

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES COMPANY)
TO AMORTIZE, BY MEANS OF TEMPORARY) CASE NO.
DECREASE IN RATES, NET FUEL COST SAVINGS) 93-113
RECOVERED IN COAL CONTRACT LITIGATION)

O R D E R

Kentucky Utilities Company ("KU") has moved for authorization to give expanded notice of this proceeding and to assess the costs of such notice against deposited funds and for the scheduling of an expedited hearing. The Attorney General ("AG"), through his Utility Rate and Intervention Division, has moved for a procedural schedule in this proceeding. For reasons stated below, we deny KU's motion and hold the AG's motion in abeyance.

KU has applied for Commission approval to disburse the Kentucky retail portion of proceeds recovered from its coal contract litigation with South East Coal Company. The proceeds represent court-ordered deposits of disputed portions of invoiced prices on coal deliveries from South East Coal Company that affected fuel adjustment clause billings from April 1985 through December 1990. The total of funds presently on deposit, including interest, is approximately \$44 million. KU proposes to distribute these funds to its present customers over a twelve-month period through its fuel adjustment clause.

KU is concerned that former customers who may have an interest in the deposited funds and the manner in which they are distributed

receive adequate notice of this proceeding. In addition to placing billing inserts with its current customers' bills and publishing notice of the proceeding throughout its service territory, KU proposes to publish notice in several regional and national publications to inform as many of these former customers as reasonably practicable. The total cost of this expanded notice ranges from \$72,481 to \$476,509. KU proposes to assess the cost of this expanded notice against the deposited funds.

Before expanded notice is authorized, the Commission must first ascertain whether former KU customers have any cognizable claim to the deposited funds. Absent the existence of such claim, the proposed expenditures for expanded notice would be unreasonable. Accordingly, we find that all parties should submit briefs addressing the issues listed in the Appendix. We further find that no procedural schedule should be established until the resolution of this issue.

IT IS THEREFORE ORDERED that:

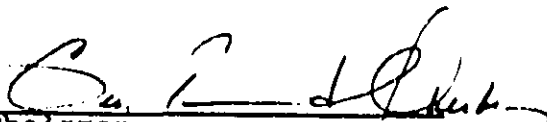
1. KU's motion for authorization for expanded notice and assessment of costs and the AG's motion for a procedural schedule are deferred pending resolution of the issue of expanded notice.

2. KU's motion for an expedited hearing on the issue of expanded notice is denied.

3. All parties shall, within 30 days of the date of this Order, submit written briefs on the issues set forth in the Appendix to this Order.

Done at Frankfort, Kentucky, this 6th day of May, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 93-113 DATED May 6, 1993.

The parties to this proceeding shall submit written briefs addressing the following issues:

1. What legal theories entitle former KU customers to a portion of the deposited funds?

2. If former customers have a claim to the deposited funds, are there any time considerations to their assertion of that right? What statute of limitations is applicable? When does the statute of limitations begin to run?

3. Does the Commission have the authority to award a portion of the deposited fund to former customers? What is the source of that authority?

4. Does an award of any portion of the deposited funds to former KU customers constitute retroactive rate-making? Is such award consistent with the "filed rate doctrine" as embodied in KRS 278.160(2)?

5. If notice to former KU customers is authorized, what should this notice state and in what manner should it be published?