

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE TARIFF FILING)
BY LOUISVILLE GAS AND ELECTRIC) CASE NO.
COMPANY TO IMPLEMENT KRS 278.214) 2002-00345

AN INVESTIGATION OF THE TARIFF FILING)
BY KENTUCKY UTILITIES COMPANY TO) CASE NO.
IMPLEMENT KRS 278.214) 2002-00346

AN INVESTIGATION OF THE TARIFF FILING)
BY KENTUCKY POWER COMPANY D/B/A) CASE NO.
AMERICAN ELECTRIC POWER TO) 2002-00349
IMPLEMENT KRS 278.214)

O R D E R

Pending before the Commission are requests for rehearing filed by Louisville Gas and Electric Company (LG&E), Kentucky Utilities Company (KU), and Kentucky Power Company d/b/a American Electric Power (Kentucky Power) of the Commission's May 28, 2003 Order entered in each of the above-captioned cases. Although these cases were not consolidated, the Commission entered the identical Order in each case and the requests for rehearing raise identical issues. Therefore, the Commission finds it reasonable to issue one Order addressing the rehearing requests.

The petitions for rehearing claim that the Commission misinterpreted judicial precedent, failed to properly interpret and apply KRS 278.214, and should reconsider its May 28, 2003 Order in light of a United States Supreme Court decision issued subsequent to that date. In addition, Kentucky Power claims that its retail ratepayers

have paid for only part of the transmission facilities in Kentucky used to provide them service, thereby negating any right they might otherwise have to priority use of jurisdictional transmission facilities in the event of an emergency.

Based on a review of the requests for rehearing, the Commission finds that no issue has been presented to justify granting a rehearing. The Commission has no authority to declare a statute unconstitutional or to interpret an unambiguous statute. As to Kentucky Power's claim that its retail ratepayers have not paid the full cost of the Kentucky transmission facilities used to provide them service, such a claim is irrelevant under KRS 278.214. The statute requires retail electric service within a utility's certified territory to receive priority in the event of an emergency on the utility's transmission facilities. There is no exception or exemption in the statute for transmission facilities that may have been partially charged to other than retail customers. If the transmission facilities are under the control of the Kentucky jurisdictional utility, KRS 278.214 is applicable.

Further, the Commission notes that in Case No. 2002-00348,¹ The Union Light, Heat and Power Company, a multi-state utility, has filed a tariff complying in all respects with KRS 278.214. Consequently, the Commission finds no basis to stay the requirement in its May 28, 2003 Order that LG&E, KU, and Kentucky Power file new tariffs setting forth without qualification the expressed transmission priority required by KRS 278.214.

¹ Case No. 2002-00348, An Investigation of the Tariff Filing by The Union Light, Heat and Power Company to Implement KRS 278.214.

IT IS THEREFORE ORDERED that the requests for rehearing filed by LG&E, KU and Kentucky Power are denied and each utility shall file within its respective case, within 15 days of the date of this Order, the tariff as required by the May 28, 2003 Order.

Done at Frankfort, Kentucky, this 3rd day of July, 2003.

By the Commission

ATTEST:

Wm. H. I. Barber

Deputy Executive Director

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