

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DELTA NATURAL GAS COMPANY, INC. ) CASE NO.  
EXPERIMENTAL ALTERNATIVE REGULATION PLAN ) 99-046

O R D E R

The Attorney General ( AG ) has moved to dismiss this matter for non-compliance with KRS 278.190 and 278.192 and Administrative Regulations 807 KAR 5:001 and 807 KAR 5:011. Delta Natural Gas Company, Inc. ( Delta ) has submitted a response in opposition to the motion. By this Order, we deny the motion, order Delta to publish notice of its proposed Alternative Regulation Plan, and establish a procedural schedule in this matter.

On February 5, 1999, Delta filed with the Commission revised tariff sheets containing an experimental alternative regulation plan. This plan establishes a rate mechanism that is designed to ensure Delta s recovery of revenues sufficient to achieve its authorized rate of return on equity. This mechanism would add three billing components to each customer s monthly bill, but would not change Delta s base rates.

Describing the proposal as a general adjustment of rates, the AG has moved to dismiss the filing. He contends that KRS 278.190 and KRS 278.192 and Administrative Regulations 807 KAR 5:001 and 807 KAR 5:011 require Delta to make a formal application for rate adjustment and to submit certain financial materials in support of such application. Delta may not, the AG asserts, file a new tariff which accomplishes a

general rate increase accompanied by a letter of explanation, without calling the matter an application for general increase of existing rates or complying with the regulatory and statutory requirements that accompany an application for a general increase of rates. AG's Motion at 2-3. Delta's actions, the AG asserts, represent an attempt to subvert the existing regulatory process.

Delta rejects the AG's characterization of its proposed Alternative Regulation Plan as a filing for general rate adjustment. It terms its proposal as a formula or plan for the automatic increase or decrease of Delta's rates and charges upon the occurrence of certain events. Delta's Response at 2. Delta further notes that its base rates will not change if the proposed plan is approved and that the submission of the plan is consistent with other alternative rate regulation proposals which the Commission has reviewed.

Based upon its review of the proposed Alternative Regulation Plan and the pertinent provisions of KRS Chapter 278, the Commission finds that Delta's application is not a request for general rate adjustment, but a request for the establishment of a new rate. While Delta's proposal will create a mechanism that may result in additional charges assessed to Delta's customers and thus is a rate,<sup>1</sup> it will not alter the utility's existing general service rates. Administrative Regulation 807 KAR 5:001, Section 10, requires a utility to file an application only for a general rate adjustment in existing rates. It does not require an application for the assessment of a new charge or rate. Administrative Regulation 807 KAR 5:011, Sections 6 and 9, expressly permit a utility to amend its tariff by filing revised rate schedules when such amendments do not involve a

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<sup>1</sup> See KRS 278.010(12).

general adjustment of existing rates. Neither KRS 278.180 nor KRS 278.190 expressly requires the filing of a rate application. Previous applications for alternative rate regulation plans<sup>2</sup> were not required to meet the requirements of Administrative Regulation 807 KAR 5:001, Section 10.

Based upon the above, the Commission finds that the AG's motion to dismiss should be denied. We further find that, as Delta's proposed Alternative Regulation Plan will likely affect every Delta customer's bill, Delta should publish notice of the Plan's filing to ensure public awareness of this proceeding.

The Commission shares the AG's concerns about Delta's reservation of the right to either choose to implement the modified version or continue to remain under traditional regulation should its Plan be modified.<sup>3</sup> Delta contends that this reservation is necessary since any modifications may limit Delta's right to demand, collect and receive fair, just and reasonable rates.<sup>4</sup> Since KRS Chapter 278 already affords protections for this right, see KRS 278.400 and 278.410, such reservation is unlawful and is not recognized by the Commission.

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<sup>2</sup> See, e.g., Case No. 97-513, Modification To Western Kentucky Gas Company, A Division Of Atmos Energy Corporation (WKG) Gas Cost Adjustment To Incorporate An Experimental Performance-Based Ratemaking Mechanism (PBR) (June 1, 1998); Case No. 97-171, Modifications To Louisville Gas And Electric Company's Gas Supply Clause To Incorporate An Experimental Performance-Based Ratemaking Mechanism (Sept. 30, 1997); Case No. 96-079, The Tariff Filing Of Columbia Gas Of Kentucky, Inc. To Implement Gas Cost Incentive Rate Mechanisms (July 31, 1996). The AG participated in two of these proceedings and apparently did not object to the lack of any application meeting the requirements of Administrative Regulation 807 KAR 5:001, Section 10.

<sup>3</sup> Letter from John F. Hall to Helen C. Helton of February 5, 1999, at 21.

<sup>4</sup> Id.

IT IS HEREBY ORDERED that:

1. The AG's Motion to Dismiss is denied.
2. Within 20 days of the date of this Order, Delta shall publish notice of the filing of its proposed Alternative Regulation Plan in a form that generally conforms with Administrative Regulation 807 KAR 5:001, Section 10(3). In lieu of the content required by Administrative Regulation 807 KAR 5:001, Sections 3(a) - 3(d), Delta shall provide a brief description of the proposed Alternative Regulation Plan and its potential effects on customer bills. Within 45 days of the date of this Order, Delta shall file proof of such publication with the Commission.
3. The procedural schedule set forth in the Appendix to this Order shall be followed.
4. 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.
5. Delta shall give notice of the hearing in accordance with the provisions set out in 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. At any hearing in this matter, neither opening statements nor summarization of direct testimony shall be permitted.
7. 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 good cause.

8. All documents that this Order requires to be filed with the Commission shall be served upon all other parties by first class mail or express mail.

9. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

Done at Frankfort, Kentucky, this 10<sup>th</sup> day of May, 1999.

By the Commission

ATTEST:

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Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 99-046 DATED MAY 10, 1999

Delta shall file with the Commission and serve upon each party the direct testimony in written verified form of each witness that it intends to call ..... 05/21/99

All requests for information to Delta shall be served upon Delta no later than ..... 06/04/99

Delta shall file with the Commission and serve upon all parties of record its responses to the requests for information no later than..... 06/18/99

All supplemental requests for information to Delta shall be served upon Delta no later than ..... 07/02/99

Delta shall file with the Commission and serve upon all parties of record its responses to the requests for information no later than..... 07/16/99

Intervenor testimony, if any, shall be filed with the Commission and served upon all parties of record in verified prepared form no later than ..... 07/30/99

All requests for information to Intervenor shall be served no later than ..... 08/13/99

Intervenor shall file with the Commission and serve upon all parties of record its responses to requests for information no later than..... 08/25/99

Last day for Delta to publish notice of hearing date ..... 09/01/99

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, Kentucky, for the purpose of cross-examination of witnesses ..... 09/08/99

Written briefs shall be filed with the Commission and served upon all parties of record no later than ..... 10/08/99