recognize the uncertainties that exist during the appeal process. Therefore, the Commission finds it reasonable to and will require all AMRP Rider revenues collected from the date of this Order be subject to refund.

In that same case also see the Order of October 7, 2002 Order., at page 2, where the Commission clarified its ruling. Further see, in Case Number 2003-00103, *In the Matter of: An*

Adjustment of Rider AMRP of the Union Light, Heat and Power Company by Order dated August 25, 2003, at page 7, and Case Number 2004-00098, *In the Matter of: An Adjustment of Rider AMRP of the Union Light, Heat and Power Company* by Order dated August 24, 2004, at page 4, maintaining the record keeping requirement that would allow the refund of amounts collected if so ordered.

Given the filed rate doctrine, absent such provisions, should the intervenors win on appeal, they would be without recourse to require a refund. Despite noting the objections made to amounts collected during the period on review and going forward on the basis of matters currently pending on appeal, the Order of January 31, 2007, neither requires that the rates be collected subject to refund nor that records be kept to facilitate a refund should one be adjudged proper. Consequently, the Attorney General moves the Commission to Rehear and Reconsider so much of its order as fails to make such provisions and to amend that Order to require that the collections be made subject to refund for the portion of the Environmental Surcharge collections relating to those costs assessed to Kentucky Power Company under the capacity settlement charge of the Interconnection Agreement be collected subject to refund and that records be maintained so as to allow refunds of amounts collected should they be required.

Respectfully submitted

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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 Attorney General's Petition for Rehearing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 20th day of February, 2007, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

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