

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF THE UNION LIGHT, HEAT)	
AND POWER COMPANY FOR AUTHORITY TO)	
IMPLEMENT A TARIFF RIDER TO RECOVER COSTS)	
ASSOCIATED WITH DEMAND SIDE MANAGEMENT)	CASE NO. 94-222
PROGRAMS, OR IN THE ALTERNATIVE, DEFER)	
THOSE COSTS UNTIL REVENUES ARE COLLECTED)	
THAT INCLUDE THE ASSOCIATED COSTS)	

O R D E R

On June 28, 1994, the Attorney General's office, Utility and Rate Intervention Division ("AG"), filed a motion requesting the Commission to dismiss the application of The Union Light, Heat and Power Company ("ULH&P") for approval of demand side management ("DSM") plans and the recovery of their costs. The application was filed pursuant to KRS 278.285 which was enacted during the 1994 regular session of the General Assembly and became effective on July 15, 1994. As grounds for his motion, the AG argues that: 1) under the decision in Commonwealth ex rel. Cowan v. Public Service Comm'n, Civil Action No. 90-CI-00798 (Franklin Cir. Ct. July 10, 1991), KRS 278.285 cannot be implemented until the Commission promulgates regulations; 2) KRS 278.285 was not yet effective at the time of filing; and 3) ULH&P did not engage in a collaborative process with its customer groups. The Commission established a procedural schedule for the filing of responses and also directed ULH&P to address the extent to which the factors set out in KRS

278.285 were considered in developing its DSM plans and cost recovery mechanism.

Citizens Organized to End Poverty in the Commonwealth, Inc. ("CO-EPIC") filed a response in support of dismissal on the grounds that ULH&P did not engage in a collaborative process with its customer groups to develop the proposed DSM plans. Citing KRS 278.285(1)(f), CO-EPIC claims that the legislation contemplates that utilities will make a reasonable effort to work with customer representatives to develop DSM plans prior to seeking rate recovery. Noting the absence of any collaborative effort by ULH&P prior to filing the pending application, CO-EPIC urges the Commission to dismiss this case.

ULH&P filed a response opposing dismissal. Arguing that the Commission will not in this case be issuing any statement of general applicability, ULH&P maintains that no regulation need be promulgated to implement KRS 278.285. In addition, ULH&P contends that KRS 278.285 authorizes the Commission to approve utility specific DSM programs and that in this case only ULH&P specific DSM programs are proposed.

ULH&P further states that it previously agreed to engage in a collaborative process with its customer representatives and one will be initiated in the near future. However, ULH&P asserts that a collaborative process is not a prerequisite under the statute for Commission review of DSM plans and a cost recovery mechanism. ULH&P states that in an effort to implement DSM plans as quickly as possible in its service territory, it is proposing to now offer the

cost-effective DSM programs which have been available for some time to the Ohio customers of its parent utility, Cincinnati Gas and Electric Company, and then meet with ULH&P customer representatives to develop additional cost-effective DSM programs.

ULH&P also moved the Commission to stay the proceeding to afford it an opportunity to meet with customer representatives to discuss DSM plans. Finally, ULH&P asserts that its application demonstrates compliance with the factors set forth in KRS 278.285 by referencing its 1993 Integrated Resource Plan which is subject to review by Commission Staff and intervenors.

Based on the motion and being otherwise sufficiently advised, the Commission finds no merit in any of the grounds cited in support of dismissal. In Commonwealth ex rel. Cowan v. Public Service Comm'n, the Court held that Commission guidelines which are generally applicable to all utilities must be promulgated in a regulation. Here, no guidelines respecting DSM plans have been issued by the Commission and KRS 278.285 explicitly reserves to the applicant the right to develop and propose DSM plans and a cost recovery mechanism of its own choosing. In addition, there are existing regulations in place that govern the processing of applications. While ULH&P's application was filed prior to the July 15, 1994 effective date of KRS 278.285, no substantive action was taken prior to the effective date. Since KRS 278.285 is now effective, this ground for dismissal is moot.

KRS 278.285 authorizes the Commission to review the reasonableness of DSM plans proposed by jurisdictional utilities

and to approve such plans and cost recovery mechanisms without the need to file a general rate application under KRS 278.190. The statute includes a non-exclusive list of factors to be considered by the Commission in its review of DSM plans. One of those factors is:

The extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the Commission to approve the plan. (Emphasis added.)

KRS 278.285(1)(f). The clear and unambiguous language of the statute belies the argument that a utility must engage in a collaborative process to develop DSM plans prior to filing an application under KRS 278.285. Had the General Assembly intended such a result, it could have very easily required consumer input as a prerequisite to a utility filing under KRS 278.285, but it declined to do so. Rather, the statute expressly recognizes that consumer input is not a prerequisite as KRS 278.285(1)(f) refers to: 1) "the extent" of involvement by customer representatives and the AG; and 2) the support of DSM plans by participants "if involved." Thus, while ULH&P is under no obligation to engage in a collaborative process on DSM plans, its request to stay the proceedings in this case to provide time to engage in such a process is reasonable and should be granted.

The Commission notes that ULH&P's reference in its application at page 2 to DSM plans which have been incorporated into its 1993

Integrated Resource Plan provides less than substantial evidence in this case to demonstrate consideration of the factors enumerated in KRS 278.285. Thus, any request to resume processing this case should be accompanied by detailed evidence demonstrating a full analysis of each factor enumerated in KRS 278.285.

IT IS THEREFORE ORDERED that:

1. The motion to dismiss ULH&P's application be and it hereby is denied.

2. ULH&P's motion to stay further proceedings on its application be and it hereby is granted.

3. Every 30 days from the date of this Order, ULH&P shall file a report detailing the status of its progress in meeting with customer representatives on DSM plans, future efforts to be taken and the anticipated date that proceedings in this case will be resumed.

Done at Frankfort, Kentucky, this 1st day of August, 1994.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director