

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE REASONABLENESS)
OF THE EARNINGS OF BRANDENBURG TELEPHONE) CASE NO. 92-563
COMPANY, INC.)

O R D E R

This investigation was initiated on January 11, 1993 pursuant to the Commission's legislative mandate to establish fair, just, and reasonable rates. Rates which produce earnings in excess of an authorized rate of return should be reduced to levels which would produce no more than the authorized rate of return in accordance with our statutory requirements. In reviewing the reasonableness of rates which produce earnings, the Commission considers rates for all services provided by a utility.

As indicated in the January 11, 1993 Order, Brandenburg Telephone Company, Inc. ("Brandenburg") was authorized in 1987 to earn a 12.5 percent return on its equity capital and an overall return on its net investment of 10.08 percent. Brandenburg has continually exceeded its currently authorized returns. For the 12 month period ending September 30, 1992, Brandenburg earned approximately 17.6 percent on net investment equating to an effective equity return of approximately 22 percent.¹

¹ These determinations are based on the annual and quarterly reports of Brandenburg filed with the Commission.

The Commission, speaking through its Orders,² placed Brandenburg on notice of each and every issue that will affect the determination of the reasonableness of Brandenburg's rates. In addition to the Commission Order initiating this proceeding, the Commission's requests for data have provided Brandenburg an adequate opportunity to learn what issues the Commission will consider in its determination of fair, just, and reasonable rates. Further, Brandenburg has been given the opportunity to be heard on each issue and to present its arguments in its filed comments and responses to the data requests. Brandenburg will be given further opportunity to present its arguments at the November 5, 1993 hearing.

Brandenburg has moved the Commission to consider several items in an August 31, 1993 pleading entitled "Seven Motions," and a September 10, 1993 pleading entitled "Motion for Hearing by Full Commission." These eight requests are considered herein.

Brandenburg requests that the Commission designate an adversarial staff and requests that this adversarial staff respond to Brandenburg's promulgated data requests. These motions, if granted, would constitute an unwarranted interference with the Commission's deliberative process. Brandenburg seeks to "probe the Commission's mental processes." This inquiry is impermissible.³ The prohibition against discovery of an administrative agency's

² "[T]he commission, like a court, acts and speaks only through its written orders." Union Light, Heat & Power Co. v. Pub. Serv. Comm'n, Ky., 271 S.W.2d 361, 365 (1954).

³ United States v. Morgan, 313 U.S. 409, 422 (1941).

decision-making process has been consistently upheld.⁴ Brandenburg's reliance on the recent Kentucky Court of Appeals case of Louisville Gas & Electric v. Commonwealth of Kentucky, 1993 Ky. App. (April 23, 1993 Slip Opinion - Motion of May 14, 1993 for discretionary review is still pending) is misplaced. There being no parties to this proceeding other than Brandenburg and currently no proposed settlement to be presented to the Commission, that case is inapplicable. Here, Staff has advised the Commission of Brandenburg's earnings in excess of that which the Commission authorized and has otherwise advised the Commission during this proceeding, in compliance with its legislative mandate in KRS 278.110. Accordingly, the motion to designate an adversarial staff and the motion for staff to respond to Brandenburg's promulgated data requests are denied.

Brandenburg has requested that the Commission expand the issues which are the subject of this proceeding as identified in the Commission's August 18, 1993 Order. Brandenburg would like the Commission to consider the possible need for increased revenues due to its application for a Certificate of Public Convenience and Necessity for a new headquarters building.⁵ This application is pending Commission review. Additions to Brandenburg's rate base to

⁴ See, e.g., Montrose Chemical Corporation of California v. Train, 491 F.2d 63 (D.C. Cir. 1979).

⁵ Case No. 93-357, The Verified Application of the Brandenburg Telephone Company, Inc. for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility in Brandenburg, Kentucky, received by the Commission on September 22, 1993.

recognize this future construction are inappropriate at this time. Until the Commission grants a certificate for this construction program and until the construction has begun, it is inappropriate to make additions to the rate base, absent a forward-looking test period. Brandenburg may petition the Commission to add appropriate levels to its rate base resulting from this construction at some appropriate point in the future. The future construction of the headquarters building is not to be considered in this pending case on the investigation on the reasonableness of Brandenburg's earnings. Accordingly, the expansion of the issues list to include additions to the rate base to recognize future construction is denied.

Brandenburg has requested the Commission expand the issues to address whether using a future test-year is appropriate for this proceeding and the effect of KRS 278.192. In response to this investigation, Brandenburg has filed historical data for the year ending 1992 with certain post-year adjustments. The Commission adopts the 12 month period ended December 31, 1992 as the test period for this investigation based upon Brandenburg's responses to data requests and will include appropriate normalization adjustments to expenses and revenues. KRS 278.192, permitting a forward-looking or future-test period, is applicable only when a utility is seeking to justify the reasonableness of a proposed general increase in rates. This investigation was undertaken because Brandenburg's rates are producing a rate of return in excess of that authorized by the Commission in Brandenburg's last

case.⁶ Utilizing a forward-looking test period is inappropriate at this time and the expansion of the investigation to include a forward-looking test period is denied.

Brandenburg has requested the Commission to consider a rate-cap plan as a mechanism to resolve the issues presented in this investigation and to resolve the issues associated with the impact of the application for a Certificate of Public Convenience and Necessity for a new headquarters building.⁷ Brandenburg also requests the Commission to revise or abandon its traditional rate of return regulation as the "benchmark for fair, just, and reasonable rates." When the Commission initiated this investigation, Brandenburg was given an opportunity to request an alternate form of regulation, in particular incentive regulation. At that time, Brandenburg declined to consider incentive regulation and did not propose consideration of another type of non-traditional rate regulation. This investigation has proceeded for several months and the Commission chooses to proceed with the historical test period and not consider an alternate form of regulation in the context of this proceeding. Considering alternative forms of regulation at this point would only delay resolution of this investigation. Should Brandenburg, in the future, desire to consider an alternative form of regulation, the

⁶ Case No. 9859, An Investigation Into the Reasonableness of the Earnings of Brandenburg Telephone Company, Inc., Order dated March 3, 1987.

⁷ See Footnote 5, supra.

Commission would consider such proposals upon application of Brandenburg.

Brandenburg requests that the Commission consider its efficiency in delivering services when determining appropriate levels of earnings. However, the rates of a utility and its service standards are to be considered as separate issues and not intertwined. In South Central Bell v. Utility Regulatory Commission, Ky., 637 S.W.2d 649 (1982), the Kentucky Supreme Court forbade this Commission to consider South Central Bell's poor quality of service to lower an otherwise reasonable rate of return. In that case, the Commission had determined, as it has here, a rate of return for a utility and after making that determination, penalized the utility by reducing the rate of return for its poor service quality. The Commission is, therefore, precluded by law from considering quality of service in awarding to a utility a rate of return other than that found reasonable. Considering a good service quality and efficiency of service is not appropriate in determining a level of rates which will produce a fair, just, and reasonable rate of return for a utility. Accordingly, the inclusion of this issue which couples reasonable rates and service standards cannot be allowed in this investigation.

Brandenburg may present its views of the Commission's review of rate of return and Brandenburg's ability to provide adequate service and to respond to competitive pressures. The Commission has never precluded presentation of these issues. On the contrary, the Commission has made every effort to give Brandenburg an

opportunity to be heard on these issues and will not preclude such testimony at the public hearing.

Brandenburg requests that the role of reduced access charges in determining its revenue requirement be considered by the Commission. The appropriate level of access charges is already an issue in this proceeding and therefore Brandenburg may present all appropriate information related to reduced access charges in this proceeding it chooses.

Brandenburg's request for an informal conference is moot as the Commission has denied Brandenburg's requests for the establishment of an "adversarial" Staff and for Staff to respond to Brandenburg's data requests. Brandenburg may petition for an informal conference to be held prior to the November 5, 1993 hearing.

On September 20, 1993, the Commission rescheduled Brandenburg's hearing pursuant to Brandenburg's request. The Commission grants Brandenburg's motion for the hearing to be conducted before the Commission. The proposed language for the public hearing notice submitted by Brandenburg on September 17, 1993 is approved, with the exception of the changed hearing date.

It is unnecessary to enter a procedural Order at this time. However, by October 29, 1993, Brandenburg should file any additional comments it wishes the Commission to consider at the scheduled public hearing and may specify additional witnesses, and their qualifications, to supplement the information supplied on September 8, 1993.

IT IS THEREFORE ORDERED that:

1. Brandenburg's motions for the establishment of an "adversarial" Staff and for this Staff to respond to Brandenburg's promulgated data requests are denied.

2. Brandenburg's motion to expand the issues list of this investigation is granted in part and denied in part as specified above.

3. Brandenburg's request for an informal conference is moot. However, Brandenburg may renew its petition for an informal conference to be held prior to the November 5, 1993 hearing should it so choose.

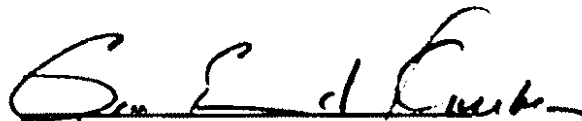
4. Brandenburg's motion for the hearing to be conducted before the Commission is granted.

5. Brandenburg's motion for the establishment of an additional procedural schedule is denied except to the extent that Brandenburg shall file any additional comments it wishes the Commission to consider at the scheduled public hearing, including the designation of any additional witnesses and their qualifications.

6. This is not a final and appealable Order.

Done at Frankfort, Kentucky, this 15th day of October, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director