

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

REC-110  
DEC 29 2017  
PUBLIC SERVICE  
COMMISSION

In the Matters of:

AN INVESTIGATION OF THE IMPACT OF THE TAX )  
CUTS AND JOB ACT ON THE RATES OF ATMOS )  
ENERGY CORPORATION, DELTA NATURAL GAS ) CASE NO.  
COMPANY, INC., COLUMBIA GAS OF KENTUCKY, ) 2017-00481  
INC., KENTUCKY-AMERICAN WATER COMPANY, )  
AND WATER SERVICE CORPORATION OF )  
KENTUCKY )

&

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, )  
INC., COMPLAINANT )  
v. ) CASE NO.  
KENTUCKY UTILITIES COMPANY, LOUISVILLE ) 2017-00477  
GAS AND ELECTRIC COMPANY, KENTUCKY )  
POWER COMPANY, AND DUKE ENERGY )  
KENTUCKY, DEFENDANTS )

**ATTORNEY GENERAL'S MOTIONS TO CONSOLIDATE, FOR USE OF  
ELECTRONIC FILING PROCEDURES, AND FOR AN INFORMAL  
CONFERENCE BETWEEN ALL PARTIES**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and moves that the Public Service Commission ("Commission") consolidate these two matters, allow the use of electronic filing procedures in the consolidated proceeding, and for the Commission to Order an informal conference for all parties to participate. In support of his Motion, the Attorney General States as follow:

1. In Case No. 2017-00477 and on December 27, 2017, the Commission found that the December 21, 2017 Complaint ("Complaint") filed by Kentucky Industrial Utility

Customers, Inc. (“KIUC”) established a *prima facie* case that as of January 1, 2018 the rates of each of the named Defendants, “will no longer be fair, just, or reasonable.”<sup>1</sup> The Complaint’s allegations are that the Tax Cuts and Jobs Act, effective January 1, 2018, will reduce the federal corporate income tax rate and thus lead to a reduction in the named defendants’ tax expense.

2. In Case No. 2017-00481 and on December 27, 2017, the Commission, on its own motion, initiated an investigation into the five (5) other largest investor owned utilities (collectively with the named defendants in the 2017-00477 matter as “IOUs”) not named in the aforementioned Complaint, finding that pursuant to the Tax Cuts and Jobs Act, the “reduction in the federal corporate tax rate constitutes a *prima facie* case that the utility rates being charged by each of the Investor Owne[d] Utilities will no longer be fair, just, or reasonable as of January 1, 2018, and need to be reduced.”<sup>2</sup>
3. Consolidating these two cases leads to an efficient use of Commission resources and further reduces the burden on the participant IOUs and intervening parties. Additionally, the main issues to be discussed in the matters are identical, namely i) Federal Income Tax Expense, and ii) Excess Accumulated Deferred Income Taxes. These issues affect all of the IOUs that are parties to either matter similarly, and thus a consolidated matter will not unduly disrupt the proceedings. Thus, with identical questions of law and fact, consolidation will reduce waste, expense and duplication between both dockets.
4. Other than the process in which the cases were initiated (complaint vs. Commission motion), the only difference between the two proceedings seems to be the amount of

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<sup>1</sup> PSC Order, Case No. 2017-00477, p. 2 (Ky. P.S.C. December 27, 2017).

<sup>2</sup> PSC Order, Case No. 2017-00481, p. 1 (Ky. P.S.C. December 27, 2017).

time in which the utilities have to respond. Whereas in the Commission-initiated docket the named IOUs have 30 days to file prepared testimony, the Commission ordered in the Complaint docket that “[p]ursuant to 807 KAR 5:001, Section 20” the named defendants “shall satisfy the matter complained of or file a written answer to the complaint within ten days...”<sup>3</sup>

5. Although the Commission’s regulations regarding formal complaints dictate a response to a Complaint within 10 days, Section 22 of 807 KAR 5:001 allows for deviations from those rules for good cause shown. There is good cause for a deviation in this matter. Allowing the parties named in the Complaint an additional 20 days to respond to the assertions therein (the same length of time afforded to those named in the investigation) is a benefit to those IOUs. Further, the complainant in that case, KIUC, has already indicated to Commission staff and the named defendants that, “KIUC would not object to a motion to extend the answer by 20 days. This would put the two related cases on a parallel schedule and allow time for a more thorough response.”<sup>4</sup> In fact, KIUC has represented to the Attorney General that they do not object to the consolidation of these two matters. Although 10 days may be long enough for a thorough answer in an ordinary complaint case, the implications following such a significant change in law provide good cause to deviate from the regulations. The deviation will provide the IOUs named in the complaint case the same time afforded to those in the investigation, 30 days. Consolidating the two matters and providing all of the named IOUs the same amount of time to respond is the best use of the Commission’s time and resources.

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<sup>3</sup> *PSC Order*, Case No. 2017-00477, p. 3 (Ky. P.S.C. December 27, 2017).

<sup>4</sup> Email from Michael L. Kurtz, Counsel for KIUC, dated December 28, 2017. Attached as Exhibit 1.

6. The Attorney General understands that neither matter is currently available for the use of electronic filing according to 807 KAR 5:001 Section 8. As such, in order to reduce the cost of involvement for all the parties involved, the Attorney General requests the Commission allow the use of electronic filing procedures in the aforementioned and requested consolidated docket. The use of electronic filing procedures reduces the costs to the parties and allows for greater transparency. Although the use of electronic filing is presumed to be elected by the applicant, the Commission can nevertheless order the use in a case initiated upon its own motion.<sup>5</sup> Upon consolidation of these cases, and according to the regulations, the Commission may order the use of electronic filing procedures. The use of electronic filing procedures will not burden any party to the proceedings, as no IOU is yet to respond to the Commission's Orders and KIUC has represented to the Attorney General they have no objection to its use. As the case(s) are in the early stages and only the Attorney General has sought intervention, there is no compelling reason to deny the use of electronic filing procedures.<sup>6</sup>
7. As the size and scope of the Tax Cuts and Jobs Act has not been seen since the Tax Reform Act of 1986, an informal conference between all of the parties would be helpful to understand the differing viewpoints on issues affecting the similarly situated IOUs. As such, the Attorney General requests the Commission hold an informal conference in the consolidated docket so that the parties may discuss the relevant issues of substance and procedure.

WHEREFORE, the Attorney General moves that the Commission consolidate the two matters, designate the consolidated matter as a proceeding in which parties may use

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<sup>5</sup> 807 KAR 5:001 Section 8 (1).

<sup>6</sup> See *PSC Order*, Case No. 2017-00316, p. 2 (Ky. P.S.C. December 18, 2017).

electronic filing procedures, and issue a notice for an informal conference in the consolidated proceeding for all parties to attend and participate.

Respectfully submitted,

ANDY BESHEAR  
ATTORNEY GENERAL



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KENT A. CHANDLER  
REBECCA W. GOODMAN  
LAWRENCE W. COOK  
JUSTIN M. McNEIL  
ASSISTANT ATTORNEYS GENERAL  
700 CAPITAL AVE., SUITE 20  
FRANKFORT KY 40601-8204  
(502) 696-5453  
[Kent.Chandler@ky.gov](mailto:Kent.Chandler@ky.gov)  
[Rebecca.Goodman@ky.gov](mailto:Rebecca.Goodman@ky.gov)  
[Larry.Cook@ky.gov](mailto:Larry.Cook@ky.gov)  
[Justin.McNeil@ky.gov](mailto:Justin.McNeil@ky.gov)

*Certificate of Service and Filing*

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Ms. Gwen Pinson, 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:

Kentucky Power Company  
855 Central Avenue, Suite 200  
Ashland, KY 41101

Michael L. Kurtz  
Kurt J. Boehm  
Jody M. Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202

Allyson K. Sturgeon  
Sara Judd  
220 W. Main Street  
Louisville, KY 40202

Kendrick R. Riggs  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202

Monica H. Braun  
Stoll Keenon Ogden PLLC  
300 West Vine Street, Suite 2100  
Lexington, KY 40507-1801

Amy B. Spiller  
Rocco O. D'Ascenzo  
Duke Energy Kentucky, Inc.  
139 East Fourth Street  
Cincinnati, OH 45202

Mark R. Overstreet  
Katie M. Glass  
Stites & Harbison  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602

Hector Garcia  
American Electric Power Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
P.O. Box 16631  
Columbus, OH 43216

Kentucky-American Water Company  
2300 Richmond Road  
Lexington, KY 40502

Atmos Energy Corporation  
3275 Highland Pointe Drive  
Owensboro, KY 42303

Columbia Gas of Kentucky, Inc.  
290 W. Nationwide Blvd  
Columbus, OH 43215

Delta Natural Gas Company, Inc.  
3617 Lexington Road  
Winchester, KY 40391

Water Service Corporation of Kentucky  
2335 Sanders Road  
Northbrook, IL 60062-6196

Lindsey W. Ingram III  
Stoll Keenon Ogden PLLC  
300 West Vine Street, Suite 2100  
Lexington, KY 40507-1801

John N. Hughes  
124 West Todd Street  
Frankfort, KY 40601

Brooke E. Wancheck  
Stephen B. Seiple  
290 W. Nationwide Blvd.  
Columbus, OH 43215

Richard S. Taylor  
225 Capital Avenue  
Frankfort, KY 40601

Robert M. Watt III  
Stoll Keenon Ogden PLLC  
300 West Vine Street, Suite 2100  
Lexington, KY 40507-1801

M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 W. Vine Street, Suite 1500  
Lexington, KY 40507

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Assistant Attorney General

# EXHIBIT 1

## Chandler, Kent A (KYOAG)

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**From:** Michael Kurtz <MKurtz@bkllawfirm.com>  
**Sent:** Thursday, December 28, 2017 9:56 AM  
**To:** 'Riggs, Kendrick R.'; Allyson K. Sturgeon (allyson.sturgeon@lge-ku.com); 'Spiller, Amy B'; Rocco D'Ascenzo (rocco.d'ascenzo@duke-energy.com); Mark R. Overstreet; Gish, Jr., Kenneth J. (kgish@stites.com); Goodman, Rebecca (KYOAG); Cook, Larry (KYOAG); Chandler, Kent A (KYOAG)  
**Cc:** Raff, Richard G (PSC); Nguyen, Quang D (PSC); Jody Kyler Cohn; Kurt Boehm  
**Subject:** Tax Complaint--Case No. 2017-00477

Counsel.

Yesterday the Commission certified the KIUC tax complaint and required the utilities to answer within ten days. Yesterday the Commission also opened its own tax investigation into the rates of the other investor owned utilities and required them to file testimony within 30 days.

KIUC would not object to a motion to extend the answer date by 20 days. This would put the two related cases on a parallel schedule and allow time for a more thorough response.

Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513.421.2255 Fax: 513.421.2764  
E-mail: mkurtz@BKllawfirm.com