

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN ADJUSTMENT OF THE)
RATES OF DELTA NATURAL)
GAS COMPANY, INC.)

Case No. 2004-00067

AUG 17 2004

PUBLIC SERVICE
COMMISSION

MOTION TO STRIKE REBUTTAL TESTIMONY

Under KRS 278.190(3) the utility bears the burden of proving its right to a rate increase. Under KRS 278.192, the Commission shall allow a utility to utilize either an historical test period or a forward looking test period for the general purpose of justifying the reasonableness of a proposed general increase in rates. Though it chose to use an historic test year, Delta has supplied selective facts pertaining to some year 2004 expenses and certain conclusions concerning its 2004 budget and 2005 expected expenses by way of John Brown's testimony that was not included in the Company's Direct Testimony, Exhibits, or Minimum Filing Requirements. This last minute filing amends Delta's original case by supplying facts and suppositions outside the test year for the first time in its rebuttal testimony. As a result the Attorney General has not had the opportunity to examine and test the assertions through discovery. Therefore, the Attorney General is prejudiced and deprived of the right to due process. Consequently, this rebuttal testimony of John Brown should be stricken.

Specifically, at page 2 of his rebuttal testimony, lines 6-10, in reference to Delta's Accounting Expenses included in Outside Services Account 923.02, Mr. Brown states that Delta has incurred an added \$111,617 of Sarbanes-Oxley expense during the first 6 months of 2004 that were not included in the test year that ended December 31, 2003, and will further begin

accruing the costs of maintaining Sarbanes-Oxley compliance from July 2004 forward for the fiscal year 2004-2005 at the rate of \$13,100 per month. Mr. Brown gave no source for either the claimed expense experience for the first six months of 2004 or for the expenses he claims will accrue beginning in July 2004. Furthermore, he did not address either the other expenses included in Account 923.02 or the other operating expenses experienced by Delta in the first months of 2004, some of which could be lower than they were in 2003. There is no way to assess the accuracy or reliability of his assertion or of its impact on the overall revenue requirements of Delta.

On page 3 of his rebuttal, in reference to computer expense included in Outside Services, Account 923.05, Mr. Brown also introduces a budgeted number of \$160,200 for Delta's Computer Expenses in 2004 and discusses additional estimated computer project expenses being evaluated for implementation in 2004. This too addresses expenses outside the test year and no source documentation is provided for any of these expense claims. It looks to budgeted expenses, a matter relevant to a future test period case, but not to an historic test period case. As such, it should be stricken. Further, this eleventh hour presentation again leaves the Attorney General with no ability to test and examine the accuracy or reliability of the matters raised and should be stricken on those grounds.

By like token, after refusing to provide data and calculations to show what would be an appropriate test year-end customer growth adjustment in response to the Attorney General's initial data requests, Item 32 (e) and (f), Mr. Seelye joined the bandwagon of eleventh hour presentations by providing Exhibit 2 to his rebuttal testimony which made the calculation in the format requested by the Attorney General in his initial data request. The delayed presentation is all the more egregious in this particular instance because Rebuttal Exhibit 2 takes on the

appearance of ambush when all of the facts are considered. First, Mr. Seelye maintained in his response that the Attorney General would have all of the information necessary to perform the calculation from the information Seelye had provided in the Exhibits to his direct testimony.¹ Prior to the filing of the rebuttal testimony, the record and the Exhibits to Seelye's direct testimony did not contain the 13-month average number of customers shown in column (1) of Rebuttal Exhibit 2, information vital to the calculation. Neither the Exhibits to Seelye's direct testimony nor the rest of the record provided prior to rebuttal contain the weather-normalized MCF data by customer class and rate block within the customer class shown in column (6) of Rebuttal Exhibit 2, also information vital to the calculation. After refusing to provide the requested calculation and information, Mr. Seelye then chose to criticize Mr. Henkes' calculations and adjustment for the Attorney General based on his failure to take into account that Delta's rates are blocked. Mr. Seelye's testimony should be stricken.

Respectfully submitted,



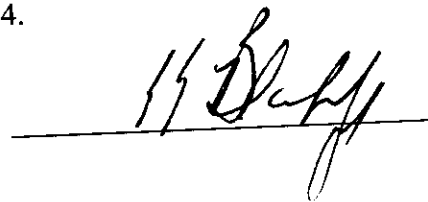
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Notice of Filing and Certificate of Service

I hereby give notice that I have filed the original and ten copies of the foregoing with the Executive Director of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky and certify that this same day I have served the parties electronically by sending a true

¹ See, Response to AG-1-32 (e) and (f).

copy of same to the Hon. Robert M. Watt, III, Counsel for Delta Natural Gas Company, Inc. at Watt@SKP.com and on the Hon. Leslye M. Bowman, Counsel for the Lexington-Fayette Urban-County Government at lbowman@lfucg.com, and Anita Mitchell, Counsel for the Commission and Staff, at almitchell@ky.gov this the 17th day of August, 2004. I further certify that a hard copy of the Motion will be hand delivered to Mr. Watt, Ms Bowman, or such other representative of LFUCG as may appear, and to John F. Hall at the hearing scheduled to commence at the Public Service Commission on August 18, 2004.

A handwritten signature in black ink, appearing to read "J. F. Hall", is written above a horizontal line.