

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AIRVIEW UTILITIES, LLC'S NOTICE)	
OF SURRENDER AND ABANDONMENT)	CASE NO. 2016-00207
OF UTILITY PROPERTY)	

ORDER

On June 16, 2016, Airview Utilities, LLC ("Airview") tendered a notice of surrender and abandonment of utility property ("Notice"), stating its intent to abandon all the property interests and rights in and to the property owned by Airview necessary to provide service to its customers.¹ On July 8, 2016, the Attorney General of the Commonwealth of Kentucky ("AG") filed a motion for full intervention into the matter.

On July 11, 2016, the Commission entered an Order that, among other things, rejected the filing of Airview's Notice, which failed to address whether Airview had provided written notices to state and local officials that are required, pursuant to KRS 278.020(11), in order for the Commission to accept the filing.² On July 11, 2016, Airview submitted a filing which demonstrated that Airview had provided the written notices. On July 12, 2016, the Commission entered an Order granting the AG's motion for intervention, and on July 15, 2016, the Commission entered an Order accepting Airview's Notice for filing as of July 11, 2016.

¹ *Airview Utilities, LLC's Notice of Surrender and Abandonment of Utility Property* "Notice" (tendered June 16, 2016).

² Order (July 11, 2016) at 2 and 3.

On July 29, 2016, the Commission initiated this investigation into the request by Airview to abandon its utility services and facilities and required Airview to continue to operate its utility facilities during the pendency of this investigation and until the Commission issues an Order adjudicating Airview's request to abandon its facilities.³ The Commission's July 29, 2016 Order also required Airview to, within 14 days of the date of the Order, file responses to information requested in the Appendix to the Order ("Commission's First Request").⁴

On August 4, 2016, Airview filed a motion for an extension of time through and until August 22, 2016, to file its responses to the Commission's First Request. On August 11, 2016, the Commission granted Airview's motion for an extension.⁵ On August 22, 2016, Airview filed its responses to the Commission's First Request; however, Airview's responses were not accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.⁶

On August 16, 2016, the AG filed his initial request for information ("AG's Initial Request"). On September 6, 2016, the Commission, on its own motion, found that Airview should file its responses to the AG's Initial Request within 14 days of the date of

³ Order (July 29, 2016) at 2.

⁴ *Id.* at 3.

⁵ Order (Aug. 11, 2016) at 2.

⁶ Order (Sept. 30, 2016) at 1.

that Order.⁷ We also established a procedural schedule which required that supplemental requests for information to Airview be filed no later than September 26, 2016; that Airview's responses to the supplemental requests be filed no later than October 6, 2016; and that a formal hearing be held on October 12, 2016.⁸

On September 20, 2016, Commission Staff filed its supplemental requests for information ("Commission's Supplemental Request") into the record. On the same day, Airview filed a motion for extension of time from September 20, 2016, through and until September 22, 2016, in which to file its responses to the AG's Initial Request.

On September 22, 2016, Airview filed its responses to the AG's Initial Request; however, Airview's responses were not accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.⁹

On September 26, 2016, the AG, noting that Airview had filed its response to the AG's Initial Request two days after the date required in the Commission's September 6, 2016 Order, requested a two-day extension of time, from September 26, 2016, to September 28, 2016, in which to file his supplemental requests for information. The AG thereafter filed his Supplemental Request for Information ("AG's Supplemental Request") on September 28, 2016.

⁷ Order (Sept. 6, 2016) at 1 and 2.

⁸ *Id.* at 2.

⁹ Order (Sept. 30, 2016) at 1.

On September 30, 2016, the Commission entered an Order that granted Airview's extension of time for filing its response to the AG's Initial Request.¹⁰ Through the same Order we also found that Airview had failed to provide the certifications required by the Commission's July 29, 2016 Order for its responses to the AG's Initial Request and the Commission's First Request and ordered that Airview file the certifications within seven days of the date of the Order. Airview filed each of the required certifications on September 30, 2016. On October 5, 2016, Airview filed a supplemental response to the AG's Initial Request.

On October 6, 2016, the day that its responses to both of the supplemental requests were due, Airview filed motions for an extension of time from October 6, 2016, to October 11, 2016, in which to file its responses to the AG's Supplemental Request and its responses to the Commission's Supplemental Request.¹¹ With regard to the Commission's Supplemental Request, Airview stated that it had "collected a substantial amount of information necessary to provide answers to the Commission Staff's Supplemental Requests for Information, but some additional information needs to be obtained to provide full and complete answers to said information requests."¹² With regard to the AG's Supplemental Request, Airview stated, among other things, that it

¹⁰ Order (Sept. 30, 2016) at 2.

¹¹ Motion for Extension of Time to Answer the Attorney General's Second Requests for Information ("Motion for Extension to Answer AG's Supplemental Request") (filed Oct. 6, 2016) and Motion for Extension of Time to Answer Commission Staff's Supplemental Request for Information ("Motion for Extension to Answer Commission's Supplemental Request") (filed Oct. 6, 2016).

¹² Motion for Extension to Answer Commission's Supplemental Request (filed Oct. 6, 2016) at 1.

had “requested the Attorney General to delete certain information requests which are not believed by Airview to result in the production of information relevant to this case.”¹³

On October 7, 2016, the AG filed an objection to Airview's Motion for Extension to Answer AG's Supplemental Requests.¹⁴ The AG asserted, among other things, that Airview had “repeatedly filed late responses to both” the Commission's and the AG's requests for information.¹⁵ The AG stated that Airview's request for an extension of time through October 11, 2016, will prejudice the AG because the hearing is scheduled for October 12, 2016, and the AG stated that it will not have adequate time to prepare if Airview is permitted to provide discovery on the eve of the formal hearing.¹⁶ The AG requested that the Commission deny Airview's Motion for Extension to Answer the AG's Supplemental Requests and, in the alternative that Airview's motion is granted, the AG requested that the hearing be reschedule to a later date.¹⁷

The Commission has pending before it the Attorney General's September 28, 2016 motion for extension of time in which to file his supplemental request, Airview's October 6, 2016 motions for an extension of time in which to respond to the Commission's Supplemental Request and the AG's Supplemental Request, and the AG's October 7, 2016 request, made in the alternative, to reschedule the hearing in the event that we grant Airview's request for an extension of time in which to respond to the AG's Supplemental Request. We note that on October 7, 2016, Airview filed its

¹³ Motion for Extension to Answer AG's Supplemental Request (filed Oct. 6, 2016) at 1 and 2.

¹⁴ Attorney General's Objection to Airview Utilities' Motion for Extension of Time to Answer the Attorney General's Second Request for Information (“AG's Objection”).

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 2 and 3.

response to the Commission's Supplemental Request, and on October 10, 2016, it filed its response to the AG's Supplemental Request; however, these filings did not render moot Airview's motions in that the filings took place after the date provided for per the September 6, 2016 Order of procedure.

We find that the Commission's Supplemental Request contained six requests for information. One of the Commission's requests required Airview to identify each witness that it intended to call at the October 12, 2016 hearing.¹⁸ In the event that Airview did not intend to call as a witness an individual who prepared or supervised the preparation of Airview's responses to requests for information, Airview was required to state why the individual would not be called.¹⁹ Four of the Commission's requests required Airview to file information that Airview should have filed with its responses to the Commission's First Request.²⁰ The sixth request required Airview to provide the journal entries that Airview will record to reflect the abandonment.

We find that Airview does not demonstrate good cause to extend the time for filing the responses to the Commission's Supplemental Request. The motion fails to set forth any reasonable grounds as to why Airview could not provide the information by the date specified in our September 6, 2016 Order. Nevertheless, the late-filed information tendered by Airview is relevant to the Commission's investigation, and we find that it should be made part of the record. We find that we should defer, for now, further consideration of the consequences of Airview's failure to comply with our September 6, 2016 Order.

¹⁸ Commission's Supplemental Request (filed Sept. 20, 2016) at 2.

¹⁹ *Id.*

²⁰ *Id.* at 2 and 3.

While we find that the AG's Supplemental Request is more extensive than the Commission's Supplemental Request, we find that Airview's request for an extension of time in which to file its responses lacks an adequate, detailed discussion as to why the additional time sought is warranted. We find that Airview does not demonstrate good cause to extend the time for filing the responses to the AG's Supplemental Request. Nevertheless, we find that the filing should be made part of the record. We find that we should defer, for now, further consideration of the consequences of Airview's failure to comply with our September 6, 2016 Order.

We find that a hearing has been scheduled for October 12, 2016, and that Airview was ordered to give notice to the public of the hearing. We acknowledge that Airview's failure to timely file its responses may prejudice the AG; however, we find that rescheduling a publicly noticed hearing in the absence of a demonstration of actual prejudice appears to be too broad a remedy. If the AG believes that formal hearing proceedings in addition to the October 12, 2016 formal hearing are necessary, he may request such proceedings through a motion. However, we note that any motion for formal hearing proceedings in addition to the October 12, 2016 formal hearing should contain a thorough discussion of the reasons why such proceedings are necessary.

IT IS THEREFORE ORDERED that:

1. The AG's motion for an extension of time to file his Supplemental Request is granted.
2. Airview's motion for an extension of time to file its responses to the Commission's Supplemental Request is denied. Notwithstanding the denial of Airview's

motion for an extension, Airview's responses to the Commission's Supplemental Request shall be filed into the record.

3. Airview's motion for an extension of time to file its responses to the AG's Supplemental Request is denied. Notwithstanding the denial of Airview's motion for an extension, Airview's responses to the AG's Supplemental Request shall be filed into the record.

4. The AG's motion to reschedule the October 12, 2016 hearing is denied.

By the Commission



ATTEST:


Executive Director 

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Honorable Robert C Moore
Attorney At Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Airview Utilities, LLC
1706 Bardstown Road
Louisville, KY 40205