

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALTERNATIVE RATE FILING OF COOLBROOK) CASE NO. 2011-00433
UTILITIES, LLC)

ORDER

Coolbrook Utilities, LLC ("Coolbrook") has moved for identification of the issues to be addressed at the scheduled hearing in this matter. The Attorney General ("AG") has filed a response to this motion in which he agrees to "Coolbrook's stipulation that the formal hearing on this matter be limited to issues in dispute, specifically the issue of Coolbrook's proposed surcharge to finance an infiltration and inflow study." By this Order, we grant the motion and identify the issues that may be presented at the scheduled hearing.

On October 31, 2011, Coolbrook applied for an adjustment of its rates for sewer service pursuant to 807 KAR 5:076. It requested an increase in its monthly sewer service rate from \$30.15 to \$36.80 and authorization to assess a monthly surcharge of \$6.75 for 12 months to fund the cost of an inflow and infiltration study. Coolbrook based its proposed rates upon its historical operations for the year ending December 31, 2010, as adjusted for certain changes in its operations which it contends occurred after the close of the test period. In its application, it proposed to calculate its total revenue requirements using an operating ratio methodology.

At our direction, Commission Staff examined Coolbrook's application and records and prepared a report of its findings and recommendations. While not taking issue with

many of the expenses that Coolbrook incurred during the test period, Commission Staff disagreed with several expenses and with some of Coolbrook's proposed adjustments. It recommended that Coolbrook's monthly sewer rate be increased to \$32.04 and that the requested surcharge be denied.

In accordance with our Order of February 3, 2012, Coolbrook submitted a response to the findings and recommendations contained in the Staff Report. It took specific exception to Commission Staff's findings regarding the proposed Owner/Manager Fee, the proposed Agency Collection Fee, proposed legal fees, and the proposed surcharge. In its response, Coolbrook also noted that the issues of Owner/Manager Fee and Agency Collection Fee "have been heavily contested in the past, and therefore Coolbrook does not wish to rehash these positions once again in this case."¹

In its Motion for Identification of Issues and in correspondence with Commission Staff, Coolbrook has taken the position that the scope of the scheduled hearing should be limited only to the issues on which it disagrees with Commission Staff. (As it does not intend to contest the issues of Owner/Manager Fee and Agency Collection Fee, Coolbrook states that these issues should also be outside of the scope of the scheduled hearing.) It requests that, to ensure that Coolbrook is fully prepared to address any issues raised by the Commission, the Commission "identify for the parties the specific issues to be addressed by the Commission at the hearing."² Asserting that limiting the

¹ Coolbrook Utilities, LLC's Objections to Commission Staff Report at 1 (filed Mar. 19, 2012).

² Motion at 2.

hearing to the issues in dispute would be in the interest of administrative economy, the AG³ supports the motion.

KRS 278.190(3) makes clear that “[a]t any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility” The utility, not Commission Staff, must demonstrate the need for a rate adjustment.⁴ The utility must show by substantial evidence the reasonableness of its test-period expenses and any proposed adjustments to those expenses, as well as the methodology used to determine its revenue requirement. Questions regarding these issues are clearly within the scope of any hearing on a proposed rate adjustment. Coolbrook should, therefore, be prepared to address these issues at the scheduled hearing.

We remind the parties that Commission Staff is not a party to this proceeding. “The task of the Staff is to conduct investigations to facilitate a thorough exploration of the interests and issues involved. The traditional role of the Staff is ‘generally to analyze the evidence and advise the Commission.’”⁵ Commission Staff has no authority to bind the Commission or limit the scope of a Commission investigation.⁶ To limit the scope of the scheduled hearing to those issues on which Commission Staff and Coolbrook disagree would effectively require the Commission to accept the uncontested findings

³ The AG has advised the Commission that he will not be presenting any evidence at the hearing. He has not conducted discovery nor has taken any position on any issues in this matter other than to advise the Commission of his lack of objections to Commission Staff’s report.

⁴ See *Morgan v. Blue Cross and Blue Shield of Ky., Inc.*, 794 S.W.2d 629, 633 (Ky. 1994) (“The Administrative Board which needs information has no responsibility to seek out evidence that should be provided as part of the movant’s request. An applicant for benefits has the burden of proof. The burden of proof is on the proponent of an issue.”) (citations omitted). See also *Energy Regulatory Com. v. Ky. Power*, 605 S.W.2d 46 (Ky.1980); *Lee v. International Harvester Co.*, 373 S.W.2d 418 (Ky.1963).

⁵ *Kentucky American Water Co. v. Com. ex rel. Cowan*, 847 S.W.2d 737, 740 (Ky. 1993).

⁶ See, e.g., *Union Light, Heat & Power Co. v. Pub. Serv. Comm’n*, 271 S.W.2d 361 (Ky. 1954).

set forth in Commission Staff's report and afford the Commission no opportunity to question the utility on the issues underlying those findings. We do not believe that such action is appropriate or consistent with our duty to the public nor are we of the opinion that questioning utility and Commission Staff witnesses on the reasonableness of test-period expenses, proposed adjustments, or the methodology used to determine Coolbrook's total revenue requirements will unduly extend the scheduled hearing or impose a great burden or additional costs on the parties.

Accordingly, we grant Coolbrook's motion and advise the parties that the issues to be addressed at the scheduled hearing are: the reasonableness of the proposed monthly service rate and proposed surcharge, the reasonableness of Coolbrook's test-period expenses and proposed adjustments to those expenses; and the methodology used to determine the utility's revenue requirement.

To the extent that Coolbrook may have interpreted the Commission's earlier orders to conclude that the scope of the scheduled hearing would be limited to its differences with Commission Staff's findings, that such interpretation renders Coolbrook unprepared to proceed with the scheduled hearing, and that it requires additional time to prepare for a hearing, the Commission will favorably consider any motion for continuance made at the beginning of the scheduled hearing.

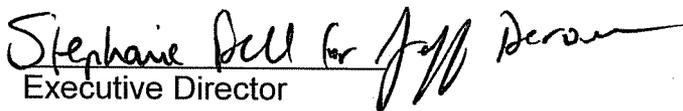
IT IS THEREFORE ORDERED that:

1. Coolbrook's Motion for Identification of Issues is granted.
2. The issues identified in this Order will be addressed at the scheduled hearing in this matter.

By the Commission

ENTERED 
MAY 09 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2011-00433

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