

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF THE GAS AND)
ELECTRIC RATES, TERMS, AND CONDITIONS) CASE NO.
OF LOUISVILLE GAS AND ELECTRIC) 2003-00433
COMPANY)

AND

AN ADJUSTMENT OF THE ELECTRIC RATES,) CASE NO.
TERMS, AND CONDITIONS OF KENTUCKY) 2003-00434
UTILITIES COMPANY)

O R D E R

On August 25, 2004, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“AG”), filed a motion in each of these rate cases requesting the Commission to clarify whether its August 12, 2004 Orders, which denied in part the AG’s petitions for rehearing, are ripe for judicial review or are interlocutory in nature. The motions set forth a recitation of facts, which includes the July 15, 2004 Orders in which the Commission, on its own motion, reopened the evidentiary records of these rate cases to allow all parties an opportunity to investigate the AG’s allegations of ex parte contacts and collusion. The AG then notes that two orders were issued on August 12, 2004 in each of these cases; one denying in part his petitions for rehearing and the other granting his motions to hold in abeyance all further proceedings in these rate cases. The motions then request “guidance from the Commission in determining whether it intends that the Attorney General should appeal

so much of its 12 August 2004 Order. . . that denies rehearing while all other matters continue to be held in abeyance before the Commission.” Motion at 3.

Based on the motions and being otherwise sufficiently advised, the Commission finds that the AG is requesting clarification of whether he may now seek judicial review, pursuant to KRS 278.410, of that portion of the August 12, 2004 Orders which denied rehearing on the depreciation issues; or whether the Commission’s decisions to hold in abeyance all further proceedings in these rate cases rendered the Orders partially denying rehearing to be interlocutory and not ripe for judicial review.

In responding to these motions, the Commission notes at the outset that it has no authority to modify or suspend a statute. Thus, the Commission’s Orders of August 12, 2004 holding in abeyance further proceedings in these rate cases cannot toll the time limits set forth in KRS 278.400 for ruling on petitions for rehearing, or in KRS 278.410(1) for seeking judicial review of a Commission Order. Consequently, the Commission had no authority to hold in abeyance the petitions for rehearing since KRS 278.400 provides that a failure of the Commission to act on the petitions within 20 days is deemed a denial of the petitions.

Judicial review of a Commission Order is provided for under KRS 278.410(1). That statute provides, in pertinent part, that:

Any party to a commission proceeding or any utility affected by an order of the commission may, within thirty (30) days after service of the order, or within twenty (20) days after service of the final order on rehearing, when a rehearing has been granted, bring an action against the commission in the Franklin Circuit Court to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable.

KRS 278.410(1). Here, the Commission's August 12, 2004 Orders denied the AG's petitions for rehearing on the depreciation issue but granted rehearing on a tax issue. By granting rehearing, the Commission retains jurisdiction over the rate cases and any action filed now for judicial review would be premature. This position is consistent with the decision in Dept. of Mental Health v. Robertson, Ky., 447 S.W.2d 857 (1969), a case which involved a judicial appeal from a decision of the Workmen's Compensation Board while a petition for reconsideration was pending at the Board. The Court in Robertson dismissed the appeal as premature, holding that when the employee "timely filed with the board the petition for reconsideration it destroyed the finality of the award made August 5, 1968, therefore, the circuit court properly dismissed the appeal." Id. at 858. This holding was subsequently cited and reaffirmed in Yocom v. Payne, Ky., 512 S.W.2d 517, 518 (1974) ("The finality of the award having been destroyed by the filing of the petition for reconsideration, the entire case as to all parties should be held in abeyance until the last of multiple petitions for reconsideration have been overruled. Until that time, the Board could change its award and a prior appeal would be premature, [citing] Robertson. . . .")

The AG will have a right to seek judicial review, pursuant to KRS 278.410(1), "within twenty (20) days after service of the final order on rehearing" when, as here, the Commission has granted rehearing.

IT IS THEREFORE ORDERED that the AG's motion for clarification is granted as discussed in the findings above.

Done at Frankfort, Kentucky, this 31st day of August, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Executive Director

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