

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF THE UNION LIGHT, HEAT AND)	
POWER COMPANY FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE TO ACQUIRE CERTAIN GENERATION)	
RESOURCES AND RELATED PROPERTY; FOR)	
APPROVAL OF CERTAIN PURCHASE POWER)	CASE NO.
AGREEMENTS; FOR APPROVAL OF CERTAIN)	2003-00252
ACCOUNTING TREATMENT; AND FOR APPROVAL OF)	
DEVIATION FROM REQUIREMENTS OF KRS 278.2207)	
AND 278.2213(6))	

O R D E R

In its December 5, 2003 Order in this docket, the Commission gave its interim approval to the proposal of The Union Light, Heat and Power Company ("ULH&P") to acquire certain generating assets from its parent company, The Cincinnati Gas and Electric Company ("CG&E"). By letter dated December 10, 2003, the Commission's Executive Director denied in part and granted in part ULH&P's petition for confidential treatment of certain information provided in response to the data requests of its Staff and the Attorney General of the Commonwealth of Kentucky ("AG").

On December 23, 2003, ULH&P submitted its acceptance of the Commission's December 5, 2003 Order, including all of the Order's conditions and modifications to its proposed asset acquisition transaction. In its acceptance filing, however, ULH&P also requested rehearing of our condition requiring that it file a general rate application to effect a change in its electric rates as of January 1, 2007. Due to concerns about when the proposed transaction might receive the required federal regulatory approvals, and how the timing of such approval might impact its choice of a test year for an upcoming

rate case, ULH&P requests that this condition be modified to allow it to file its next general rate application to effect a change in rates “during 2007, but no later than January 1, 2008.”

On December 22, 2003, ULH&P submitted a petition for reconsideration of the December 10, 2003 decision denying, in part, its request for confidential treatment of certain information filed in this record.¹ Therein, ULH&P states that public disclosure of this information would enable competitors in the wholesale power market to ascertain the manner in which CG&E manages and operates its portfolio of generation assets as well as how CG&E responds to market conditions.

DISCUSSION

The Commission’s choice of January 1, 2007 as the date that a future increase in ULH&P’s electric rates would become effective was based on the numerous examples in ULH&P’s testimony, data responses, exhibits and schedules that referenced such date. Based on these references and based on ULH&P’s commitment to maintain the current freeze on its electric rates through 2006, it appeared that January 1, 2007 was the date by which ULH&P intended to effect an increase in these rates. However, while it appears that ULH&P could have made clear at an earlier juncture in the case that January 1, 2007 was not its “target” date, we find that rehearing should be granted in order to clarify and resolve this matter. We also find that ULH&P should provide further

¹ ULH&P requested reconsideration of the decision on confidentiality on all items for which confidentiality was denied except Item 1 of its response to the AG’s second request and Item 34, parts (b), (c) and (d) of its response to Commission Staff’s second request. Although the petition does not state that ULH&P accepts the decision on these items, their omission from Exhibit A to the petition, which identifies the items that are the subject of the petition, is presumed to be intentional.

explanation of its concerns and we intend to obtain such explanation via the data request attached as Appendix A to this Order.

ULH&P's original petitions for confidential treatment were quite general in nature, particularly in light of the magnitude of the information for which confidential treatment was sought. The petitions, some of which ULH&P and CG&E filed jointly, primarily cited the manner in which disclosure of the information might impact CG&E given the deregulated status of electric generation in Ohio. Absent more specificity, the Commission generally applied the reasoning that historical information should be disclosed while projected information should be granted confidential protection.² ULH&P's petition for reconsideration of that ruling cites similar concerns, although with more complete explanations and greater detail than its earlier petitions. Having considered these more explicit concerns, we find that the petition for reconsideration should be granted because disclosure of the information could harm CG&E and, in turn, harm ULH&P and its Kentucky ratepayers.

IT IS THEREFORE ORDERED that:

1. ULH&P's application for rehearing on the condition in our December 5, 2003 Order that it file its next rate case to effect an increase in its electric rates on January 1, 2007 is granted.
2. ULH&P shall respond to the questions contained in Appendix A attached hereto within 20 days from the date of this Order.

² Some of the most recent historical information was granted confidentiality.

3. ULH&P's petition for reconsideration of the December 10, 2003 decision on its requests for confidentiality is granted. If the information granted confidentiality becomes publicly available or no longer warrants confidential treatment, ULH&P, pursuant to 807 KAR 5:001, Section 7(9)(a), shall inform the Commission so that the information may be placed in the public record.

Done at Frankfort, Kentucky, this 9th day of January, 2004.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2003-00252 DATED January 9, 2004

REHEARING DATA REQUEST OF COMMISSION STAFF TO THE UNION LIGHT, HEAT AND POWER COMPANY

1. Page 28 of the Commission's December 5, 2003 Order in this case states,

Based on the current freeze on ULH&P's retail electric rates, effective through December 31, 2006, many of the accounting or rate-making provisions included in the amendment to its application refer to its next general rate proceeding or contain the phrasing "on or after January 1, 2007." These same references and phrasing were in ULH&P's original application and in numerous of its responses to data requests.

Would ULH&P agree that the record in this case contained numerous references that could have led the Commission to conclude that ULH&P was anticipating that there would be a change in its electric base rates effective January 1, 2007? Explain the response in detail.

2. On page 2 of its Application for Rehearing, ULH&P states, "In order to file an application for a change in rates in the time period prescribed by the Commission, ULH&P may have to elect a test year beginning as early as September 30, 2004." In ULH&P's last gas base rate case, the Commission was critical of the 7 months that passed between the end of the proposed test period and the filing of its application. The Commission stated, "In future rate case applications where a historical test period is utilized, the Commission will expect a more current test period to be used."¹

¹ Case No. 2001-00092, Adjustment of Gas Rates of The Union Light, Heat and Power Company, final Order dated January 31, 2002 at 4.

a. Explain in detail why ULH&P believes the test year in this future electric base rate case may have to begin as early as September 30, 2004.

b. Explain in detail how ULH&P's belief that the test year in this future electric base rate case may have to begin as early as September 30, 2004 is consistent with the Commission's instruction to ULH&P in Case No. 2001-00092.

3. Assume for purposes of this question the following scenario. ULH&P receives all the necessary regulatory approvals and completes the transaction by the end of 2004. It selects calendar year 2005 as the test year for the electric base rate case. ULH&P times the filing of its application in 2006 to provide, after the suspension period, for a January 1, 2007 effective date for new electric base rates.

a. Would this scenario address ULH&P's concerns that its test year reflect a full year of ownership and operation of the three generating facilities? Explain the response in detail.

b. If the regulatory approvals are received and the transaction is completed by the end of 2004, explain why this scenario would not be workable.

4. Concerning the approvals ULH&P will be seeking from the Federal Energy Regulatory Commission ("FERC") and the Securities and Exchange Commission ("SEC"):

a. What is the current status of the FERC and SEC applications?

b. When does ULH&P anticipate filing the FERC and SEC applications?

5. On pages 18 through 20 of its December 5, 2003 Order in this case, the Commission discussed and approved ULH&P's proposal concerning the sharing of profits from off-system sales. If the Commission grants ULH&P's request on rehearing

to delay the filing and effective dates for its next general electric base rate case, would this also result in a delay in implementing the sharing of off-system sales profits? Explain the response in detail.