

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY WATER )  
SERVICE CORPORATION OF KENTUCKY )  
FOR AN ADJUSTMENT OF RATES )

Case No. 2010-00476

ATTORNEY GENERAL'S  
POST-HEARING BRIEF

Respectfully submitted,

JACK CONWAY  
ATTORNEY GENERAL



David Edward Spenard  
Assistant Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204  
T 502-696-5457  
[david.spenard@ag.ky.gov](mailto:david.spenard@ag.ky.gov)

*Notice of Filing with Certificate of Service*

Counsel certifies that an original and ten (10) photocopies of this pleading were filed by hand-delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Furthermore, service was through mailing a true and correct photocopy of the same, first class, postage pre-paid, to John N. Hughes, 124 West Todd Street, Frankfort, Kentucky 40601 and Sue Ellen Morris, Hickman County Courthouse, 110 East Clay Street, Suite D, Clinton, Kentucky 42031, all on this 22<sup>nd</sup> day of August, 2011.

  
Assistant Attorney General

## OVERVIEW

Water Service Corporation of Kentucky (WSCK) is a Kentucky, for-profit entity wholly-owned by Utilities, Inc. WSCK provides water service to approximately 7,376 customers<sup>1</sup> in Bell and Hickman Counties. Through an Application for Water Rate Adjustment filed on 24 January 2011, Water Service Corporation of Kentucky seeks an adjustment in rates for water service. Under the Application, the average bill for a customer of WSCK will increase approximately 21.90%.<sup>2</sup>

The pending Application was filed approximately 14 months following the Order in Case No. 2008-00563 (WSCK's most recent rate case) becoming final.<sup>3</sup> While ~~there is a basis for an adjustment in rates, WSCK significantly overstates its expenses~~ and revenue requirement.

Two points warrant particular interest. WSCK again fails to demonstrate the reasonableness of the cost allocation for Project Phoenix. WSCK's Agreement with corporate affiliate Water Service Corporation remains unreasonable, and Water Service Corporation continues to allocate unreasonable expense amounts to Kentucky.

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<sup>1</sup> Annual Report of WSCK to the Kentucky Public Service Commission for the year ending 31 December 2010, Water Operating Revenue (Ref Page: 30).

<sup>2</sup> Application for Water Rate Adjustment (Application), Exhibit 3, Notice to Customers.

<sup>3</sup> The Order in Case No. 2008-00563 was issued on 9 November 2009. In the absence of petition for Rehearing under KRS 278.400 or an action for judicial review under KRS 278.410, it became final thirty (30) days after service of the Order. KRS 278.410(1).

## PROJECT PHOENIX

In Case No. 2008-00563, the Commission found “that Water Service has failed to demonstrate that the allocated Project Phoenix costs are reasonable and, therefore, has reduced UPIS by \$389,537, the cost of JD Edwards, and has reduced rate base by \$178,715 to remove the allocation of Oracle costs.”<sup>4</sup> In this proceeding, there is no material information warranting a different conclusion or regulatory treatment. WSCK has not shown the reasonableness of the expense and the corresponding benefits to the ratepayers of WSCK. Accordingly, the Commission should again remove the costs of Project Phoenix from its test period expenses.

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~~With regard to Mr. Baryenbruch’s day-of-hearing testimony on the subject, Mr.~~  
Baryenbruch was not retained for the purpose of offering a conclusion on Project Phoenix (and did not submit pre-filed testimony on the subject).<sup>5</sup> Equally important is the fact that Mr. Baryenbruch did not offer or render an opinion on the prudence of Project Phoenix.<sup>6</sup> There has not been a demonstration that a reasonable utility of comparable size would spend in excess of a half-million dollars on software similar to that contained in Project Phoenix.

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<sup>4</sup> Case No. 2008-00563, Order, 9 November 2009, page 6 (internal footnote omitted). Note, however, the amounts for the total costs of the Project Phoenix components utilized by the company in Case No. 2008-00563 appear to be incorrect. See WSCK responses to hearing data requests, Item 11.

<sup>5</sup> TE 14 July 2011 - 11:45:50 to 11:46:10.

<sup>6</sup> TE 14 July 2011 – 11:45:20 *et seq.*, and 11:46:25 *et seq.*

## DIRECT AND ALLOCATED EXPENSES UNDER 2007 AGREEMENT

WSCK's Board of Directors consists of Lisa Sparrow, the President and CEO of Utilities, Inc.,<sup>7</sup> and John Stover, Vice President and Secretary of Utilities, Inc.<sup>8</sup> They also serve as directors for all other subsidiaries of Utilities, Inc.<sup>9</sup> Clearly, each wears many hats. It is equally as clear that there are no directors independent of Utilities, Inc., on the WSCK Board of Directors. In very blunt terms, there are no directors whose sole focus is upon the well-being of Water Service Corporation of Kentucky and in turn the customers of WSCK.

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~~Through a 19 December 2007 Agreement between WSCK and Water Service Corporation (a corporate affiliate of WSCK), expenses are allocated to Water Service Corporation of Kentucky by WSC. The 2007 Agreement is signed by Steven Lubertozzi in his capacity as Vice President and Chief Financial Officer of Water Service Corporation and also by him in his capacity as Vice President and Chief Financial Officer of Water Service Corporation of Kentucky. As noted in Case No. 2008-00563, the allocation process is the product of a less-than-arm's-length transaction.<sup>10</sup>~~

The Agreement does not contain a check-and-balance system through which WSCK can monitor and contest costs allocations from WSC. This is a fundamental flaw

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<sup>7</sup> WSCK Response to OAG 1-4.

<sup>8</sup> WSCK Response to OAG 1-4

<sup>9</sup> WSCK Response to OAG 1-4.

<sup>10</sup> Case No. 2008-00563, Order, 9 November 2009, page 15.

in the Agreement and a clear manifestation of the fact that there is no essential independence between WSCK and WSC. In that Water Service Corporation has virtually no compunction when it comes to allocating amounts to Kentucky which have no discernable connection with the provision of reasonable utility service, the lack of independence works to the material detriment of Water Service Corporation of Kentucky's ratepayers.

In Case No. 2008-00563, the Commission eliminated the indirect cost allocations from Water Service Corporation.<sup>11</sup> It should do so again.

Mr. Baryenbruch's testimony on behalf of a wholly-owned subsidiary of Utilities, Inc., with no independent directors does not establish that the allocations to Kentucky are reasonable. While Mr. Baryenbruch was free to make any inquiry into Water Service Corporation's allocations or WSCK,<sup>12</sup> he did not look at comparably-sized utilities in Kentucky for testing the reasonableness of WSC's cost-allocations.<sup>13</sup> He chose not to look for any material, relevant evidence bearing directly upon the issue based upon an allegation that (despite annual reports on file with the Kentucky Public Service Commission, rate orders of the Kentucky Public Service Commission, and information available from municipal utility providers) information is lacking.<sup>14</sup>

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<sup>11</sup> Case No. 2008-00563, Order, 9 November 2009, page 16.

<sup>12</sup> TE 14 July 2011 – 10:34:15.

<sup>13</sup> TE 14 July 2011 – 10:34:40 and 10:39:00 to 10:40:20.

<sup>14</sup> *Id.*

Instead, Mr. Baryenbruch based his analysis on a template that he uses in other jurisdictions loaded with information pulled from the FERC Form 60, which has nothing to do with water utilities in Kentucky. Moreover, the FERC Form 60 is not a document that collects information pertaining to the retail regulation of utility service.<sup>15</sup> It is difficult to describe the information that Mr. Baryenbruch supplies as relevant to the question at hand, namely the reasonableness of the test period amounts utilized to support WSCK's application for a rate increase. Mr. Baryenbruch's analysis is simply a device by which he seeks to discuss whether WSC's costs allocations are in "the ballpark"<sup>16</sup> with amounts on the FERC Form 60. As is demonstrated by this Commission's decisions in other cases,<sup>17</sup> the requirements of KRS 278.190(3) are far more exacting and demanding than an "in the ballpark" standard.

The only thing that Mr. Baryenbruch's analysis demonstrates is Water Service Corporation of Kentucky does not *believe* that Water Service Corporation's allocations are outside a range of reasonableness. In that WSCK has no independence within the Utilities, Inc., corporate family to even think about challenging the allocations, the revelation is hollow of meaning.

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<sup>15</sup> TE 14 July 2011 – 10:48:30 to 10:49:25.

<sup>16</sup> TE 14 July 2011 – 10:57:15 *et seq.*

<sup>17</sup> Including *In the Matter of: Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year*, Case No. 2010-00036 and *In the Matter of Columbia Gas of Kentucky, Inc.*, Case No. 10498.

WSCK bears the burden to establish the reasonableness for the change in rates.<sup>18</sup> Expenses, even those having minimal effect on operating income, must be borne by investors unless such expenses are proven beneficial to ratepayers in furnishing utility service.<sup>19</sup> The record in this case again demonstrates that WSCK does not follow this framework. It is not the responsibility for the Commission or anyone else to prove that the proposed change is inappropriate.<sup>20</sup>

#### CONCLUSION

Water Service Corporation of Kentucky requires reasonable rates in order to provide reasonable service. To this end, the Attorney General has no qualms in conveying that WSCK should be permitted the opportunity to obtain reasonable rates. This application has provided WSCK with that opportunity, and it fails to meet its burden for the rate increase that it seeks. The primary cause of the failure relates to the inability to understand the fundamental principle that at issue before this proceeding is the well-being of Water Service Corporation of Kentucky and its ratepayers. The Attorney General asks that the Commission deny the application in a manner consistent with the positions outlined in his Brief.

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<sup>18</sup> KRS 278.190(3).

<sup>19</sup> *In the Matter of Kentucky-American Water Company*, Case No. 9842, Order, 18 July 1986, page 22; also see *In the Matter of Columbia Gas of Kentucky, Inc.*, Case No. 10498, Order, 6 October 1989, page 30.

<sup>20</sup> *In the Matter of: Notice of Adjustment of the Rates of Kentucky-American Water Company*, Case No. 8836, Order, 20 December 1983, page 9.