

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 a December 5, 2003 Order, this Commission granted preliminary approval to The Union Light, Heat and Power Company's ("ULH&P") proposal to acquire roughly 1,105 Megawatts of electric generating facilities from its parent, The Cincinnati Gas and Electric Company ("CG&E"). Along with several other conditions, based on documents filed by ULH&P in the record of this case, and the fact that ULH&P's existing retail rate freeze is in effect through December 31, 2006, the Order required that ULH&P file its next electric rate case by such time that the change in its rates would be effective, after suspension, on January 1, 2007. This date is related to another condition contained in that Order, which required that ULH&P implement a sharing of off-system sales profits with its retail customers at the time of its next rate increase.

In its application and throughout this proceeding, ULH&P committed to retain its existing retail rate freeze through December 31, 2006, the date on which its current wholesale purchase power contract is scheduled to terminate. It made this commitment even though the wholesale purchase power contract will terminate early if the acquisition is consummated as planned. A number of the conditions and commitments

proposed by ULH&P were, in some way, related to the effective date of that future rate adjustment. Generally, information filed by ULH&P throughout the case indicated that it expected to file a future rate application so that the effective date of the new rates, after suspension, would be January 1, 2007. Based on these indications, and mindful that the sharing of profits from off-system sales is projected to provide a greater benefit to ratepayers in the early years after ULH&P acquires CG&E's generating facilities, the Commission required ULH&P to file its next rate case to result in an effective date, after suspension, of January 1, 2007.

On December 23, 2003, ULH&P sought reconsideration of the provision of the December 5, 2003 Order that established a time frame for filing its future rate case. On January 9, 2004, the Commission granted the reconsideration request and required ULH&P to file additional information in support of its request. ULH&P filed the required information on January 29, 2004.¹

In its request for reconsideration, ULH&P expresses concern that it might not be able to comply with the requirement that its next rate application be filed in time for the final approved rates to become effective, after suspension, by January 1, 2007. ULH&P bases its concern on two factors: (1) its desire that the test year in its future rate case reflect a full year of actual operations after it acquires the CG&E generating assets and (2) the possibility that the timing of the approval of the acquisition by the Federal Energy Regulatory Commission ("FERC") or the Securities and Exchange Commission ("SEC") might not permit ULH&P to use such a test year. ULH&P states that, if the FERC and SEC approvals are delayed, it might not have a full year's ownership of the generating

¹ The Attorney General of the Commonwealth of Kentucky, the only intervenor in this proceeding, did not respond to ULH&P's request for reconsideration.

assets to use as the test year in a rate application that would need to be filed by the second quarter of 2006. Therefore, ULH&P asks for flexibility to file its rate application to effect a change in rates sometime during 2007, but in any event, not later than January 1, 2008.

ULH&P outlines a scenario in which it might be required to use a test year in its next rate case ending as early as September 30, 2005. It explains that it generally prepares test years for rate cases using a period that ends with a calendar quarter because its quarterly financial statements are reviewed by its independent auditors and because it prepares several types of financial reports on a quarterly basis. It indicated, in response to Staff's January 9, 2004 data request, that it expected to file its transfer application with FERC in early February 2004 and its SEC application shortly thereafter.

The Commission appreciates the quandary in which ULH&P finds itself. ULH&P does not want to risk failing to comply with the Commission's directive regarding the timing of its next electric rate case and it anticipates that events beyond its control, the dates upon which it receives approvals from FERC and the SEC, may compromise its ability to comply. While we understand ULH&P's concern, we conclude that the request for a change in the provision of the December 5, 2003 Order governing the timing of ULH&P's next rate case is premature.

ULH&P filed its request for reconsideration within the time for such requests, based on the Commission's rules pertaining to such filings. However, the possible events on which it bases its request, the outcome of its filings with FERC and the SEC, are months away and impossible to predict. The outcome upon which ULH&P bases

the “worst case scenario” outlined in its filing may not occur. If such a scenario does occur, ULH&P may seek appropriate relief at that time.

Based on the evidence, and being otherwise advised, the Commission finds that ULH&P’s request should be denied as premature. However, we recognize that ULH&P believes that there may be a need to modify the timing of its future rate case, based on events beyond its control. Therefore, we find that denial of ULH&P’s request for reconsideration of the timing of the next rate application should be without prejudice. The Commission’s decision herein that the issue is premature should in no way be interpreted as assurance that ULH&P will be granted the requested modification sometime in the future. ULH&P has not shown why the test year in its future rate case must include a full year’s operation of the facilities being acquired.² Furthermore, the Commission believes that ratepayers should realize the benefit of the sharing of profits from off-system sales as early as is reasonably possible.

IT IS THEREFORE ORDERED that ULH&P’s request for reconsideration is denied without prejudice.

Done at Frankfort, Kentucky, this 2nd day of March, 2004.

By the Commission

ATTEST:


Executive Director

² It is not uncommon for electric utility rate cases to be timed to coincide with the in-service date of new generating facilities such that the test year contains zero actual operation of the facilities being put into rate base.