

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE UNION LIGHT,	)	
HEAT AND POWER COMPANY TO CLARIFY	)	CASE NO.
APPLICATION OF THE INTERRUPTIBLE	)	8774
SERVICE RIDER	)	

O R D E R

On July 25, 1983, Newport Steel Corporation ("Newport") filed an application for rehearing of the Commission's Order entered July 1, 1983, denying the application of the Union Light, Heat and Power Company ("ULH&P") to clarify its Interruptible Service Rider ("Rider IS"). Newport alleges that the Order contains four "erroneous" findings: (1) that Newport has not entered into any written service agreement with ULH&P; (2) that Newport alleged the existence of a contract based solely upon a February 21, 1983, letter; (3) that Newport failed to disclose a level of interruptible load; and (4) that ULH&P has not been provided with sufficient data to calculate Newport's demand credit. On August 1, 1983, ULH&P filed a memorandum in opposition to Newport's application for rehearing.

Newport argues that correspondence with ULH&P, dated December 9, 1982, January 14, 1983, January 25, 1983, and February 2, 1983, constitutes a contract entitling Newport to receive service

under Rider IS. The Commission recognizes that its Order of July 1, 1983, contains a typographical error in that the reference on page 4 to a "February 21, 1983," letter should have been a "February 2, 1983," letter.

A review of the correspondence fails to disclose Newport's level of interruptible load for calculating a billing demand credit as required by Rider IS. In its letters of January 14, 1983, and February 2, 1983, Newport's request to ULH&P that "all KW over 5,000 will be 'Interruptible Load'" constitutes nothing more than an offer to modify Rider IS which ULH&P did not accept. When viewed individually or collectively, the letters between Newport and ULH&P do not constitute a contract for service under Rider IS.

Newport alleges that the Commission's finding that Newport did not have a contractual right under Rider IS is an unnecessary finding and was outside the Commission's jurisdiction. The issue of Newport's "contractual rights" was initially raised by Newport in its motion to dismiss ULH&P's application. Newport's motion, being a procedural pleading, required disposition prior to consideration of the merits of ULH&P's application. The Commission was obligated to decide the issue of Newport's contractual rights in order to dispose of Newport's motion.

Newport has failed to present any substantive support for its argument that the Commission lacks jurisdiction to decide legal questions between two parties. Newport's allegation that such decisions are outside the Commission's expertise and not the type the legislature has empowered the Commission to make lacks merit.

The Commission is empowered with "...original jurisdiction over complaints as to rates or service of any utility...." KRS 278.260. The determination of a customer's contract rights arising under a Commission approved tariff is clearly within the Commission's jurisdiction.

The Commission, based upon the application for rehearing, the memorandum in opposition to rehearing and the evidence of record, is of the opinion and hereby finds that:

1. The Commission's Order entered July 1, 1983, contains a typographical error on page 4 in that the reference to a "February 21, 1983," letter should be a "February 2, 1983," letter and that the Order should be modified by deleting page 4 and inserting amended page 4 attached hereto.


2. Newport has failed to present any argument of merit to support a rehearing.

IT IS THEREFORE ORDERED that the Commission's Order entered July 1, 1983, be and it hereby is modified in accord with Finding No. 1 and affirmed in all other respects.

IT IS FURTHER ORDERED that Newport's application for rehearing be and it hereby is denied.

Done at Frankfort, Kentucky, this 15th day of August,  
1983.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary

Newport's third ground is an allegation that it has an existing 1-year contract right with ULH&P to receive service under Rider IS. Consequently, Newport argues that the Commission is prohibited from changing Newport's contract rate.

The application of Rider IS is expressly limited to customers who:

(2) enter into a written Service Agreement with the Company [ULH&P] which Service Agreement shall specify among other rules and regulations, the levels of interruptible power load, and firm power load.

Since the billing demand credit is a function of both the customer's interruptible power load and firm power load, it would be impossible to determine the credit without this load data.

Newport has not entered into any written service agreement with ULH&P. Newport alleges the existence of a contract by estoppel arising out of a February 2, 1983, letter it sent to ULH&P. That letter fails to disclose Newport's level of interruptible load. Consequently, ULH&P has not been provided with sufficient data to calculate Newport's demand credit. Since a requisite term of the Rider IS service agreement is missing, there can be no contract.

Turning to the merits of the proposed change in rates, the Commission finds that ULH&P's proposal to offer an interruptible tariff with a demand credit applied only during the months of actual service interruption would introduce an element of uncertainty to the demand credit. ULH&P's proposal would negate any positive benefits of having a published rate and is contrary