

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF OWEN)
ELECTRIC COOPERATIVE, INC.) Case No. 2011-00037
FOR AN ADJUSTMENT OF RATES)

RECEIVED

ATTORNEY GENERAL'S
MOTION TO COMPEL

AUG 01 2011

PUBLIC SERVICE
COMMISSION

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and moves the Public Service Commission (hereinafter the "PSC" or "Commission") to compel Owen Electric Cooperative, Inc. (hereinafter "Owen") to adequately respond to certain questions which the Attorney General filed in the instant matter. Specially, the company has failed to adequately respond to the Attorney Generals' Initial Request questions 16, 31, 32, 60, 67 and 68. Unless the Commission compels Owen to respond to the discovery requests, the Attorney General and the Commission will not have access to the information necessary to make informed decisions, and the Attorney General will be deprived of procedural due process in this matter.

As a general overview, Owen has failed to adequately respond to many of the Attorney General's initial data requests on only one ground on one question and utterly failed to answer other questions which will be addressed below. The Attorney General provides the following questions in this motion for easier reference.

Question 16: The report at page 5 states that the company had created a rates task force in August 2009 to develop a request for proposal to hire a consultant to prepare a rate study based on a 2009 test year, and that the results were expected in August 2010. Provide a copy of the request for proposal, together with all responses received.

- a. Provide copies of any all correspondence to and from the consultant(s) that were retained to conduct such study.
- b. Provide copies of any all correspondence to and from EKPC regarding this study.
- c. Provide copies of any other cost of service studies that were provided to EKPC during the past three (3) years.

Question 31: Confirm that without decoupling, EKPC, as Owen's primary generation source, has the ability to sell conserved power on the wholesale unregulated market in excess of both the wholesale rates EKPC charges to Owen, and the retail regulated rates Owen charges to its ratepayers.

- a. Confirm that when Owen's ratepayers conserve energy, EKPC is able to sell that conserved power on the wholesale market, thereby reducing Owen's proportionate costs.
- b. Confirm that from a general perspective, the more power Owen sells, the more its costs will increase.

Question 32: Confirm that EKPC system-wide experienced a record decline in consumption during 2009.

- a. Confirm further that Owen's use of a 2009 test year in the instant proceeding to establish average use per customer will lead to customers paying for that historic decline.

Question 60: Reference the Stallons testimony, p. 2, wherein he states the purpose of the instant filing is to align the member charge with the company's fixed costs over a five-year period. Provide any and all documentation to support Owen's forecasted fixed costs over the next five years, including any and all assumptions underlying such forecasts.

- a. State to what extent, if any, the company's forecasted fixed costs are dependent upon the 2008 load forecast.
- b. State to what extent, if any, the company's forecasted fixed costs in the instant case relies upon the most recent load forecast.

Question 67: Reference the Stallons testimony, p.5, question no. 18, wherein Mr. Stallons defines the "throughput incentive" as an incentive "to increase fixed cost[s] and margin recovery." Does Mr. Stallon acknowledge that Owen is likewise under an incentive to maximize its fixed costs? If he does not so admit, explain why not in complete detail.

- c. Is the concept of providing the lowest cost energy possible to its members not enough incentive for Owen to reduce its fixed costs? If not, why not? Please explain in complete detail.
- d. Please explain the nature of the legal duty Owen believes it owes to its members.
- e. If Owen institutes DSM programs and attempts to recover any sales lost as a result of the "energy innovations" Mr. Stallons describes in his answer to this question, would that not eliminate the purported "disincentive" described therein? If not, why not? Describe in complete detail.

Question 68: Reference the Stallons testimony, p.6, question no. 19, wherein he states that raising the customer charge is the "simplest way for a rural electric cooperative to mitigate the throughput incentive." Would doing so also be the most effective and efficient way? If so, why? If not, why not? Explain in complete detail.

- f. If Owen also instituted DSM programs designed to recover its lost sales resulting from the implementation of energy efficiency measures, would Mr. Stallons continue to believe that raising the customer charge remains the "simplest way" to mitigate the throughput incentive?
- g. If Owen also instituted DSM programs designed to recover its lost sales resulting from the implementation of energy efficiency measures, would Mr. Stallons believe that raising the customer charge would be the most effective and efficient means of mitigating the throughput incentive? If not, explain why not in complete detail.

ARGUMENT

The scope of permissible discovery before the Commission is very broad. In fact, the Commission has stated:

While the Commission's Rules of Procedure are generally silent upon discovery, the Kentucky Civil Rules make clear that scope of discovery is quite broad. If the requested material appears reasonably calculated to lead to discovery of admissible evidence, then the request is relevant. (footnotes omitted).

In the Matter of: The Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main, Case No. 2007-00134, Order, 15 November 2007.

Further, the Commission follows Kentucky Civil Rule 26.02 (1).

It is well-settled that discovery rules are to be liberally construed so as to provide the parties with relevant information fundamental to proper litigation. While not binding on the Commission, nonetheless, the Commission finds persuasive Kentucky Civil Rule 26.02 (1).

In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2004 to October 31 2006, Case No. 2006-00509, and In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from November 1, 2004 to October 31, 2006, Case No. 2006-00510, Order, 9 May 2007.

Kentucky Civil Rule 26.02 (1) states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information

sought appears to reasonably calculated to lead to the discovery of admissible evidence.

The information sought by the Attorney General clearly falls within the scope of permissible inquiry consistent with the authority under Civil Rule 26.02 (1). Further, it is not the Attorney General's burden to prove that the discovery request is proper. Rather, it is the company's burden to demonstrate that the request is exempt from disclosure, and to cite specific grounds in support of its contention.

Where a party objects to the request, the burden is upon the objecting party to demonstrate that the request is improper. (footnote omitted).

In the Matter of: The Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main, Case No. 2007-00134, Order, 15 November 2007.

Moreover, as the Commission has explained:

As part of a discovery request, the issue is not whether the item is admissible.

In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2004 to October 31 2006, Case No. 2006-00509, and In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from November 1, 2004 to October 31, 2006, Case No. 2006-00510, Order, 9 May 2007.

With regard to question 16, the Attorney General is entitled to the information sought in the opening question based on the aforementioned arguments notwithstanding the fact that the company claims that the request is not "germane," or presumably irrelevant. The company should be required to provide all information it

used, or rejected, in determining the EKPC retail rate feasibility study as well as Owen's participation in same, including correspondence between Owen and the consultant and Owen and EKPC. Indeed, it is the feasibility of the rates and the impact on the ratepayers, as in whether they are fair, just and reasonable, that lies at the heart of this litigation.

At questions 31, 32, 60, 67 and 68 the company simply did not answer the opening questions and should be compelled to do so. There was no objection or claim of privilege. Hence, the responses should be immediately provided.

WHEREFORE, the Attorney General respectfully moves the Commission to compel the company to adequately respond to the aforementioned discovery requests immediately. To deny this request will result in denying the Attorney General and the Commission the information they require in reaching informed decisions regarding this matter, and further, it would deny the Attorney General due process and meaningful participation in the instant proceeding.

Respectfully submitted,

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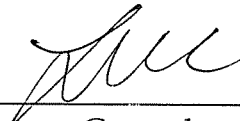
Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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Mark Stallons
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this 1st day of August, 2011



Assistant Attorney General