

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 reconsideration of the Commission's Order of May 6, 1993, an expedited procedural schedule, and approval of the form and manner of notice of this proceeding. After reviewing the motion and the Attorney General's response thereto, the Commission grants the motion in part and denies it in part.

KU has applied for Commission approval of its plan 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 funds presently on deposit, including interest, is approximately \$44 million. KU proposes to distribute these funds through its fuel adjustment clause to its present customers over a twelve-month period.

KU is concerned that former customers who may have an interest in the deposited funds and the method of their distribution receive adequate notice of this proceeding. It has expressed doubts about

whether the publication of notice solely in its service territory, as the Commission normally requires, will meet the requirements of procedural due process.

To that end, KU previously proposed several plans for publishing notice of this proceeding. These proposals included publication of notice in several major regional newspapers and the Wall Street Journal at an estimated cost of \$476,000. In its Order of May 6, 1993, the Commission deferred ruling on KU's request for authorization of expanded notice and the Attorney General's motion for a procedural schedule. We stated that the parties should first demonstrate that former KU customers have a cognizable claim to the deposited fund and ordered them to submit written briefs on several issues related to the claims of former KU customers.

In response to the Commission's Order, KU requested, and was granted, an informal conference with Commission Staff. At this conference, KU explained the need for expanded notice. The intervenors shared KU's concerns and supported the concept of expanded notice. KU then brought its motion for reconsideration which includes a more limited version of its earlier proposals.

Under its most recent proposal, KU will insert notice of this proceeding in its current customers' bills over a normal billing cycle. It will also publish notice of the proceeding in 97 newspapers throughout the 77 counties of its in-state service area. Notice will also be published in three issues of the 35 regional

newspapers¹ with the largest combined circulation in Kentucky. To reach former customers living well beyond Kentucky's borders, notice will be published in three issues of the Wall Street Journal. The total cost of this proposal is \$122,885.

To meet the requirements of procedural due process and to ensure a measure of finality to this proceeding, it is essential that all potential claimants have notice of the proceeding. As all parties agree that former customers have cognizable claims, the concerns expressed in the Commission's earlier Order have been addressed. Equally important, KU has significantly reduced the cost of the notice without significantly reducing its coverage. The Commission therefore finds that KU should be authorized to implement its most recent proposal.

KU and the Attorney General disagree over the form of the proposed notice. Contending it gives only KU's "side of the story," the Attorney General urges several modifications. He submits that the notice should state that current customers on the KU system anytime during the period 1985-1990 are entitled to a bill credit and that former customers who were on the KU system during any part of the period 1985-1990 may also be entitled to a refund. The Attorney General also argues that the notice should contain language indicating that there are parties to the Commission proceeding taking issue with KU's position that refunds should go only to present customers. "It must be made clear to

¹ These newspapers are published outside of Kentucky. Their circulation, however, reaches into this state.

former customers that their task of claiming their property does not require major litigation on their part." Attorney General's Response at 5.

The Commission does not agree with the Attorney General's suggested changes. As no determination has been made as to which groups shall share in the deposited funds, it is premature to announce that any group is entitled to a refund.² Moreover, the Attorney General's proposed reference to the existence of intervenors who are contesting KU's refund plan is potentially misleading and may undercut the purpose of giving expanded notice.

Having reviewed KU's proposed notice, however, the Commission finds that certain modifications are required. These modifications are contained in the notice set out in Appendix A.

KU's motion raises two additional issues. First, KU requests authorization to recover the cost of the expanded notice from the deposited funds. As all questions concerning recovery of litigation and notice expense should be addressed at the same time and not in a piecemeal fashion, the Commission defers any ruling on this issue until the conclusion of this proceeding.

Next, KU requests an expedited procedural schedule. This request is similar to the Attorney General's earlier motion. The

² The Commission shares KU's uncertainty about the Attorney General's legal authority to represent former and current KU customers. Assuming arguendo that KRS 367.150 authorizes the Attorney General to represent former customers' interests, the clear conflict between these interests and those of current KU customers raises substantial ethical concerns about the Attorney General's efforts to represent both. We, therefore, strongly encourage the Attorney General to seek advice from the appropriate authority on the propriety of his efforts.


Commission is well aware of the need for proceeding with all deliberate speed in this matter. Accordingly, an expedited procedural schedule is set forth in Appendix B.

IT IS THEREFORE ORDERED that:

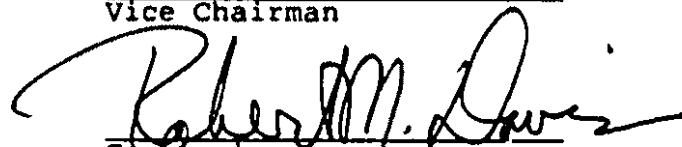
1. KU's motion for reconsideration is granted.
2. The Commission's Order of May 6, 1993 is vacated and set aside.
3. KU's motion for approval of the proposed form and manner of notice is granted in part and denied in part.
4. KU shall publish the notice set forth in Appendix A in the manner described in its motion of May 26, 1993.
5. KU's motion to schedule expedited discovery and hearing on the merits and the Attorney General's motion for a procedural schedule are granted.
6. KU's motion for assessment of costs is deferred pending the final resolution of this proceeding.
7. The procedural schedule listed in Appendix B shall be followed.
8. All requests for information and responses thereto shall be appropriately indexed. All responses shall include the name of the witness who will be responsible for responding to the questions related to the information provided, with copies to all parties of record and 10 copies to the Commission.
9. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of compelling reasons.

Done at Frankfort, Kentucky, this 13th day of July, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 93-113 DATED JULY 13, 1993.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

NOTICE OF PENDENCY AND PROPOSED
DISTRIBUTION OF COAL CONTRACT ESCROW FUNDS

TO: All Persons or Entities Who Are Now or Were Electric Customers
of Kentucky Utilities Company Between April 1, 1985 and
December 31, 1990.

Kentucky Utilities Company ("KU") has filed with the Public
Service Commission of Kentucky ("PSC") a plan for distributing
funds received as a result of litigation with a coal supplier.
These funds are court-ordered deposits (including interest) on
contract deliveries between April 1, 1985 and December 31, 1990.
KU customers during that period paid fuel clause adjustments which
included the supplier's invoice price with no reduction for the
funds deposited in court. The total amount deposited, including
interest, is approximately \$44.5 million.

KU has determined that the Kentucky retail share of the funds
is approximately \$32.3 million, net of the Kentucky portion of KU's
litigation costs and the cost of notice of this proceeding. KU
proposes to credit this amount, plus interest, by fuel clause
adjustments to current bills over a 12 month period.

The PSC will hold a hearing on KU's plan beginning September 28, 1993, at 9:30 a.m., Eastern Daylight Time, at the Commission's offices, 730 Schenkel Lane, Frankfort, Kentucky 40601.

Under its proposal, KU will distribute the funds to its current retail customers only. Former retail customers, no longer on KU's system, would not receive a credit or refund. KU's proposal is subject to approval by the PSC, which may order the funds distributed in a manner which differs from KU's proposed method. Final action on the application by the PSC may affect the rights of all current and former customers to pursue claims on the fund which differ from the plan approved by the PSC.

Any person, corporation, association, or other entity with an interest in this matter may, by timely written request, request leave to intervene. The request must be submitted to: Public Service Commission of Kentucky, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, and must set forth the grounds for the request including the status and interest of the party. Copies of the Application may be obtained by contacting KU, Attention: Department of Rates & Regulation, One Quality Street, Lexington, Kentucky 40507. Copies of the Application may be inspected at KU's General Offices at the above address in Lexington and its Division and District offices in its Kentucky service area.

APPENDIX B
APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 93-113 DATED JULY 13, 1993.

KU shall file testimony in verified prepared form no later than 07/23/93

Intervenors shall submit any requests for information to KU no later than 08/06/93

KU shall mail or deliver responses to the requests for information no later than 08/16/93

Intervenors shall file testimony, if any, in verified prepared form no later than 08/26/93

Any party shall submit requests for information to Intervenors no later than 09/08/93

Intervenors shall mail or deliver responses to requests for information no later than 09/20/93

Public Hearing is to begin at 9:30 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of KU and witnesses of the Intervenors 09/28/93