

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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PUBLIC SERVICE
COMMISSION

In the Matter of:

**APPLICATION OF KENTUCKY POWER)
COMPANY FOR A GENERAL ADJUSTMENT) Case No. 2009-00459
OF ELECTRIC RATES)**

**ATTORNEY GENERAL'S REPLY TO KENTUCKY POWER COMPANY WITH
REGARD TO THE ATTORNEY GENERAL'S MOTION FOR HEARING**

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and in regard to Kentucky Power Company's Response to Attorney General's Motion for Hearing on Confidentiality Issues, hereby files the following Reply.

As an initial matter, the Attorney General states that on or about March 5, 2010, his office filed a Response with regard to Kentucky Power Company's ["KP"] "Motion for Confidential Treatment" (pertaining to its responses to AG 1-47 through AG 1-5) and that on or about March 12, 2010, the Company filed its Reply in support of its motion for confidential treatment of the subject responses. On March 17, 2009, the Attorney General filed his Motion for Hearing with respect to the issue of the confidentiality of the Company's responses to data requests and its application for confidential treatment of those responses. The Company filed its Response to this Motion on March 24, 2009. The data requests, KP's responses thereto and the various motions, responses, and replies of the parties are filed of record in the action.

In its Response, the Company notes that the Attorney General has offered no affidavits to support his Motion for Hearing. This lack of affidavits filed in support of the Attorney General's

request is unremarkable as the burden of proof with regard to the issue of confidentiality rests on the party claiming such protection.¹

In his Motion, the Attorney General observed that the Company has offered testimony with regard to the issue of confidentiality by way of the affidavit of Ms. Renee V. Hawkins, the Assistant Treasurer and Managing Director, Corporate Finance for American Electric Power Service Corporation. The Motion for Hearing noted that, in her affidavit, Ms. Hawkins makes generalized statements regarding the alleged harm claimed by the Company that would result from the disclosure of the subject information. Therefore, the Attorney General seeks an evidentiary hearing for the purpose of cross examination of Ms. Hawkins with regard to her statements and noted that as the Commission must make a determination with respect to the issue of confidentiality The hearing, including the cross examination of Ms. Hawkins, is required to satisfy due process concerns.

In its Response, the Company states that the Open Records Act² and the Commissions' regulation implementing the Act, 807 KAR 5:001, Section 7 does not provide for evidentiary hearings in connection with confidentiality issues. However the Attorney General states that the requirements of the U.S. Constitution with regard to due process were not superseded or suspended with the passing of the Act or the Commissions' regulations implementing it. Rather, contrary to the position taken by the Company, the Act, and any regulations implementing it, must be applied in consideration of Due Process requirements.³ The Attorney General observes that in prior cases, the Commission has recognized that Due Process concerns dictated that an

¹ *Stidham v. Clark*, 74 S.W.3d 719, 725 (Ky.,2002)

² KRS 61.870 *et seq.*

³ "Such due process rights, granted under the United States Constitution are, of course, paramount to the provisions of any statute. " *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.* , 642 S.W.2d 591, 593 (Ky.App.,1982).

evidentiary hearing is necessary to resolve disputes related to discovery issues and has amended the procedural schedules to include such hearings accordingly.⁴ Additionally, the Company asserts that for the Commission to hold a “full-blown hearing, and the time required to prepare for such hearings”⁵ would undermine the “efficient and timely action” required under the Act and that the Attorney General has “failed to identify what benefit such a hearing would hold for the Commission.”⁶ The Attorney General is unaware of any authority which authorizes a governmental body to dispense with a party’s Due Process rights on the basis that the exercise of such rights would be “inefficient” or because such a hearing may be a “substantial administrative burden for the Commission and its Staff.”⁷ Further, in regard to the “benefit to the Commission”, a cross examination of the testimony of the witness for the Company would allow the Commission and the parties to evaluate the statements of the witness concerning the “harm” to the Company claimed by the her should the subject information not be found to be confidential.

Next, the Company asserts that the case cited by the Attorney General in his Motion, the case of *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky.App., 642 S.W.2d 591, 593 (1982), offers no support to his position. We could not disagree more. A simple reading of the case indicates that it is the position of Kentucky Courts that Due Process *requires* a hearing on evidentiary issues to be held in the event of a dispute and quotes with approval two cases decided by the U.S. Supreme Court.⁸ The quote from *Bowman Transportation v. Arkansas-Best Freight System*, 419 U.S. 281, 287, 95 S.Ct. 438, 442, 42 L.Ed.2d 447 (1974), is especially

⁴ PSC Orders in Case No. 2002-00018, dated April 1, 2002 and April 3, 2002.

⁵ Response of Ky Power, Page 2.

⁶ Response of Ky Power, Page 4.

⁷ Response of Ky Power, Page 4.

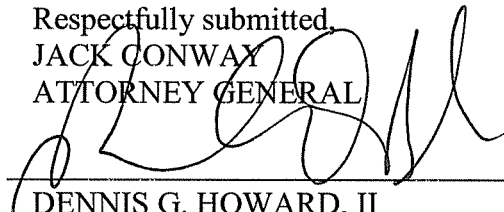
⁸ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky.App., 642 S.W.2d 591, 593 (1982).

illustrative of the position of the Attorney General.

“A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids any agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation”, *Bowman Transportation v. Arkansas-Best Freight System*, 419 U.S. 281, 287, 95 S.Ct. 438, 442, 42 L.Ed.2d 447 (1974) (Quoting *Ohio Bell Telephone Company v. Public Utilities Commission*, 301 U.S. 292, 81 L.Ed. 1093, 57 S.Ct. 724 (1937)).

WHEREFORE, the Attorney General respectfully requests that the Commission schedule an evidentiary hearing in the matter and order the affiant to appear before it for the purposes of cross examining her testimony.

Respectfully submitted,
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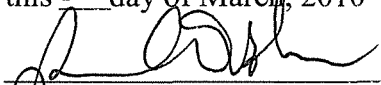
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