

Kentucky Power objects to the Attorney General's motion to consolidate this case with Case No. 2017-00481.¹ Consolidation will unduly complicate these proceedings and could delay the resolution of the issues presented by KIUC's complaint against Kentucky Power. For similar reasons, Kentucky Power moves to sever KIUC's claims against it from those alleged by KIUC against the other parties to this case.

Kentucky Power states in support of its positions as follows:

Use Of Electronic Filing Procedures

1. Electronic filing procedures will simplify the administration of this case by the Commission and will facilitate the filing and receipt of papers by KIUC, the Attorney General, and Kentucky Power. Kentucky Power joins in the Attorney General's motion to use electronic filing procedures.

Motion For Informal Conference

2. An informal conference could allow the further identification, as well as the simplification, of the claims and issues presented by KIUC's complaint against Kentucky Power. Kentucky Power objects to the Attorney General's motion to consolidate this complaint case with the Commission-initiated investigation in Case No. 2017-00481. Further, the Company is moving to sever KIUC's claims against it in this case from the claims alleged against the remaining parties to this proceeding. Kentucky Power thus requests that any informal conference involving KIUC's claims against Kentucky Power be limited to the Company, the Attorney General who has moved to intervene in this case, and KIUC.

¹ Order, *In the Matter of: An Investigation Of The Impact Of The Tax Cuts And Jobs Acts On The Rates Of Atmos Energy Corporation, Delta Natural Gas Company, Inc., Columbia Gas Of Kentucky, Inc., Kentucky-American Water Company, And Water Service Corporation Of Kentucky*, Case No. 2017-00481 (Ky. P.S.C. Filed December 27, 2017).

Motion To Amend The Commission's December 27, 2017 Order To Provide Additional Time To Satisfy Or Answer KIUC's Complaint.

3. In conformity with 807 KAR 5:001, Section 20(2)(b) the Commission's December 27, 2017 Order directs Kentucky Power to satisfy or answer KIUC's complaint within ten days. Kentucky Power's response currently is due January 8, 2018. The additional 20 days proposed by the Attorney General in his December 28, 2017 motion (extending the time to January 26, 2018) will provide the Company the opportunity to understand better the implications of the Tax Cuts and Jobs Act ("TCJA") on the Company's operations and rates, and to provide a more complete response to KIUC's complaint. The Commission has authority pursuant to 807 KAR 5:001, Section 22 to grant a deviation from the requirements of 807 KAR 5:001, Section 20(2)(b). The additional time will not prejudice KIUC. By e-mail dated December 28, 2017, counsel for KIUC indicated that KIUC did not object to the Commission granting a 20-day extension for the defendants in this case to satisfy or answer its complaint. Thus, Kentucky Power moves the Commission to amend the Commission's December 27, 2017 Order to extend until January 26, 2018 the date by which the Company must satisfy or answer KIUC's claims against it.

Objection To Motion To Consolidate And Motion To Sever

4. Although both this case and Case No. 2017-00481 involve the TCJA, the application of the TCJA to each investor-owned utility party will vary based on the utility's individual tax status. Further, the effect of the application of the TCJA on each utility's rates will again vary among the utilities. Rates by definition are utility-specific. Even if the application of the TCJA did not vary among the investor-owned utilities, and Kentucky Power anticipates that it will, the establishment of new rates reflecting the TCJA will require the calculation, litigation, and review of the new rates on a utility-by-utility basis. Examining the

rates of nine individual utilities in a single proceeding is a prescription for unnecessary complexity and delay.

5. Kentucky Power also is differently situated from the other utility parties to Case Nos. 2017-00477 and Case No. 2017-481. The Company recently completed the hearing in its current rate base case (Case No. 2017-00179). The suspension period in that case will expire January 18, 2018. As a result, Kentucky Power is able to implement, albeit on a limited basis, the TCJA without awaiting the outcome of this case or Case No. 2017-00481. For example, on January 3, 2018, Kentucky Power filed certain new forms in Case No. 2017-00179 incorporating a proposed new gross revenue conversion factor that reflects the TCJA.

6. The Commission previously recognized the need for, and advantages of, addressing the effect of major tax legislation on Kentucky Power on a Company-specific. In 1986, the Commission opened an investigation regarding the effect of the Tax Reform Act of 1986 on Kentucky Power that was limited to the Company.²

7. Consolidation also will introduce unnecessary procedural and evidentiary complexities. This proceeding was initiated upon KIUC's complaint. As the complainant in this case, KIUC indisputably bears the burden of proof.³ The burden proof in a Commission-initiated investigation, such as Case No. 2017-00481,⁴ is not statutorily assigned⁵ and it is far from clear

² Order, *In the Matter Of: The Effects Of The Federal Tax Reform Act Of 1986 On Kentucky Power Company*, Case No. 9779 (Ky. P.S.C. December 11, 1986).

³ *Energy Regulatory Com'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980) (“[a]pplicants before an administrative agency have the burden of proof.”); Order, *In the Matter of: Office Of The Attorney General v. Atmos Energy Corporation*, Case No. 2005-00057 at 6 (Ky. P.S.C. June 1, 2007) (“In both its February 2, 2006 and February 9, 2007 Orders, the Commission plainly set forth the statutory responsibility of the AG, as the complainant, to carry the burden of proof.”)

⁴ KIUC to date has not moved to intervene in Case No. 2017-00481, and it is unclear whether it intends to do so based on its past failure to intervene in many of the rate cases of the parties to Case No. 2017-00481.

⁵ Order, *In the Matter of: Investigation Of The Membership Of Louisville Gas And Electric Company And Kentucky Utilities Company In The Midwest Independent Transmission Owner, Inc.*, Case No. 2003-00266 at 2 (Ky. P.S.C. July 6, 2006).

which party or parties to Case No. 2017-00481 would bear the burden of proof in a consolidated case. To the extent there is overlap, if any, of the evidentiary issues presented in the two cases, conflicting burdens of proof will unnecessarily complicate the resolution of the evidentiary issues presented.

8. Further, the burden of proof typically has governed the procedural schedule, including discovery and the filing of testimony. For example, the applicant, here KIUC, typically files its testimony and provides discovery first. On the other hand, the utility party to a Commission-initiated investigation typically proceeds first.⁶ Consolidation could result in a procedural schedule that varies based on whether the utility originally was a party to the complaint case or the investigation.

9. Severance of KIUC's claims against Kentucky Power from those asserted against the other utility defendants in this proceeding avoids these complexities and will permit the resolution of KIUC's claims against the Company on a schedule that reflects Kentucky Power's unique situation.

Wherefore, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. Approving the use of electronic filing procedures in this case;
2. Amending the Commission's December 27, 2017 Order in this case to extend to January 26, 2017 the time for Kentucky Power to satisfy or answer KIUC's claims against it;
3. Convening an informal conference to be attended by the Company, KIUC, and the Attorney General;
4. Denying the Attorney General's motion to consolidate;

⁶ See, Case No. 2017-00097.

5. Severing KIUC's claims against Kentucky Power and establishing a new case for their litigation and resolution; and

6. Granting Kentucky Power such further relief to which it may appear entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of Kentucky Power Company's foregoing Response To The Attorney General's Motions And Motion To Sever was served by United States Postal Service, First Class, postage pre-paid, upon:

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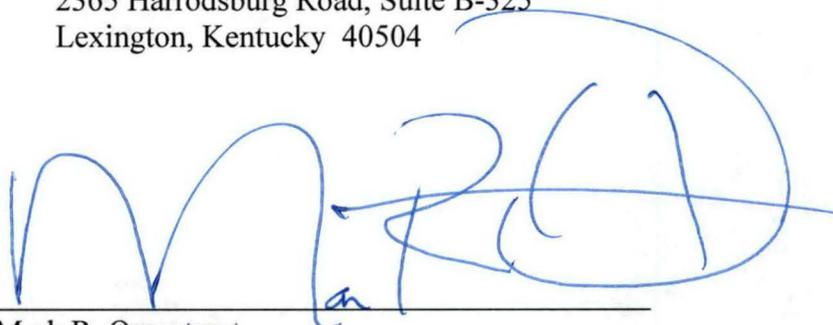
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On this the 4th day of January 2018.



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