

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

The Attorney General ("AG") has moved for a stay of these proceedings. As grounds for his motion, the AG cites his motion for intervention in Kentucky Utilities Co. v. South East Coal Co., No. 84-CI-1703 (Fayette Cir. Ct.). Finding no reason exists to delay these proceedings, we deny.

On July 19, 1993, the AG filed a motion for intervention in Kentucky Utilities Co.. That action involved a contract dispute between Kentucky Utilities Company ("KU") and South East Coal Company ("SECCo") over the proper billing price for coal. The purpose of the AG's intervention is to seek a declaratory ruling from Fayette Circuit Court on the ownership of the funds which KU, instead of paying to SECCo, had deposited with that Court during that action. The AG also seeks an order from that Court directing the parties to that proceeding to submit a proposed refund plan for those funds.

In support of his motion to the Commission, the AG contends "that it is in the interest of administrative and judicial economy for the Commission to stay the publication of notice and to stay the procedural schedule in this case to allow the Fayette Circuit

Court, as the Court having jurisdiction over the disposition of the CR 67.01 fund, to rule on the Attorney General's Motions." AG's Motion at 2.

The AG's argument rests on the erroneous assumption that Fayette Circuit Court, not this Commission, has jurisdiction over the deposited funds. Fayette Circuit Court's jurisdiction over the funds terminated when it entered an Agreed Order of Settlement, released all deposited funds to KU, and struck the Kentucky Utilities Co. from its docket.<sup>1</sup>

Release of the deposited funds to KU triggered this Commission's jurisdiction. Pursuant to Commission Regulation 807 KAR 5:056, the rates of each jurisdictional electric utility contains a fuel adjustment clause component. This component ensures electric utilities of full recovery of their reasonable costs by permitting them to passthrough directly to their ratepayers any changes in their reasonable fuel costs.

The deposited funds represent monies collected as rates from KU's ratepayers through the fuel adjustment clause. Commission Regulation 807 KAR 5:056 permitted KU to pass its full cost of fuel, including the funds deposited with the Court, to its

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<sup>1</sup> Relying on Northern States Power Co. v. Pub. Serv. Comm'n, 13 N.W.2d 779 (N.D. 1944), the AG argues that Fayette Circuit Court has exclusive jurisdiction over court deposited funds. The facts of the case at bar, however, are readily distinguishable. Unlike Northern States Power Co., the deposited funds in this case are not in the custody of a court. They have already been released and the underlying action has been removed from the Court's docket.

ratepayers. Return of these funds to KU represents a reduction in fuel costs which Commission Regulation 807 KAR 5:056 requires be returned to KU's ratepayers through KU's fuel adjustment clause.

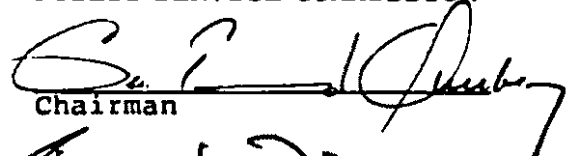
The issue posed by the deposited funds which are now in KU's possession clearly involves the regulation of utility rates. On that issue, the Commission has exclusive jurisdiction. KRS 278.040(2). How the deposited funds are returned to KU's ratepayers is a matter which only this Commission can decide. For this Commission to grant the AG's motion is to deny our own jurisdiction and shirk our statutory duty to regulate utilities.

Moreover, this Commission finds no valid reason to delay these proceedings. This matter has been pending before us for four months while the parties wrangled over the issue of notice. Having granted the AG's motion for a procedural schedule and ordered KU to publish expanded notice, an action which the AG previously endorsed, we see no reason to delay these proceedings now.

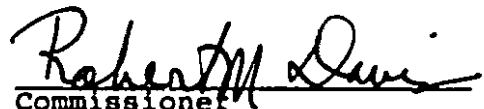
IT IS THEREFORE ORDERED that the AG's Motion to Stay is denied.

Done at Frankfort, Kentucky, this 23rd day of July, 1993.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director