

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| THE APPLICATION OF THE UNION |) | |
| LIGHT, HEAT AND POWER COMPANY |) | CASE NO. |
| RELATING TO SALE OF 7200 INDUSTRIAL |) | 2005-00199 |
| ROAD CONSTRUCTION/MAINTENANCE |) | |
| CENTER BUILDING |) | |

O R D E R

On May 12, 2005, The Union Light, Heat, and Power Company ("ULH&P") filed an application pursuant to KRS 278.218 seeking approval to sell its current construction and maintenance center building located at 7200 Industrial Road, Florence, Kentucky ("Industrial Road Property") or, in the alternative, a decision that Commission approval is not required.

The Attorney General, by and through his Office of Rate Intervention ("Attorney General"), was granted intervention in this proceeding. A procedural schedule was established for the proceeding that provided, among other things, an opportunity for the parties to request a public hearing. No request for a public hearing was made and the case now stands submitted to the Commission for a decision on the current record.

PROPOSAL

ULH&P explained in its application that it wishes to sell its Industrial Road Property and relocate its construction and maintenance center to 1262 Cox Avenue, Erlanger, Kentucky ("Cox Avenue Property"). It originally proposed to sell the Industrial Road Property to Tri-State Improvement Company ("Tri-State") at net book value.

Tri-State is an affiliate of ULH&P and is engaged in the business of holding and managing non-utility property.¹ ULH&P stated that Tri-State would sell the property to the general public and that, in the event the building is sold for an amount greater than the net book value, ULH&P would credit its customers with the sale proceeds in excess of the then-current book value, proportionate to the amount of the building in ULH&P's base rates.

On June 12, 2005, in its responses to discovery requests by Commission Staff and the Attorney General, ULH&P revised its proposal. It now proposes to sell the building directly to the general public. ULH&P states that any gain recorded for the jurisdictional portion of the property will be passed on to the customers through the establishment of a regulatory liability for refund in a future rate case. It states that any and all losses will be recorded below the line.

DISCUSSION

ULH&P states that it purchased the Industrial Road Property, a former manufacturing plant, in 1994 for \$2.5 million. It states that improvements in the amount of \$2,594,727 were made to convert the former plant to a construction and maintenance center. ULH&P states that the building at this site is approximately 140,000 square feet in size and that ULH&P uses approximately 71,000 square feet of the building for 65 electric operation employees, 34 gas operation employees, 112 vehicles and trailers, and various construction equipment, tools, parts, and supplies. ULH&P explained that the remaining one-half of the building was previously leased to Cinergy Services, Inc.

¹ ULH&P requested that the Commission grant it permission to deviate from KRS 278.2201 *et seq.* if the Commission determined that a deviation was required.

("Cinergy Services"), a ULH&P affiliate, and that Cinergy Services spent approximately \$21 million on improvements to the building to equip it for use as a wholesale electricity trading center. ULH&P states that Cinergy Services vacated the building in 2002 and that a 15-year lease was entered into with Cincinnati Bell in 2004 for the space formerly occupied by Cinergy Services. ULH&P states that, as of March 2005, the building's net book value was \$16.1 million and that only \$2.9 million is in ULH&P's base rates.²

ULH&P states that the building on the Cox Avenue Property has approximately 93,500 square feet. The purchase price for the land and building is \$2.1 million and the projected cost to retrofit the building is approximately \$2 million. This purchase would result in approximately \$4.1 million being included in ULH&P's rate base.

ULH&P states that traffic concerns at the Industrial Road Property prompted the proposed relocation. It states that in recent years greater residential, commercial, and industrial growth have caused increased traffic congestion in the area. In addition, it states that the Commonwealth of Kentucky recently notified it that a road-widening project is planned for Industrial Road, which ULH&P contends will result in increased traffic and in loss of ULH&P land. ULH&P states that the Cox Avenue Property is more centrally located to ULH&P's customers and that it is more accessible to the interstates, which, it contends, should allow ULH&P to respond to customer outages more quickly. It also contends that the Cox Avenue Property is operationally superior because it is newer and has inside storage for vehicles and equipment.

² The \$2.9 million in ULH&P's base rates represents only the costs attributable to ULH&P Gas Operations' use of the center. No amount has been included in ULH&P's rate base to reflect its Electric Operations' use of the building. Application at 4.

The Attorney General filed comments on July 5, 2005. He did not object to the transfer of the property, but did object to ULH&P's proposed allocation of the proceeds of the sale. He argues that ULH&P has included 100 percent of the original cost of the building in jurisdictional rate base and that, as a result, ULH&P's proposal to allow its non-jurisdictional operations to retain the majority of the proceeds is unreasonable. ULH&P responded to the Attorney General's concerns in its reply comments of July 13, 2005 by clarifying that the proceeds from the sale of the building will be allocated proportionately to the net book value of the jurisdictional operations versus the non-jurisdictional operations. It asserts that the Attorney General's argument that all gain from the sale of the building should be allocated to jurisdictional operations is patently unreasonable.³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ULH&P argues that KRS 278.218 does not apply to the sale of the Industrial Road Property because the building is being sold due to obsolescence and because the building will not be used to provide the same or similar service to ULH&P or its customers. However, ULH&P acknowledges that the statute does not define the term "obsolescence" and that, despite the fact that the Industrial Road Property is not the most optimal location, ULH&P could continue to operate its construction and maintenance center at that location. Therefore, ULH&P requests that the Commission rule either: (1) that Commission approval of the sale of the Industrial Road Property is

³ ULH&P also provided information showing that the cost of Industrial Road Property is allocated to both its jurisdictional and non-jurisdictional operations. See Response to the Commission Staff's First Data Request dated June 10, 2005, Item 1.

not required by KRS 278.218 or (2) that Commission approval is granted because the sale is for a proper purpose and consistent with the public interest.

KRS 278.218 provides:

- (1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:
 - (a) The assets are to be transferred by the utility for reasons other than obsolescence; or
 - (b) The assets will continue to be used to provide the same or similar service to the utility or its customers.
- (2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

The Commission, having considered the record and being otherwise sufficiently advised, finds that KRS 278.218 is applicable to ULH&P and that its proposed transaction does not meet either of the exemptions provided by the statute. We find, however, that the proposed sale is consistent with the public interest and that it should be approved as proposed. The Commission also finds that ULH&P's proposed treatment of any gain or loss from the sale of the Industrial Road Property is reasonable and should be approved.

IT IS THEREFORE ORDERED that:

1. ULH&P is authorized to sell the property located at 7200 Industrial Road, Florence, Kentucky as proposed herein.
2. In the event ULH&P realizes a gain on the sale of the Industrial Road Property, it is authorized to establish a regulatory liability to record the gain on the

jurisdictional portion of the property for the purpose of passing such gain to its customers in a future rate case.

3. In the event ULH&P realizes a loss on the sale of the Industrial Road Property, it shall record the loss as proposed.

Done at Frankfort, Kentucky, this 28th day of July, 2005.

By the Commission

ATTEST:


Executive Director