

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WATER SERVICE CORPORATION OF)
KENTUCKY'S NOTICE OF INTENT TO FILE) CASE NO. 2013-00237
AN APPLICATION FOR RATE ADJUSTMENT)

JOINT RESPONSE TO WATER SERVICE CORP OF KENTUCKY'S MOTION TO
AMEND PROCEDURAL SCHEDULE AND ATTORNEY GENERAL, HICKMAN
COUNTY FISCAL COURTS, AND CITY OF CLINTON JOINT
MOTION TO DISMISS WATER SERVICE CORP OF KENTUCKY'S APPLICATION
FOR RATE ADJUSTMENT WITH PREJUDICE

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), Hickman County Fiscal Court ("HCFC") and City of Clinton (together as "Intervenors") and hereby move the Commission to deny Water Service Corporation of Kentucky's ("WSCK" or "the Company") Motion to Amend Procedural Schedule and to issue a Final Order dismissing the WSCK Application for Rate Adjustment with prejudice.

WSCK has demonstrated a repeated pattern of unwillingness or inability to commit sufficient and appropriate resources to allow WSCK to adhere to procedural schedules in Case No. 2013-00237. Moreover, scheduling accommodations afforded WSCK have resultantly prejudiced the cases of the Intervenors. Finally, WSCK has violated, and continues to be in non-compliance with, the Commission's 18 October 2013 Order. Due to WSCK's continued failure to allocate the necessary resources to respond to Intervenors and the Commission, prejudices the Intervenors have suffered caused by accommodations to the scheduling Order requested by WSCK, and WSCK's

past and ongoing violation of the Commission's Order, Intervenors assert that WSCK's Motion to Amend the Procedural Schedule should be denied and Case No. 2013-00237 should be dismissed with prejudice.

WSCK Scheduling Accommodations and Failure to Appropriate Resources

On 20 June 2013, WSCK filed a Notice of Election of Use of Electronic Filing Procedures which, in part, stated WSCK's intent to file for rate adjustment on or before July 31, 2013.¹ WSCK did not file its Application until 27 September 2013. A No Deficiency Letter was issued by the Commission on 10 October 2013. No explanation has been provided regarding why WSCK did not file its application on July 31, 2013; yet, shortly after the Commission issued a No Deficiency letter, Counsel for WSCK began corresponding with Intervenors and Commission Staff regarding an expedited procedural schedule that would allow for a Hearing in early March. Had WSCK filed its application on July 31, as WSCK indicated it would, then the Hearing could have undoubtedly been held before mid-March. The Commission accommodated WSCK's request for an expedited schedule and issued an Order on 18 October 2013 that did not provide an exact date for the Hearing, but it appeared to make a Hearing in mid-March 2014 a likely outcome. The updated scheduling Order issued on 14 November 2013 provided for the Hearing to commence on 18 March 2014.

The October 18, 2013 Order provided for all parties to file initial requests for information ("RFI") to WSCK by October 25th (this timing will be discussed further

¹ See page 1 of WSCK Notice of Election of Use of Electronic Filing Procedures.

below.) The Order further provided for WSCK to respond to the Office of the Attorney General (“OAG”) and Commission Staff’s RFI on or before November 8th.² WSCK encouraged parties to file initial RFI³, seemingly to keep up with the expedited procedural schedule WSCK requested and the Commission issued. However, on 4 November 2013, a mere two (2) weeks after the procedural schedule was issued, WSCK filed a Motion to Extend Deadlines and Amend the Procedural Schedule. WSCK requested an extension of two (2) weeks to respond to OAG and Commission Staff’s RFI. Intervenors informed WSCK that they would not object to the extension of time on the condition that the entire procedural schedule be extended by two (2) weeks. The Commission granted the WSCK Motion and issued an amended procedural schedule on 14 November 2013 providing for WSCK to respond to RFI by November 22.

On November 22, WSCK filed incomplete responses to OAG and Staff RFI’s. WSCK also filed a Motion to Amend the Procedural Schedule and set an Informal Conference. WSCK’s Motion states, in part, “Staff from WSCK and its parent company, Utilities, Inc., have worked diligently to prepare responses to the 136 items and subparts requested by Commission Staff and the Attorney General in their most recent requests for information.” The OAG doubts the diligence with which WSCK and Utilities Inc. (“UI”) have worked to prepare responses to the RFI. The OAG asked one hundred and thirteen (113) questions in his RFI and WSCK only responded to seventeen (17). In other words, WSCK responded to a paltry 15% of the questions

² Note that the procedural schedule currently only allows two (2) weeks for Intervenors to respond to RFI.

³ See October 21 email from Counsel for WSCK to Intervenors and Commission Staff filed to docket 2013-00237 on October 28 by Commission Staff.

asked. Basic questions such as “How many total customers does WSCK serve”⁴ were left unanswered. Furthermore, WSCK only answered five (5) of the twenty-three (23) questions posed by Commission Staff. Intervenors have grave concerns with WSCK’s commitment of resources to this case where WSCK was afforded four (4) full weeks to respond, yet WSCK could only answer 16% of the total (OAG and Commission Staff) RFI, and failed to respond to basic questions. This lack of responsiveness points to either an active disregard or negligence on the part of WSCK. This seems especially relevant and accurate in light of the fact that previously, WSCK has been granted scheduling accommodations by Intervenors and the Commission.

An Informal Conference was held via telephone on 26 November 2013. While not reflected in the Commission Staff’s Memorandum, Counsel for WSCK explained that WSCK was having difficulty responding to RFIs due to UI’s involvement **in other matters, including rate cases in other jurisdictions.**⁵ Intervenors were made to understand that staff from UI is necessary to respond to many of the RFI, and that UI has not appropriated the resources necessary to respond to the RFIs at this time. Intervenors note that while WSCK and UI were not able to meet the November 8th deadline to respond to OAG and Commission Staff’s RFI, UI *was* able to file a stipulation and settlement agreement on November 8th in Docket No. 120161-WS before

⁴ See AG’s Initial RFI filed 25 October 2013.

⁵ Intervenors note that while WSCK and UI were not able to meet the November 8th deadline to respond to RFI, UI filed a stipulation and settlement agreement in Docket No. 120161-WS before the Florida Public Service Commission.

the Florida Public Service Commission.⁶ It seems that UI prioritized their resources to the Florida case over the Kentucky case. While the OAG shares some measure of empathy with the Company given its case load, it was the Company that decided to file this matter and is bound to follow the procedural deadlines incumbent in a rate case. Thus, if UI cannot make this case a priority and comply with KRS 278.190 **which the Company set in motion**, then the Commission should not be forced into making a decision on a case that the Company has effectively rendered itself into default from day one. Accordingly, the Company's motion should be denied and the case should be dismissed with prejudice.

Currently, WSCK has a Motion pending to further extend the deadline for WSCK to file its responses to the OAG and Commission Staff's RFIs. Specifically, WSCK has requested an additional three (3) weeks on top of the previous two (2) week extension. This additional extension, if granted, moves the deadline to file WSCK's response to 12 December 2013. That is nearly two (2) full months after the RFI were filed to WSCK on 25 October 2013. It took WSCK four (4) weeks to respond to a mere 16% of the questions they received. If that trend were to continue, then a three (3) week extension would not be nearly enough time for WSCK to respond to all the RFI they received. In fact, they would need more than 6 months to fully respond to the RFI. Commission Staff have already voiced their concern that the additional extension requested by WSCK would push the Hearing further back and consequently limit the time the

⁶ See Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement at <http://www.psc.state.fl.us/library/FILINGS/13/06843-13/06843-13.pdf>

Commission will be afforded to draft and issue a Final Order. Any further delay by WSCK⁷ would be potentially catastrophic to the Commission's ability to issue a timely decision before the 10 month statutory period expires.⁸ Finally, as discussed further below, WSCK has offered absolutely no just cause for the Commission to extend the filing deadline and subsequently amend the procedural schedule. Thus, the Company's motion for an extension should be denied and the case should be dismissed with prejudice.

Prejudice to Intervenors

Throughout this case, Intervenors have been saddled with unusually difficult deadlines due to WSCK's request that the entire procedural schedule be expedited. The schedule was issued with the purpose of expediting a Hearing, even though WSCK did not file its application until more than three (3) months after it filed Notice. It is the Company's action that sets the procedural schedule in motion. Should WSCK have wanted to ensure a schedule allowing for a hearing before mid-March 2014, they should have filed their application earlier. Instead, the 18 October 2013 procedural schedule only provided Intervenors five (5) business days in which to file a first round of RFI. Despite this difficult set of circumstances, the OAG was able to retain experts and file an RFI by the October 25 deadline. WSCK still has not completely responded to that RFI.

⁷ This assumes that none of the Intervenors, nor Commission Staff, will need to request an amendment to the procedural schedule, which is still a realistic possibility when considering the expedited procedural schedule.

⁸ See KRS 278.190(4).

Intervenors did what was necessary to meet the Commission's deadlines and WSCK should be held to the same standard.

Intervenors did not object to WSCK's request for an expedited schedule. Intervenors did not formally object to the mere five (5) business day notice that was given before initial RFI was due. Intervenors even worked with WSCK to allow additional time for WSCK to respond to the RFIs. WSCK has been afforded every procedural accommodation WSCK has asked for, yet WSCK is still unable to meet its first deadline provided for in the procedural Order. Indeed, WSCK now wants to inconvenience the calendars of the Commission and Intervenors a third time because of its inability to properly allocate resources necessary to proceed with this rate case - a case that the Company chose when to file and thus is bound by the procedural deadline inherent therewith. It would be unjust and contrary to fundamental due process for the Commission to issue a procedural schedule that would not allow for additional extensions of time, should Intervenors request and need such an extension, due to multiple delays of WSCK. WSCK has been afforded every procedural accommodation and any further accommodation would greatly prejudice the Intervenors to the point that their participation would become meaningless.

WSCK Non-Compliance with Commission's 18 October 2013 Order

WSCK's responses and Motion filed 22 November 2013 are in non-compliance with two separate paragraphs of the Commission's 18 October 2013 Order. Paragraph 3. d. of the Order states "For any request to which a party fails to furnish all or part of

the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.” Neither in WSCK’s responses, nor in its Motion to Amend the Procedural Schedule, does WSCK provide a written explanation of its failure to completely and precisely respond. In fact, WSCK offers no explanation at all for failing to completely and precisely respond to the OAG and Commission staff RFIs. Despite being provided a second Opportunity - via Commission Staff’s suggestion that WSCK file a supplement to its Motion to Amend the Procedural Schedule - to provide any rationale whatsoever, WSCK has still failed to provide any sufficient grounds explaining its failure to follow the mandates provided in the Commission’s 18 October 2013 Order.

WSCK failed to adhere to a second paragraph of the Commission’s 18 October 2013 Order. Paragraph 7 states “Any objections or motions relating to discovery or procedural dates shall be filed upon four business days’ notice or the filing party shall explain, in writing, why such notice was not possible.” Neither WSCK’s initial Motion to Amend the Procedural Schedule filed 22 November 2013, nor it’s Supplement to the Motion filed five (5) days later on 27 November 2013 provides any explanation why four (4) days notice was not provided. WSCK needed to either file their Motion on 18 November 2013, or provide written explanation why that was not possible. Neither of these events took place. As WSCK has failed to comply with paragraphs 3 and 7 of the Commission’s Order, WSCK is continuously in violation of the Commission’s 18 October 2013 Order. Due to WSCK’s failure to comply with the Commission’s Order,

WSCK's Motion to Amend Procedural Schedule should be denied and the Application dismissed with prejudice.

Conclusion

Because WSCK chose when to file this application, it essentially took command of the ultimate deadline for the Commission to render a decision in this case. Thereafter, at every procedural turn, the Company engaged in a pattern of continuing delays that have precluded the parties from exercising their procedural due process rights in this litigation. Simply stated, WSCK has set in motion a statutory deadline with which the Commission must comply yet the Company has simultaneously taken every step to preclude the Commission from issuing a timely ruling without prejudicing the parties. Accordingly, the Attorney General requests that the Commission deny WSCK's Motion to Amend the Procedural Schedule and issue a Final Order dismissing this matter with prejudice.

WHEREFORE, the Attorney General requests an Order from the Commission consistent with his positions as set forth herein.

Respectfully submitted,
JACK CONWAY
ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Gregory T. Dutton", written in black ink. The signature is positioned above a horizontal line.

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Respectfully Submitted
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A handwritten signature in black ink, appearing to read "Sue Ellen Morris", written over a horizontal line.

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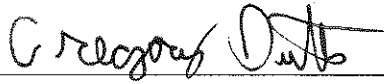
Leanna Wilkerson b7/670 w/ permission

LEANNA WILKERSON

City Attorney for the City of Clinton

Certificate of Service and Filing

Counsel certifies that the Joint Response to Water Service Corp of Kentucky's Motion to Amend Procedural Schedule and Attorney General, Hickman County Fiscal Courts, and City of Clinton Join Motion to Dismiss Water Service Corp of Kentucky's Application for Rate Adjustment with Prejudice is a true and accurate copy of the documents to be filed in paper medium to the Commission within two business days; that the electronic filing was transmitted to the Commission on December 3, 2013; and that no party has been excused from preparation by electronic service.



Assistant Attorney General