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Michael J. Schmitt
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Vice Chairman

Talina R. Mathews
Commissioner

July 20, 2018

PARTIES OF RECORD

Re: *CMN-RUS, Inc. v. Windstream Kentucky East, LLC*
Case No. 2018-00157

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact Benjamin Bellamy, Staff Attorney III, at 502-782-2584.

Sincerely,

A handwritten signature in blue ink that reads "Gwen R. Pinson".

Gwen R. Pinson
Executive Director

BAB

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File No. 2018-00157

FROM: Benjamin Bellamy, Staff Attorney III

DATE: July 20, 2018

Re: Informal Conference of July 18, 2018

Pursuant to an Order entered on July 17, 2018, an informal conference was conducted on July 18, 2018 via telephonic conference. The informal conference was held at the request of CMN-RUS, Inc. (CMN) to discuss a procedural order, including the extent to which discovery is necessary to resolve the issues presented and deadlines that should apply. Prior to the informal conference, counsel for CMN, Katie Yunker, circulated a proposed schedule via email to the parties and Commission Staff. A copy of that email and proposed schedule are attached to his memorandum. A copy of the attendance roster for the informal conference is also attached hereto. However, because the informal conference was conducted via telephonic conference, it was completed solely by Commission Staff based on representations made during the conference as to who attended.

During the telephone conference, Commission Staff asked the parties what major issues they felt needed additional discovery and what timeframe and schedule they felt would be appropriate in this matter. Commission Staff noted that in asking what issues the parties felt needed discovery that Commission Staff was not suggesting that the parties would be limited to those issues. Rather, Commission Staff explained that they were simply trying to gauge the extent to which additional discovery was necessary to assist in establishing a procedural schedule.

Ms. Yunker indicated that it was necessary to move this matter forward quickly based on the nature of the issues involved. She proposed that the Commission adopt the schedule referenced above and attached hereto or a schedule similar to it. She indicated that CMN contends that some discovery is necessary in this matter – primarily on what procedures Windstream Kentucky East, LLC (Windstream) contends are reasonable. She indicated that the schedule CMN proposed provides time for the completion of that discovery but will also permit the matter to move forward quickly. Also, although the proposed schedule provides for resolution based on the written record, Ms. Yunker indicated that it would be necessary to set a hearing date in the original scheduling order to avoid further delay when it comes time to determining whether a hearing should occur.

Counsel for Windstream, Tia Combs, did not object to moving this matter along at the rate requested by CMN and agreed that the schedule proposed by CMN, or one

similar to it, would be reasonable in this matter. Ms. Combs indicated that the primary issues on which discovery is necessary related to the reasonableness of proposed pole attachment procedures. Ms. Combs indicated that she felt discovery on those and other issues could be completed within the schedule proposed by CMN. However, Ms. Combs did suggest adding a provision for a settlement conference as Windstream felt that this was a matter in which they might be able to reach a resolution. Ms. Yunker agreed with the suggestion that a settlement conference might be helpful as long as the addition of a settlement conference did not otherwise materially affect the schedule CMN proposed.

Commission Staff stated that although they attended the informal conference to discuss the parties positions regarding a procedural schedule the Commission acted only through its orders such that the Commission would ultimately set the schedule. Commission Staff explained that they would prepare this memorandum summarizing the discussions at the informal conference in general terms and file it into the record along with the email and proposed schedule. Commission Staff indicated that if the parties felt that this memorandum was inaccurate that they could make a filing indicating the same. Commission Staff represented that no additional motion would be necessary for the Commission to issue an order setting a procedural schedule as the Commission would take the matter under submission.

There being no further material discussions, the IC was then adjourned.

CC: Parties of Record

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CMN-RUS, INC.

COMPLAINT

v.

WINDSTREAM KENTUCKY EAST, LLC

DEFENDANT

CASE NO
2018-00157

Please sign in:

NAME

ON BEHALF OF

Ben Selbony

PSC Staff

Jim Stevens

PSC Staff

Jeb Pinney

PSC Staff

Tie Combs

Wind stream

James Lloyd

Windstream

Anita Larson

CMN

Katie Yunker

CMN

Joe McClure, Law Clerk

CMN

Bellamy, Ben A (PSC)

From: Katie Yunker <kyunker@mmlk.com>
Sent: Wednesday, July 18, 2018 8:18 AM
To: Bellamy, Ben A (PSC); Stansbury, Casey C.; Combs, Tia J.
Subject: Ky. PSC No. 2018-00157, proposed Schedule for consideration
Attachments: prop'd Schedule (distributed 7-18-18).pdf

Counsel: In the interest of making efficient use of everyone's time at the informal conference, Complainant CMN-RUS, Inc. (CMN) proposes for discussion the attached as the case schedule if there are genuine issues of material facts in the case that might require or be most expeditiously addressed by pre-filed testimony and an evidentiary hearing. I prepared it to track the PSC's customary scheduling-order form, and have also included in the proposal time periods for motions practice, for substantive and other motions.

I had hoped that we all would be in a better position to assess whether further discovery was necessary and whether the case was amenable to disposition on something akin to summary judgment because we would have in hand Windstream's responses to the CMN contention interrogatories served by email on Windstream counsel on 6/22/18 (available on the PSC website at: https://psc.ky.gov/PSCSCF/2018%20cases/2018-00157/20180625_CMN-RUS,%20Inc.%20First%20Set%20of%20Discovery%20Requests%20to%20Windstream%20Kentucky%20East,%20LLC.pdf). On the day of the 7/13/18 deadline, Windstream counsel stated that 2 additional weeks will be needed to get the discovery answered.

Katie Yunker

(MCBRAYER)

Katherine K. Yunker

Of Counsel

McBrayer, McGinnis, Leslie & Kirkland PLLC

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APPENDIX

**(proposed) Scheduling Order of the Kentucky Public Service Commission
in Case No. 2018-00157**

CMN and Windstream shall file direct testimony, in verified form,
setting forth in detail the factual and legal basis addressing the issues
raised in the complaint and answer, no later than.....08/17/18

Requests for information upon CMN or Windstream
shall be filed no later than08/31/18

CMN and Windstream shall file responses to requests
for information no later than09/14/18

CMN and Windstream shall file verified rebuttal testimony,
if any, no later than09/28/18

The parties to this matter shall request a hearing or
submit the case for decision based on the record no later than.....10/05/18

Public Hearing, if any, to be held in Hearing Room 1 of the
Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky,
for the purpose of cross examination of witnesses of the parties,
beginning at 9:00 a.m., Eastern Daylight Time10/30/18

Briefing/Response deadlines

A dispositive motion, if any, shall be accompanied by a brief setting forth the applicable law and factual support therefor.

Any response to a dispositive motion (with a brief accompanying or incorporated therein) shall be filed on or before the 10th working day after the filing of the motion.

A non-dispositive motion, if any, may be filed without an accompanying brief; any response thereto shall be filed on or before the 5th working day after the filing of the motion.

*CMN-RUS, Inc.
3701 Communications Way
Evansville, IN 47712

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CMN-RUS, Inc.
3701 Communications Way
Evansville, IN 47712

*Katherine Yunker
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