

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 Commission approval of certain agreements with the Commonwealth involving the transfer of unclaimed refunds. Having reviewed the motion and the responses thereto<sup>1</sup> and being otherwise sufficiently advised, the Commission finds that the motion should be granted.

In June 1984, KU brought legal action against South East Coal Company in Fayette Circuit Court to obtain a \$19.00 per ton reduction in the price of coal. In April 1985, KU successfully moved for leave to deposit some of the disputed portion of the billing price into a court escrow account. After litigating its claims,<sup>2</sup> KU recovered approximately \$44.5 million from this escrow account. Approximately \$35.3 million of this amount ("Escrow Funds") was attributable to its Kentucky retail jurisdictional sales.

On December 8, 1993, after lengthy proceedings, the Commission ordered KU to refund this amount plus accrued interest and less certain costs to the customers on its system from April 1985 through December 1990. On June 16, 1994, the Commission approved KU's refunding plan. KU began issuing refunds in July 1994. As of May 1, 1996,

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<sup>1</sup> The Attorney General and Kentucky Industrial Utility Customers responded to the motion. Neither objects to the proposed transfer of funds.

<sup>2</sup> Kentucky Utilities Co. v. South East Coal Co., Ky., 836 S.W.2d 392 (1992).

KU had refunded approximately \$28.6 million. Approximately \$6.8 million remains unclaimed.<sup>3</sup>

KU now proposes to transfer unclaimed funds to the Kentucky State Treasurer. To effect this transfer, it has entered an agreement with the Kentucky Finance and Administration Cabinet. KU has also entered an agreement with Kentucky Finance and Administration Cabinet and the Kentucky Workers' Compensation Funding Commission to transfer computer equipment and software, records, and information necessary to process claims for the remaining funds.

KU's action is taken pursuant to House Bill 287. This legislation, which became law on March 28, 1996, amended KRS 393.080 and provides as follows:

If there remains a total of one million dollars (\$1,000,000) or more in unclaimed sums one (1) year after a public utility refund became payable in accordance with the final determination or order providing for the refund . . . the Finance and Administration Cabinet shall enter into an agreement or agreements with the public utility that will allow the public utility to pay the unclaimed sums . . . to the Kentucky State Treasurer immediately if the Attorney General determines by written opinion that a reasonable relationship exists between the source of and reason for the refund, and the workers' compensation liability of a bankrupt employer who purportedly was self-insured, either individually or through a self-insurance group, under KRS Chapter 342. Payment of the unclaimed sums to the Kentucky State Treasurer shall constitute a complete release of the public utility from any further responsibility for the sums so paid, and from liability to any person who may have a claim to any of such sums.

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<sup>3</sup> Principal of \$5,313,421 plus accrued interest of \$1,460,512 minus accrued bank fees of \$882.

The Kentucky Attorney General has opined that the unclaimed funds which KU currently holds fall within the purview of House Bill 278.<sup>4</sup>

Having reviewed the motion and its supporting documents, the Commission finds the prerequisites of House Bill 278 have been met and that KRS 393.080 authorizes KU's proposed transfer of unclaimed funds. As KRS 393.080 imposes upon the Kentucky Workers' Compensation Funding Commission the obligation to "preserve the rights of persons or ratepayers entitled to claim a refund under KRS 393.080" and authorizes it to use "any funds available to the agency for the purpose of preserving those rights,"<sup>5</sup> the Commission finds that the rights of persons who have yet to claim their refund are fully protected.<sup>6</sup> Given the clear intent of the General Assembly in this matter, the Commission finds the Agreement between KU and the Finance and Administration Cabinet should be approved.<sup>7</sup>

IT IS THEREFORE ORDERED that:

1. KU's Motion to Approve Agreements and Transfer of Unclaimed Funds is granted.

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<sup>4</sup> OAG 96-07 (Jan. 23, 1996) and OAG 96-20 (Apr. 25, 1996).

<sup>5</sup> House Bill 278, Section 1 (Regular Session 1996).

<sup>6</sup> See also OAG 96-07 (Jan. 23, 1996) at 2.

<sup>7</sup> The Commission, however, finds no legal requirement that it approve the "Transfer Agreement." Neither KRS Chapter 278 nor KRS 393.080 requires Commission approval of the modest transfers of equipment or information involved. Any approval which this agency gives to the Transfer Agreement is given only to the extent to which Kentucky law requires such approval.

2. The proposed agreements between KU and the Kentucky Finance and Administration Cabinet and the Kentucky Workers' Compensation Funding Commission are approved to the extent authorized by law.

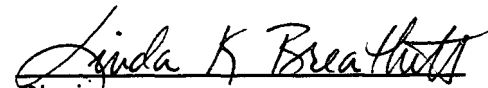
3. KU is authorized to transfer the unclaimed funds to the Kentucky State Treasurer in accordance with the provisions of KRS 393.080.

4. Upon KU's transfer of the unclaimed funds to the Kentucky State Treasurer, KU is released from all obligations previously imposed by the Commission to hold, maintain, or distribute the unclaimed funds.

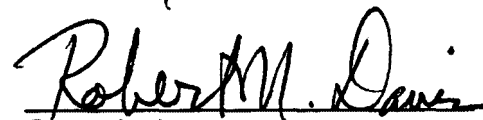
5. Within 20 days of the transfer, KU shall file with the Commission a final report on Escrow Funds. All reporting requirements established by prior Commission Order are terminated.

Done at Frankfort, Kentucky, this 20th day of June, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director