

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES COMPANY)	
FOR APPROVAL OF AN ALTERNATIVE METHOD)	CASE NO. 98-474
OF REGULATION OF ITS RATES AND SERVICES)	

O R D E R

On March 5, 1999, Kentucky Utilities Company (KU) filed a motion to amend its application for approval of an alternative method of regulating its rates and services and tendered with that motion its amended application and supplemental testimony. The original application, filed on October 12, 1998, requests approval of a new tariff that would increase or decrease the overall cost of electricity based on KU s performance in specific areas of operations, including fuel purchases, power plant availability, customer service satisfaction, and reliability of service. The amended application supplements the original application by including in the new tariff a number of rate credits and ratepayer protections that are not based on KU s performance but, rather, are guaranteed over the next five years.

The most significant of these rate credits is referred to as a bill reduction and is included as a component in the performance-based rate tariff. The proposed bill reduction is \$10.6 million in the first year and then declines to \$4.24 million in each of the following four years. The performance-based rate tariff as filed with KU s original application did not bear an effective date but was requested to be effective in the first calendar quarter not more than 120 days or less than 30 days following Commission approval. The amended tariff bears an effective date of July 1, 1999.

The amended application states that the public is being notified of the filing by newspaper publication as well as by an insert in monthly billings to customers. KU proposes minor modifications to the existing procedural schedule to allow the parties an opportunity to request information relating to the amended application and to file supplemental testimony, while maintaining the hearing as originally scheduled on June 15, 1999. The amended application also indicates that it is the product of negotiations between KU and the Attorney General's Office (AG), and that the AG joins in and supports the filing.

Based on a review of the amended application and being sufficiently advised, the Commission finds that the inclusion of guaranteed rate credits, and in particular the bill reduction, greatly enhances the overall benefits for ratepayers. While under the original application ratepayers would receive a bill reduction only if KU's performance exceeded minimum thresholds, the amended application guarantees bill reductions and other ratepayer benefits without regard to performance.

The amended application states that even when 1998 calendar year financial data is adjusted to reflect the first year bill reduction of \$10.6 million, the return on equity for KU and its affiliate, Louisville Gas and Electric Company, will be slightly less than equity returns authorized by other state commissions in 1998. While the Commission has no evidentiary record before it at this time to determine what level of earnings is appropriate for KU, or what a reasonable return on equity should be, we note that earlier in this case KU strenuously objected to the Commission's request for financial data more recent than its March 31, 1998 pre-merger returns.¹ KU said at that time that

¹ KU Response to Commission Order dated December 2, 1998, Item 11, at 2.

return on equity data was not relevant to its performance based regulation filing and that its March 31, 1998 data is the appropriate point of consideration because it does not include the anomalies of the merger synergies or the aberrations from the summer's wholesale energy market.²

It was only after the Commission's February 2, 1999 Order found the pre-merger returns to be insufficient responses did KU file post-merger data. Now, it is KU that relies upon its most recent financial data to demonstrate that its return on equity is within a reasonable range.

The Commission is also acutely aware of a separate complaint filed by one of the intervenors here, Kentucky Industrial Utility Customers, Inc. (KIUC), challenging KU's earnings as excessive and its rates as no longer fair, just and reasonable. That complaint, which has been pending in Case No. 99-083,³ includes KIUC's expert testimony on an appropriate level of earnings for KU and a reasonable rate of return on equity. In light of KU's amended application here, and its supplemental testimony incorporating an analysis of 1998 equity returns to demonstrate the reasonableness of the amendment,⁴ the Commission finds that there are common issues of fact raised here and in Case No. 99-083. In the interest of administrative economy, to avoid unnecessary duplication of effort, and to prevent the unnecessary expenditure of

² Id. at 3.

³ Case No. 99-083, Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company.

⁴ Supplemental Testimony of Ronald L. Willhite, p. 11-12.

resources by the parties as well as the Commission, we find it reasonable and appropriate to transfer KIUC's rate complaint from Case No. 99-083 to this case. We have today issued an Order in Case No. 99-083 overruling KU's pending motion to dismiss, directing KU to satisfy or answer the rate complaint within 10 days as required by 807 KAR 5:001, Section 12(4)(b), transferring the complaint to Case No. 98-474, and closing docket No. 99-083.

In accordance with 807 KAR 5:001, Section 3(5), the Commission further finds good cause to grant KU's motion to amend its application for approval of performance-based regulation. The amended application should be accepted for filing as of the date it was tendered, which was April 5, 1999. Due to the substantial modifications to the originally filed tariff, and the inclusion of an effective date less than three months from its filing date, the Commission finds that the April 5, 1999 filing date begins the time period specified in KRS 278.190(3) in the event that it should ultimately be held that this case is subject to that provision of law.

Since KU has elected to include an effective date of July 1, 1999 on its amended tariff filing, and even under the February 8, 1999 procedural schedule in this case a hearing would not commence until June 15, 1999, the Commission will be unable to conclude its investigation of the reasonableness of the amended tariff by the proposed effective date. Since KU's amended tariffs now include a bill reduction based on KU's analysis that its current level of earnings will support such a reduction, the ratepayers are entitled to this reduction as soon as possible. Therefore, pursuant to KRS 278.190(2), the Commission will suspend the amended Electric Performance-Based

Rate tariff for one day and allow it to go into effect subject to future change on July 2, 1999.

To allow all parties a fair opportunity to address the issues raised by KU in its amended application, as well as those raised by KIUC in its rate complaint, the Commission is compelled to revise the existing procedural schedule. While we anticipate that none of the parties (or our staff) will be comfortable with the tight schedule established today in Appendix A, it has been designed to comport with due process of law while proceeding with all deliberate speed to investigate the relevant issues. KU and the intervenors should be ready to address the rate issues without undue delay. KIUC's testimony and analyses filed with its rate complaint are substantially similar to: 1) its oral and written presentations at the January 22, 1999 informal conference in this case; and 2) its testimony filed March 18, 1999 in this case. Since discovery has already occurred in this case on that testimony, the Commission encourages KU and the intervenors to suggest revised procedural dates that might result in an earlier conclusion of the investigation here.

Also pending before the Commission is the Kentucky Resources Council's (KRC) motion for an extension of time to file its testimony addressing KU's original application. Based on the revised procedural schedule adopted herein, the Commission finds that KRC's testimony on the original application should be filed on May 24, 1999, in conjunction with its testimony on the amended application and the rate complaint.

IT IS THEREFORE ORDERED that:

1. KU's motion to amend its application to adopt an alternative method of regulating its rates and services is granted and the amendment is deemed filed as of April 5, 1999.

2. KU's Electric Performance-Based Rate tariff, bearing an effective date of July 1, 1999, is suspended for one day and shall become effective on July 2, 1999 subject to future change as may be ordered in this case.

3. KIUC's rate complaint now pending in Case No. 99-083 is transferred to and consolidated with this case.

4. The procedural schedule set forth in Appendix A shall be followed in this case and shall supersede the schedule appended to the February 8, 1999 Order.

5. KU shall give notice of the hearing in accordance with 807 KAR 5:011, Section 8(5). At the time publication is requested, it shall forward a duplicate of the notice and request to the Commission.

6. KRC's motion for an extension of time to file testimony is granted and its testimony shall be filed no later than May 24, 1999.

Done at Frankfort, Kentucky, this 13th day of April, 1999.

By the Commission

ATTEST:

Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 98-474 DATED APRIL 13, 1999

KU shall satisfy or file its Answer to
KIUC s Complaint within 10 days of the date of this Order

All requests for information to KIUC relating to its
rate complaint, and all requests to KU relating to
its amended application, shall be filed no later than4/30/99

KIUC and KU shall file responses to April 30, 1999
requests for information no later than.....5/10/99

Response testimony of intervenors to KU s
amended application and Response testimony of
KU and intervenors to KIUC s rate complaint shall
be filed no later than.....5/24/99

Information requests to KU and intervenors shall be
filed no later than.....6/7/99

KU and intervenors shall file responses to information
requests no later than.....6/21/99

Any rebuttal testimony by KU shall be filed no later than7/1/99

Any rebuttal testimony by KIUC on its rate complaint
shall be filed no later than7/12/99

All requests for information relating to rebuttal
testimony shall be filed no later than7/16/99

Last day for KU to publish notice of public hearing7/20/99

All responses to information requests relating
to rebuttal testimony shall be filed no later than7/23/99

Public hearing is to begin at 9:00 a.m., Eastern Daylight Time, in
Hearing Room 1 of the Commission s offices at 730 Schenkel Lane,
Frankfort, Kentucky7/27/99