

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Application of Water Service Corporation            )  
of Kentucky for a General Adjustment                )  
in Existing Rates    )        Case No. 2013-00237

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**WATER SERVICE CORPORATION OF KENTUCKY’S  
MOTION TO SUBSTITUTE A WITNESS**

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Water Service Corporation of Kentucky (“WSCK”), by counsel, hereby respectfully requests the Commission permit it to substitute Dimitry Neyzelman as a witness for Lowell Yap. In support of its motion, and as more fully described below, WSCK states that this substitution is appropriate because Yap is no longer an employee of Utilities, Inc., the substitution will not prejudice any party, and Neyzelman will be able to provide more complete, thorough responses based on his knowledge of the rate case filings and his position in the organization.

In order to provide the most thorough, complete answers, WSCK determined that it would be better to present Neyzelman as a witness in place of Yap. Neyzelman was Yap’s supervisor throughout the entire term of the rate case and has been involved in the preparation of all testimony and responses to information requests that Yap sponsored. In his managerial role, Neyzelman can provide responses to a broader range of questions than Yap, and Neyzelman has knowledge on substantive matters that Yap did not. For example, Yap was not privy to corporate salary information that was the subject of Items 43 and 50 in the Attorney General’s Initial Request for Information and WSCK’s Third Motion for Confidentiality. Similarly, because he

participated in the preparation of the testimony and responses to information requests (albeit it in a “behind-the scenes” role), Neyzelman has the requisite knowledge to respond to cross-examination questions at the hearing.

WSCK’s pre-filed testimony and responses to information requests on factual issues is similar to written discovery in civil litigation.<sup>1</sup> Administrative Regulation 807 KAR 5:001, Section 4(12)(d)(2) instructs parties to identify witnesses responsible for providing information in response to information requests and “for representatives of a public or private corporation . . . be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person’s knowledge, information, and belief formed after a reasonable inquiry.”

The Kentucky Rules of Civil Procedure provide a similar process by which a corporation must respond to interrogatories. Civil Rule 33.01(1) states, “Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.” Subsection (2) of that rule states that “[e]ach interrogatory shall be answered separately and fully in writing under oath . . . .”

In interpreting Civil Rule 33, the Kentucky Supreme Court has stated that “signing a response to interrogatories does not, in-and-of-itself, make the signor subject to being deposed.” Wal-Mart Stores, Inc. v. Dickinson, 29 S.W. 796, 804 (Ky. 2000). Likewise, signing responses to information requests or providing testimony on factual matters should not obligate a corporate

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<sup>1</sup> As a utility with less than \$5,000,000 in gross annual revenues, WSCK was not required to submit pre-filed written testimony with its application. 807 KAR 5:001, Section 16. WSCK nevertheless filed testimony with its application in an effort to expedite the process and provide as much information as possible to the Commission and intervening parties.

representative to appear at an evidentiary hearing before the Commission, so long as the utility has an adequate witness who can respond to questions on the same subject matter. Not only is Neyzelman more than adequate to testify, he is a superior witness because he has more first-hand information to provide.

There will be no prejudice in having Neyzelman adopt Yap's testimony and be cross-examined thereon. Neyzelman has full knowledge of the testimony and responses to information requests that were previously sponsored by Yap. He will be prepared to respond to cross-examination questions on Yap's testimony and responses to data requests as if he sponsored them initially. WSCK acknowledges that it is bound by the testimony and responses that it has presented in the record of this case, subject to any clarifications and corrections that appear in the record as a whole. WSCK will not change its position on any issue simply because of the substitution of this witness.

At the April 1, 2014, pre-hearing informal conference, counsel for the Attorney General indicated that there would be prejudice because Neyzelman's qualifications have not yet been disclosed. Neyzelman is being presented as a corporate-designated witness for factual matters. He is not rendering opinions that would subject him to Daubert-like challenges for expert testimony. See, e.g., KRE 702. Accordingly, Neyzelman's qualifications are not relevant.

Nevertheless, WSCK has no objection to describing Neyzelman's professional background. Neyzelman joined Utilities, Inc., ("UI") in October 2005 and is currently a Financial Planning and Analysis Manager in the company. Prior to joining UI, he was a consultant in the Dispute Resolution and Valuation department for Virchow Krause and Company, a Litigation Consultant with Russell Novak and Company, an Investment Consultant for Deloitte & Touche Investment Advisors, and a Portfolio Administrator for Harris Associates

LLC, all in Chicago, Illinois. Neyzelman has over ten years' experience in public accounting, litigation consulting, and investment consulting. He earned a Bachelor's of Science Degree in Finance and a Concentration in International Business at the College of Business at the University of Illinois at Chicago. Neyzelman is a former member of the National Chapter of the Association of Certified Fraud Examiners and the local Greater Chicago Chapter of the Association of Certified Fraud Examiners and has successfully completed the utility rate regulation seminar sponsored by National Association of Regulatory Utility Commissioners.

In addition to the information presented above, Yap is no longer an employee of Utilities, Inc., effective April 2, 2014. Accordingly, he is unavailable to testify on behalf of WSCK. In his stead, WSCK proposes to have Neyzelman adopt Yap's testimony and respond to cross-examination on behalf of the corporation.

Accordingly, WSCK respectfully requests that it be permitted to substitute Dimitry Neyzelman as a witness for Lowell Yap for the above-mentioned reasons.

Respectfully submitted,



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