

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

INVESTIGATION OF THE FAILURE OF  
WATER SERVICE OF KENTUCKY TO )  
HOLD ANNUAL PUBLIC MEETINGS IN )  
THE CITIES OF CLINTON AND )  
MIDDLESBORO )

Case No.  
2014-00272

ATTORNEY GENERAL'S REQUEST FOR ISSUANCE  
OF SUBPOENAS TO TESTIFY AT HEARING

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and, pursuant to KRS §§ 278.320 and 278.330 and 807 KAR 5:001 Section 4(6), hereby moves the Public Service Commission to issue subpoenas to the following witnesses in the hearing of the above-styled matter, currently scheduled for 6 November 2014.

Steven Lubertozi  
President  
Water Service Corporation of Kentucky  
2335 Sanders Road  
Northbrook, IL 60062

M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KY 40507

In support of his motion and request for subpoenas, the Attorney General states as follows:

(1) KRS § 278.320 authorizes the Commission to “issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the [C]ommission”. Further, KRS § 278.330 and the Commission’s regulation, 807 KAR 5:001 Section 4(6) govern the calling of witnesses before the Commission.

(2) In Case No. 2012-00133,<sup>1</sup> the Commission ordered Corix Utilities and Utilities, Inc., the parent companies’ of Water Service Corporation of Kentucky (“WSCK”) (collectively “the companies’) to hold “annual public meetings in the cities of Clinton and Middlesboro, Kentucky, at which the senior officers from the regional office of Utilities, Inc. that oversees Water Service Corporation’s operations will attend and participate.”<sup>2</sup>

(3) The witnesses identified above, Steven Lubertozzi and M. Todd Osterloh, serve as, respectively, the senior officer and manager of WSCK and the senior most officer at the regional office of Utilities, Inc., overseeing WSCK; and as Kentucky counsel to WSCK.

(4) In the most recent rate case for WSCK, at the hearing on 9 April 2014,<sup>3</sup> Bruce Haas, Regional Director of Operations for the Midwest Region of Utilities, Inc. testified that neither he nor any other senior officer that oversees the operation of WSCK’s

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<sup>1</sup> *In the Matter of: Joint Application of Corix Utilities (Illinois) LLC; Hydro Star, LLC; Utilities, Inc.; and Water Service Corporation of Kentucky for the Transfer and Acquisition of Control Pursuant to KRS 278.020*, KPSC Case No. 2012-00133, Order (August 13, 2012).

<sup>2</sup> *Id.* at 11 ¶20

<sup>3</sup> *In the Matter of: Water Service Corporation of Kentucky’s Notice of Intent to File An Application for Rate Adjustment*, KPSC Case No. 2013-00197, Public Hearing (April 9, 2014).

operations had attended or participated in a public meeting in either the city of Clinton or the City of Middlesboro.

(5) As indicated on filings before the Commission, Mr. Lubertozzi is the President and senior-most officer for WSCK and the senior-most officer at the regional office of Utilities, Inc., overseeing WSCK, and, as such, his testimony is directly relevant and necessary to the question regarding whether the respective companies violated the Commission's Order dated 13 August 2012.

(6) During the same hearing, Mr. Osterloh asserted on the record to the Commission that Commission Staff had waived the annual meeting requirement.

(7) The correspondence Mr. Osterloh filed in support of his assertion in Case No. 2013-00237 demonstrates that counsel was in error regarding his statement and misled the Commission during the 9 April 2014 Hearing.

(8) Further, the correspondence produced demonstrates that Mr. Osterloh is the only representative of WSCK that participated in communications and/or discussions with Commission Staff regarding scheduling the annual meetings.

(9) As indicated by counsel during an informal conference with staff on 2 October 2014, WSCK continues to assert that the correspondence between Mr. Osterloh and Commission Staff abrogated WSCK of the annual meeting requirement or, alternatively, demonstrates the companies' intent to comply with the Commission's Order dated 13 August 2012.<sup>4</sup>

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<sup>4</sup> See Case File, Case No. 2014-00272, Inter-Agency Memorandum (October 7, 2014)

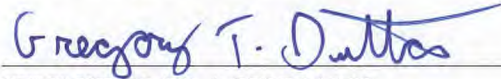
(10) Mr. Osterloh is the only *dramatis personae* in the correspondence at question that is not affiliated with the Commission. Thus, Mr. Osterloh has by his own action and conduct become a necessary fact witness for the Attorney General and the Commission, and has relevant information regarding this matter to be addressed in public hearing on 6 November 2014.

(11) Neither WSCK nor its parent companies have asserted attorney-client privilege as to the correspondence or any communications between Mr. Osterloh and Commission staff, nor may they do so. Further, by asserting that these communications from counsel serve as an affirmative defense against the Commission's investigation of the companies' failure to comply with its 13 August 2012 Order in Case No. 2012-00133, the companies have waived any attorney-client privilege regarding Mr. Osterloh's involvement in and intent regarding these communications.

(12) Finally, the Attorney General has no objection to Mr. Osterloh continuing to serve as counsel to the companies, except to the narrow extent that the Commission orders him to appear as a fact witness as requested herein.

Respectfully submitted,

JACK CONWAY  
ATTORNEY GENERAL



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JENNIFER BLACK HANS  
GREGORY T. DUTTON  
ANGELA M. GOAD  
ASSISTANT ATTORNEYS GENERAL  
1024 CAPITAL CENTER DRIVE, SUITE 200  
FRANKFORT KY 40601-8204  
(502) 696-5453  
FAX: (502) 573-1005

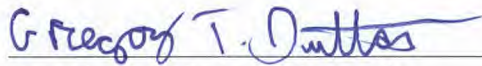
*Certificate of Service and Filing*

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

James Leonard  
Regional Manager  
Water Service Corporation of Kentucky  
1221 East Cumberland Avenue  
Middlesboro, KY 40965

M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507

this 27<sup>th</sup> day of October, 2014



Assistant Attorney General