

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On July 10, 1989, RCG/Hagler, Bailly, Inc. and Harris Goldstein Associates, Inc. ("Hagler Bailly") filed a motion to reopen the evidentiary record to allow the inclusion of a late filed exhibit, designated Consultant's Exhibit No. 8, attached to the motion. The tendered exhibit is a one page compilation by Hagler Bailly of certain identifying information relating to compliance coal contracts executed between April 1977 and November 1978. The exhibit also indicates the type of pricing provisions contained in the listed contracts.

Hagler Bailly's motion states that the exhibit is intended to rebut an argument presented by Kentucky Industrial Utility Customers ("KIUC") in their initial brief on Appendix page 26. Hagler Bailly represents that KIUC's argument was not revealed during the evidentiary phase of this investigation and no record evidence supports the argument.

Based on Hagler Bailly's motion and being advised, the Commission is of the opinion and hereby finds that the decision in this investigation must be supported by substantial evidence in the record. To the extent that KIUC's argument is not supported

by record evidence it cannot be adopted as a finding of fact by the Commission. Consequently, it is not appropriate to reopen the record for the receipt of evidence to rebut a legal argument disclosed in a post-hearing brief. Furthermore, the acceptance of new evidence after the close of the record would necessitate affording the parties an opportunity to test the new evidence through discovery and cross-examination. The Commission finds that the Hagler Bailly motion does not present good cause sufficient to reopen the evidentiary record.

IT IS THEREFORE ORDERED that Hagler Bailly's motion to reopen the evidentiary record to include a tendered Exhibit No. 8 be and it hereby is denied.

Done at Frankfort, Kentucky, this 17th day of August, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director