

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE UNION LIGHT, HEAT AND)
POWER COMPANY TO ADJUST ELECTRIC RATES) CASE NO. 91-370

O R D E R

On December 4, 1991, the Attorney General's Office, Utility and Rate Intervention Division ("AG"), filed a motion to dismiss the pending rate application of The Union Light, Heat and Power Company ("ULH&P"). As grounds for its motion, the AG states that the primary purpose of ULH&P's rate application is to recover an anticipated increase in the cost of power purchased from its parent, Cincinnati Gas and Electric Company ("CG&E"). Although CG&E had filed an application with the Federal Energy Regulatory Commission ("FERC") for authority to increase the rate for power purchased by ULH&P, FERC has notified CG&E that its application is deficient in a number of areas. CG&E was instructed on November 27, 1991 to amend its application to cure the deficiencies within 30 days.

The AG argues that since CG&E's application at the FERC was deficient, so too is ULH&P's application. The AG claims that neither the Commission nor the intervenors have accurate information regarding a major item of cost proposed to be recovered by ULH&P, and that ULH&P will have to amend its application to reflect CG&E's amended FERC application. The AG

argues further that information to be requested from ULH&P regarding its purchase power costs will be inaccurate due to the deficiencies in CG&E's FERC application, and concludes by stating that this case must be dismissed because, "the missing information is too crucial. . . ."

Intervenors Co-Epic filed on December 6, 1991 a response in support of the AG's motion to dismiss. Co-Epic's response states that the Commission should not merely hold the procedural schedule in abeyance pending CG&E's amended application at the FERC because the date of such amendment is currently unknown and after adjusting the procedural schedule to allow for adequate discovery on the amended FERC application, the rate suspension set forth in KRS 278.190(2) will have likely expired and ULH&P's proposed rates could be placed in effect subject to refund.

Based on the motion and response, and being advised, the Commission hereby finds that the filing requirements for a rate application are set forth in KRS Chapter 278 and the regulations promulgated thereunder, specifically 807 KAR 5:001 and 807 KAR 5:011. Although the Commission's initial review indicated that ULH&P's application was deficient under 807 KAR 5:001, Section 6(6), upon further review it appears that such deficiency was noted in error and that all Commission filing requirements have been satisfied. Therefore, ULH&P's application should be accepted for filing on November 4, 1991, the date of its receipt.

Neither the motion to dismiss nor the response allege that ULH&P's rate application contains a deficiency arising under KRS Chapter 278 or Commission regulations. Rather, dismissal is

sought on the basis that a substantial adjustment reflected in ULH&P's application, purchase power cost, is not known and measurable due to FERC's determination that CG&E's rate application was deficient.

At most the AG's motion raises an evidentiary issue of whether ULH&P will be able to meet its burden of proof under KRS 278.190(3). Neither the AG nor Co-Epic cite any requirement or precedent to declare a rate application to be deficient, and thus subject to dismissal, merely because a proposed increase in an operating cost cannot be determined with certainty one month after the application was filed. Pursuant to KRS 278.190(3), the Commission must adjudicate a rate application within 10 months of its filing. The relief sought by the pending motion is for the Commission to conclude its investigation after one month, dispense with a hearing, and dismiss the rate application for lack of evidentiary support.

In addition, the Commission well recognizes that the reasonableness of the rate to be paid by ULH&P for purchase power is beyond our jurisdiction. The FERC, not this Commission, is the proper forum for the determination of a reasonable rate for purchase power. Once FERC establishes such a rate, this Commission is preempted from reviewing its reasonableness. Absent a finding that the power purchase is imprudent due to lower cost alternative supplies, retail rates must be adjusted to allow full recovery of the FERC rate for purchase power.

While both the motion to dismiss and the response state the need to conduct discovery on CG&E's FERC filing, the relevancy of

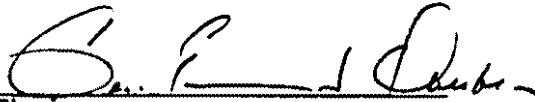
such discovery, in light of our limited jurisdiction, has not been demonstrated. There has been no showing that an investigation of ULH&P's application cannot proceed due to the unavailability of allegedly crucial but unspecified information. However, it is clear that ULH&P's rate application seeks recovery of cost increases for numerous items in addition to purchase power. No reason has been advanced to dismiss ULH&P's application to recover these other cost increases.

IT IS THEREFORE ORDERED that:

1. The AG's motion to dismiss be and it hereby is denied.
2. ULH&P's rate application be and it hereby is accepted for filing on November 4, 1991, the date of its receipt.

Done at Frankfort, Kentucky, this 11th day of December, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director