

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AUG 20 2012

KENTUCKY FRONTIER GAS
COMPANY, LLC AS BANKRUPTCY
OPERATOR OF B.T.U.GAS COMPANY

PUBLIC SERVICE
COMMISSION

Vs.

CASE NO. 2012-00028

HARRY THOMPSON, THOMPSON ENERGY
ET. AL AND OTHER UNKNOWN ENTITIES

MOTION TO COMPEL

Kentucky Frontier Gas, LLC (Frontier), by counsel, submits this motion to compel responses to its discovery request of June 11, 2012. Pursuant to the Commission's order of June 6, 2012, Frontier submitted data requests to the respondents. To date no responses have been provided and no objections made to the discovery. 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. In the Matter of: The Application of Kentucky-American Water Company for 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 has recognized the standards for discovery stated in 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 Frontier falls within the scope of permissible inquiry consistent with the authority under Civil Rule 26.02 (1). It is the respondents' burden to demonstrate that the request is exempt from disclosure and to cite specific grounds in support of their contention. Where a party objects to the request, the burden is upon the objecting party to demonstrate that the request is improper. 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, the Commission has stated that for matters of discovery, 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 32 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 2, 2004 to October 3, 2006, Case No. 2006-00510, Order, 9 May 2007.

In this case the respondents simply did not answer the questions. There was no objection or claim of privilege. It was respondents that initially moved for an order allowing discovery. See respondents' motion of May 29, 2012. Having raised the issue, they should not be allowed to avoid the procedure they sought to be included in this case. The Commission should order the responses to be filed pursuant to its order of June 6, 2012.

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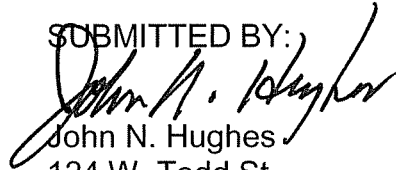
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I certify a copy of this motion was served on the following by first class mail and by email the 20th day of August, 2012.

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