

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF WATER)	
SERVICE CORPORATION OF KENTUCKY FOR A)	
GENERAL ADJUSTMENT IN EXISTING RATES)	CASE NO.
AND A CERTIFICATE OF PUBLIC CONVENIENCE)	2022-00147
AND NECESSITY TO DEPLOY ADVANCED)	
METERING INFRASTRUCTURE)	

ORDER

This matter arises upon the motion of Water Service Corporation of Kentucky (Water Service Kentucky) to excuse Expert Witnesses Shawn Elicegui and Patrick Baryenbruch from appearing at the hearing scheduled for November 30, 2022, or that the Commission allow Mr. Elicegui and Mr. Baryenbruch to testify virtually at the upcoming hearing. According to Water Service Kentucky, Mr. Elicegui has a management meeting previously scheduled on the date of the hearing in Chicago, Illinois. Water Service Kentucky claimed that virtual attendance for Mr. Baryenbruch, based in North Carolina, as well as Mr. Elicegui, will eliminate certain rate-case expenses associated with their travel to the Commission’s offices. Water Service Kentucky also pointed to the fact that none of the Intervenors’ witnesses challenge the subject matter of Mr. Elicegui’s and Mr. Baryenbruch’s testimony.

To date, the Intervenors, the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention and city of Clinton, have not filed a response to object to the request for recusal or request to testify virtually.

The Commission, being otherwise sufficiently advised, finds that, while Water Service Kentucky's witness's attendance at management meetings does not establish good cause, in this specific instance, the Commission will permit Mr. Eilcegui and Mr. Baryenbruch to testify virtually based on the fact there appears to be no objection to the subject matter of their testimony by the Intervenors. The Commission emphasizes that excusing in person attendance at a Commission hearing based solely on a witness's status as a resident of another state is inconsistent with the practice followed by other utilities that make their out-of-state witnesses available to testify in person at Commission hearings. Residency in another state, taken alone, has not been treated as good cause to excuse in person attendance by a witness.¹ The Commission prefers in person testimony but will consider motions for virtual participation for counsel and witnesses who can establish good cause to participate virtually.²

The Commission further finds that Water Service Kentucky's request to excuse Mr. Elicegui and Mr. Baryenbruch from testifying should be denied because, based upon their participation in the case prior to the hearing, their testimony is necessary to develop the case record. Water Service Kentucky's assertion that it is inconvenient or costly for a witness to testify at a hearing does not establish good cause to excuse a witness from participating in a Commission hearing. The Commission puts Water Service Kentucky

¹ See Case No. 2021-00365, *Electronic Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Network's Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to Unserved and Underserved Households and Businesses of the Commonwealth* (Ky. PSC Mar. 17, 2022).

² See Case No. 2021-00481, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company* (Ky. PSC Mar. 10, 2022).

on notice that, when a utility submits witness testimony or when a utility witness sponsors responses to data requests, the witnesses are expected to be available to testify at a Commission hearing. Such witnesses are integral to the investigation of cases such as this, given the seriousness and potential impact on their customers. Further, Water Service Kentucky bears the burden of proof and is in control of presenting its case in chief, including the witness testimony filed to support its application. To the degree that the procedural event dates are inconvenient for a utility's witnesses, the utility should pursue options that do not preclude developing a robust case record, including withdrawing the application and refile in the future if that is the utility's choice.

Finally, the Commission puts Water Service Kentucky and all jurisdictional utilities on notice that excusing witnesses from testifying at a Commission hearing is at odds with developing a robust record upon which the Commission reaches a decision and therefore such requests will not be considered lightly.

IT IS HEREBY ORDERED that:

1. Water Service Kentucky's motion is granted in part and denied in part.
2. The request for Mr. Elicegui and Mr. Baryenbruch to testify virtually is granted.
3. The request for Mr. Elicegui and Mr. Baryenbruch to be excused from testifying is denied.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

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