

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF ELECTRIC RATES OF)
THE UNION LIGHT, HEAT AND POWER) CASE NO. 8509
COMPANY)

O R D E R

On December 8, 1982, Intervenor Newport Steel Corporation ("Newport Steel") filed an application for rehearing pursuant to KRS 278.400 and a memorandum supporting its allegation that the Commission's Order of November 15, 1982, contained numerous errors. On December 15, 1982, the Union Light, Heat and Power Company ("ULH&P") filed a motion to dismiss Newport Steel's application for rehearing based upon an allegation that the application was not filed within the 20-day time limit prescribed by KRS 278.400. Newport Steel responded on December 20, 1982, by filing a memorandum in opposition to ULH&P's motion to dismiss.

The procedural question is a case of first impression before the Commission. The statutory jurisdiction for an application for rehearing is set forth in KRS 278.400:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order upon him, apply for a hearing. . . .

Thus, for an application for rehearing to be timely, it must be filed within 20 days "after the service of the order" upon

that party. The question to be decided is, when is the Order served so as to start the 20 days?

A review of the case law cited in the memoranda provides no answer. Newport Steel has requested relief based upon dictum in the case of Lockard v. Workmen's Compensation Board, 554 S.W.2d 396 (Ky. Ap. 1977) while ULH&P relies upon an unpublished Court of Appeals opinion in Save the Valley v. Comm. of Ky., Ky. Ap. No. 80-CA-1570-MR. (July 24, 1982.) Both cases involve appeals from an administrative agency to the Court of Justice and discuss the applicability of the Rules of Civil Procedure. The case at hand involves a rehearing before an administrative agency and it is a well established principle that the Rules of Civil Procedure do not apply to proceedings before administrative bodies. See, e.g., Inter-County Rural Elec. Coop. v. PSC, Ky., 407 S.W.2d 127 (1966).

Aside from Civil Rule 5.02, which provides that service is complete upon mailing, there is no statute or regulation defining service. Absent such a definition, and based upon the complex nature of Public Service Commission proceedings, the Commission finds that parties should have the full 20-day period as provided by KRS 278.400. Therefore, the 20-day period will commence upon receipt of the Commission's Order.

It is the custom and practice of the Secretary of the Commission to serve all parties with a certified copy of the Commission's Order accompanied by a transmittal letter bearing the date of

mailing. The Commission will adopt the presumption that a three-day interval between the date of mailing and actual receipt is a reasonable period. See Alford v. Continental Casualty Co., 376 F. Supp. 237 (E.D. Ky. 1974). In the future, the Secretary will forward a certificate of service with each Order so that parties may be certain of the date on which the Order was mailed.

The Commission's Order of November 15, 1982, was mailed to all parties on that date and received by Newport Steel on November 18, 1982. By application of KRS 446.030, the computation of the 20-day period for filing for rehearing results in December 8, 1982, being the twentieth day. Accordingly, Newport Steel's application for rehearing was timely filed.

Newport Steel alleges that the Commission has violated its Order in Administrative Case No. 203, PURPA Ratemaking Standards, by allocating revenues to customer classes based upon criteria other than a cost of service study. The Commission's Order in Administrative Case 203 does not require revenue allocation based solely upon cost of service. It recognizes that achieving the objective of equitable rates is not to be construed as requiring equal rates of return among classes of customers because the Commission must take into account other criteria such as rate continuity. The Order in this case is clearly consistent with the Order in Administrative Case No. 203.

Newport Steel further alleges that the concept of business risk cannot be used as a basis for revenue allocation because it

is unsupported by evidence in the record. A review of the record shows ample testimony by ULH&P witness Marshall and Newport Steel witness Gerasimou on this concept. Mr. Gerasimou acknowledged the existence of business risk in serving customer classes although he felt it was negated by including an 85 percent demand ratchet provision in a customer's tariff. (T.R. 166, September 16, 1982.) The Commission's Order was based upon the finding that since business cycles are of longer duration than one year, the demand ratchet does not negate business risk.

The Commission finds that Newport Steel's application for rehearing fails to present any grounds to justify a rehearing.

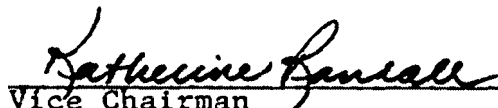
IT IS THEREFORE ORDERED that ULH&P's Motion to Dismiss be and it hereby is overruled.

IT IS FURTHER ORDERED that Newport Steel's Application for Rehearing be and it hereby is denied.

Done at Frankfort, Kentucky, this 29th day of December, 1982.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary