

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

GENERAL ADJUSTMENT OF ELECTRIC)
RATES OF KENTUCKY UTILITIES) CASE NO. 5915
COMPANY)

* * * * *

ORDER DIRECTING SUBMISSION OF REFUND PLAN

On November 21, 1973, Kentucky Utilities Company ("K.U.") gave notice to the Public Service Commission ("PSC") that it would increase its annual rates by \$13.4 million on a date certain. The Commission suspended the proposed rates for the statutory five-month period, or until May 14, 1974. However, the PSC was not able to issue its final order until July 10, 1974, and K.U. accordingly began collecting the full \$13.4 million on May 15, 1974, subject to refund, as it is statutorily entitled to do. 1/ On July 10, 1974, the PSC issued its order granting K.U. \$7.3 million of their requested \$13.4 million in additional revenue, and ordered the Company to refund the difference.

Upon receipt of the PSC's final order, K.U. filed a timely appeal to the Franklin Circuit Court contesting the rates

1/ KRS 278.190(3).

allowed, and the Company obtained an injunction from the Franklin Circuit Court allowing the company to keep the money it had been collecting since May 15, 1974 until all court appeals were exhausted. K.U. continued to charge the un-approved rates it put into effect on May 15, 1974, until June 23, 1975, when these rates were superseded by new rates approved by the PSC in a separate case. Both the Attorney General and Lexington-Fayette Urban County Government filed appeals asserting that the Commission had allowed excessive rates. The appeals were consolidated, briefed and argued by the utility and intervenors, and the Franklin Circuit Court entered an order on February 20, 1976, upholding the Commission's rates. However, before the order could be appealed, the Court vacated its order of February 20, 1976, and remanded the case to the Commission with directions to consider evidence as to the company's operations after the entry of the Commission order of July 10, 1974. This remand order was appealed by the Commission to the Court of Appeals and the Supreme Court of Kentucky. On July 3, 1978, the Supreme Court of Kentucky issued an order holding that a remand for additional evidence outside of the test-year was impermissible, and directed the Franklin Circuit Court to decide the case solely on the evidence presented to the Commission before the entry of the final order. ^{2/} Thus, in the Fall of 1978

^{2/} Stephens, et al. v. Kentucky Utilities Company, Ky., 569 S.W.2d 155 (1978).

the case began anew in the Franklin Circuit Court for review on the merits. On December 14, 1979, the Franklin Circuit Court affirmed the PSC's July 1974 order on the merits. K.U. appealed this decision to the Court of Appeals, and on April 3, 1981, the Court of Appeals affirmed the PSC's 1974 rate order in toto.

The Court of Appeals denied K.U.'s petition for rehearing on May 29, 1981. K.U. then had 20 more days to petition the Supreme Court to further review the decision. On June 18, 1981, the Company announced that it would not seek discretionary review by the Supreme Court, but would abide by the Court of Appeals decision and refund the money due its customers. The Court of Appeals mandate, accordingly, issued June 19, 1981, 3/ and judicial review of this matter is now at an end.

The Commission must now approve an appropriate plan by which K.U. will refund the amounts overcollected to those persons who were customers of K.U. from May 15, 1974 to July 23, 1975.

There are two time periods that are relevant to the Commission's determination of an appropriate refund plan. The first is from May 15, 1974 (the date the five-month suspension period expired and K.U. put the full amount of its requested rate increase into effect) to July 10, 1974 (the date the PSC issued

3/ Copy attached.

its final order approving a lesser amount than requested by the company and requiring the utility to refund the difference with 6% interest). The second relevant time period is from May 15, 1974 until June 23, 1975. This represents the time K.U. charged unapproved rates and fixes the principal amount to be refunded. Our Rates & Tariffs division has calculated this sum to be approximately \$6.7 million.

The next question the Commission must address is how much interest should be assessed on this principal amount in determining the final refund amount to the Company's customers. As mentioned above, the PSC's July 1974 Order specified that K.U. would refund any sums overcollected with 6% interest. However, this language in the 1974 order referred only to the amount K.U. had collected since May 15, 1974 (the day the company put the unapproved rates into effect) until the date of the Commission's final order, July 10, 1974. Thus, the interest K.U. must pay on its refund liability for the period from May 15, 1974 to July 10, 1974 is fixed at 6% and the Commission will so apply this rate for that time period. However, as previously discussed, after issuance of PSC's July 10, 1974 Order, K.U. obtained a court injunction pendente lite allowing the Company to continue collecting the higher, unapproved rates it began charging on May 15, 1974, until the completion of all court appeals in this matter. Court litigation ended with the issuance of the Court of Appeals mandate on June 19, 1981. Thus, the principal amount to be refunded

continued to be held by K.U. from July 10, 1974 to June 19, 1981, when the injunction was lifted by final order of the Court of Appeals. K.R.S. 278.190(4) states in relevant part as follows:

In the event the commission by order, directs any utility to make a refund...the utility shall make the same within sixty (60) days after a final determination of the proceeding by an order of the court or commission with or without interest in the discretion of the commission.

The Commission has determined that it would be totally unfair to the customers of K.U. to allow the Company to have had the use of this money it collected under un-approved rates for the period July 10, 1974 to June 19, 1981, without payment of some amount of interest. The question remains as to a proper interest rate for this period.

In fixing a fair, just and reasonable interest rate for the period July 10, 1974 until June 19, 1981, the Commission has considered both interest rates at which K.U. could have borrowed during that period, and interest rates available to the Company's ratepayers on investments during that same period. Financial market conditions and interest rates have fluctuated through a wide range since mid-1974. For example, the bank prime rate has been as high as 20.35% and as low as 6.25%. 4/ Interest rates on long-term financial instruments,

4/ Federal Reserve Bulletins, 1974-1981.

such as utility bonds, have been more stable than interest rates on short-term instruments, such as commercial paper. Since July 10, 1974, yields on Aa rated utility bonds 5/ have averaged approximately 10%. 6/ From this analysis of the financial markets, the Commission concludes that a fair, just and reasonable interest rate to be applied to the refundable amount for the period July 10, 1974 to June 19, 1981, is 10% per annum.

Based upon all of the above-stated findings of fact and conclusions of law, the Public Service Commission hereby ORDERS as follows:

(1) Within 15 days from the date of this Order, Kentucky Utilities Company shall file with this Commission a plan for refunding \$6.7 million to those persons who were customers of the utility from the period May 15, 1974 to June 23, 1975. Such plan shall provide for the payment of interest at the rate of 6% per annum for that portion of \$6.7 million collected from May 15, 1974 to July 10, 1974. For that portion of the \$6.7 million K.U. overcollected from July 11, 1974 to June 23, 1975, the plan shall provide for the payment of interest at the rate of 10% per annum. This 10% interest assessment on

5/ K.U.'s bonds are rated Aa by Moody's.

6/ Moody's Public Utility Manual, 1980; Moody's Public Utility News Reports, 1981.

that portion of the total refundable amount shall apply for the period July 11, 1974 to June 19, 1981.

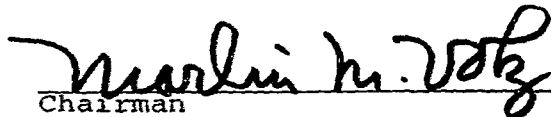
(2) K.U.'s refund plan shall further provide that any amounts it is unable to refund due to the Company's inability to locate certain customers for the time period May 15, 1974 to June 23, 1975, will be used as a future credit on the monthly bills of the Company's existing customers.

(3) K.U. shall also submit an estimate of the cost of making this refund at the time it submits its refund plan for the Commission's approval.

(4) If the Commission approves K.U.'s refund plan, the Company shall have 60 days from the date of the PSC's final order approving such plan to complete the refund, pursuant to the provisions of K.R.S. 278.190(4).

Done this 10th day of July, 1981 at Frankfort, Kentucky.

PUBLIC SERVICE COMMISSION


Chairman

Did not participate.
Vice Chairman


Commissioner

Attest:

Secretary

COMMONWEALTH OF KENTUCKY



KENTUCKY

Court of Appeals

MANDATE

KENTUCKY UTILITIES COMPANY

File No. 80-CA-580-MR
Opinion Rendered APRIL 3, 1981

Appeal From FRANKLIN

Circuit Court Action No. 85298, 85384 & 85386

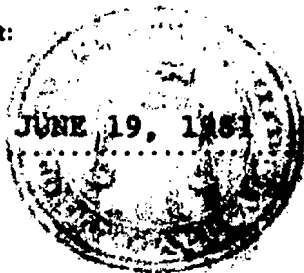
PUBLIC SERVICE COMMISSION OF KENTUCKY, ET AL

The opinion rendered on the above date, a copy of which is attached hereto and made a part hereof, is now final. It appearing that there is no error in the judgment of the Circuit Court, it is therefore the mandate of this Court that said judgment is hereby AFFIRMED.

MAY 29, 1981 - Appellant's Petition for Rehearing Denied.

A Copy - Attest:

Issued




JOHN C. SCOTT, CLERK