

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE)
FUEL PROCUREMENT PRACTICES) CASE NO. 9631
OF KENTUCKY UTILITIES COMPANY)

O R D E R

On May 19, 1983, the Commission issued an Order in Case No. 8590, An Examination By The Public Service Commission Of The Application Of The Fuel Adjustment Clause Of Kentucky Utilities Company From November 1, 1980, To October 31, 1982, which initiated an investigation into the fuel procurement practices of Kentucky Utilities Company ("KU"). In particular, the Commission indicated its concern with the relatively high prices that KU was paying for coal delivered to its Ghent plant under contracts with River Processing, Inc., ("River Processing") and South East Coal Company ("South East"). The Order requested KU to provide responses to several questions about specific provisions of the two contracts. KU moved to hold the investigation in abeyance to avoid disclosing sensitive "opinions concerning legal and other questions which have been and are issues between KU and other parties" to the coal supply agreements.¹ To prevent the premature disclosure of this information at a time when KU was seeking to

¹ Motion by KU filed May 27, 1983, in Case 8590.

reduce its coal prices, the Commission held its information request in abeyance.

During this same period, KU had initiated a declaratory judgment action against River Processing in the Circuit Court of Fayette County, Kentucky. The suit was subsequently settled and dismissed upon a renegotiation of the coal supply agreement. However, the Commission continued to hold its investigation in abeyance because KU was attempting to renegotiate its South East coal contract. Subsequently, KU initiated litigation against South East over its coal supply agreement. That litigation has yet to be resolved.

In order to protect KU's ratepayers during this period, the Commission designated all fuel adjustment clause orders since 1982 as interim orders.² Consequently, all revenue received by KU under its fuel adjustment clause since November 1, 1980, has been collected subject to refund.

The Commission finds that the original justification for holding its investigation in abeyance is no longer valid. During the course of KU's litigation with both its coal suppliers and its wholesale municipal customers,³ KU has made public thousands of pages of documents and been obligated to permit its adversaries

² Interim orders have been entered in the following fuel adjustment clause cases: Nos. 8590, 8590-A, 8590-B, 8590-C, 9173, 9173-A, and 9173-B; covering the period November 1, 1980, to October 31, 1985.

³ Eight municipal utilities and an investor-owned utility have jointly filed a complaint at the Federal Energy Regulatory Commission challenging KU's fuel procurement practices.

full and complete discovery of its files. As a result, KU's internal documents and legal theories are now a matter of public record. Based on the foregoing, the Commission is of the opinion that the resumption of its investigation is now appropriate.

The Commission finds that a rigorous, independent investigation of KU's fuel procurement practices should proceed. In its investigation the Commission will determine, among other things, whether the long term contracts with River Processing and South East were prudently entered into, effectively and efficiently managed once they were negotiated, and whether reasonable consideration was given to the renegotiation of the contracts. If KU has been imprudent in the procurement or administration of its fuel contracts, the investigation will determine the size of the refund to which KU's ratepayers are entitled.

The Commission believes that the services of an independent consultant will be necessary to assist in this investigation. The consultant will be selected by the Commission, and KU will pay for the consultant's services. The cost of the consultant's services will be considered as a cost of service for ratemaking purposes in KU's next rate case.

While the final outcome of this investigation will resolve the issues pending in the interim fuel adjustment clause cases, the Commission believes that a separate case should be established since the scope of this investigation should include all relevant issues. The Commission believes the following initial steps are reasonable. First, all interested parties will be given an opportunity to intervene. Second, the Commission will prepare a

draft request for proposals ("RFP"). The draft RFP will be distributed to all parties for comments. If necessary, a hearing or conference will be held to receive these comments. Third, the RFP will be put into final form and distributed to qualified consultants. Fourth, upon receipt and review of the proposals, the Commission will select a consultant to perform the study. While it would be premature to establish a further procedural schedule, the Commission notes that, subsequent to the submission of the consultant's report, it will schedule a hearing to allow all parties the opportunity to present testimony and cross-examine the consultant and all other witnesses.

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. A case docket should be established to investigate KU's fuel procurement practices and all interested parties should be given the opportunity to intervene.

2. An independent consultant should be selected by the Commission to perform the investigation and KU should pay for the consultant's services.

3. The cost of the consultant's services should be considered as a cost of service for ratemaking purposes.

IT IS THEREFORE ORDERED that:

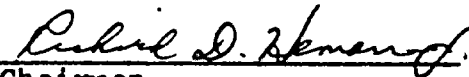
1. An investigation be and it hereby is established to investigate KU's fuel procurement and administration practices.

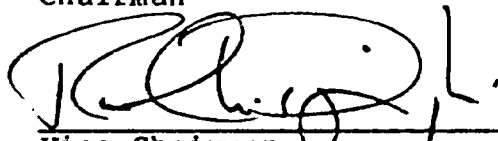
2. An independent consultant shall be selected by the Commission to perform the investigation and KU shall pay for the consultant's services.

3. The cost of the consultant's services shall be considered as a cost of service for ratemaking purposes.

Done at Frankfort, Kentucky, this 10th day of July, 1986.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary