

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Kentucky Cable Telecommunications Association,)	
)	Case No. 2014-00025
)	
Complainant,)	
)	
v.)	
)	
Louisville Gas and Electric Company and Kentucky Utilities Company,)	
)	
Defendants.)	

**KENTUCKY CABLE TELECOMMUNICATIONS ASSOCIATION’S REPLY IN
SUPPORT OF ITS MOTION TO CONSOLIDATE**

The Kentucky Cable Telecommunications Association (“KCTA”) submits this reply in support of its Motion to Consolidate the above-referenced proceeding with Case Numbers 2014-00371 and 2014-00372, Kentucky Utilities Company and Louisville Gas & Electric Company’s (collectively “the Companies”) Notices of Intent and Election to File Application for a General Adjustment in Electric Rates.

INTRODUCTION

On December 22, 2014, KCTA moved to consolidate the above-referenced matter with the Companies’ current rate proceedings. KCTA’s Complaint alleges that the pole attachment rates the Companies have charged since January 1, 2013, are not supported by the Companies’ costs that were in effect at the time the rates were instituted. In support of its motion, KCTA argues that consolidation would conserve time, energy, and resources of the parties and the Commission.

The Companies did not file a separate response to KCTA's motion, but opposed KCTA's motion in their Reply in Support of the Companies' Second Motion to Dismiss. *See* Companies' Reply Br., at 8-10 (filed Dec. 30, 2014).¹

The Companies argue that consolidation of KCTA's Complaint with the Companies' current rate proceedings would result in the consolidation of the Companies' dual rate applications, which, they assert, would complicate discovery and create an "unwieldy" record. The Companies also argue that their costs at the time the current rates were instituted are "irrelevant" to the current rate proceeding because the rate proceeding will focus only on the Companies' future costs.

First, KCTA did not ask the Commission to consolidate the dual rate proceedings, and the Companies fail to explain why consolidation of the Companies' separate rate proceedings is necessary. Consolidation of KCTA's Complaint into each of the dual rate proceedings will not result in burdensome discovery or otherwise complicate the record.

Second, the Companies' argument that their prior costs are "irrelevant" to the current proceeding is an admission that, contrary to the Companies' arguments in their motions to dismiss, KCTA's members would indeed be prejudiced by dismissal of KCTA's Complaint in this matter.

Third, the Companies' reply brief misquotes in dramatic fashion KCTA's Memorandum Opposing the Companies' Second Motion to Dismiss. The inaccurate quotation is more than an incorrect citation – the Companies insert words into a sentence from KCTA's brief, and then

¹ The Companies cannot deprive KCTA of the opportunity to file a reply in support of its Motion to Consolidate by including their opposition in their reply to their motion to dismiss, rather than filing a separate response to KCTA's motion. *See* 807 KAR 5:001, § 5(3) ("[A] party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion.").

attribute that sentence to KCTA. The Companies should withdraw their misleading brief and file a corrected one with the Commission.

Consolidation of KCTA's Complaint with the Companies' respective, current rate proceedings would conserve time, energy, and resources of the parties and the Commission. Consolidation also prevents the prejudice that would result from the Commission's dismissal of KCTA's Complaint. KCTA asks the Commission to grant its Motion to Consolidate.

ARGUMENT

I. Consolidation of the Matters Will Conserve Time, Energy, and Resources of the Parties and the Commission.

KCTA has not asked the Commission to consolidate the Companies' separate rate proceedings into one. Rather, KCTA asks the Commission to consolidate its Complaint into the Companies' *respective* pending rate proceedings. The Companies fail to explain why consolidation of the Companies' separate rate proceedings would be necessary if the Commission grants KCTA's Motion to Consolidate. Thus, there would still be separate records and separate discovery for each of the Companies' rate applications.

Consolidation of the proceedings would require minimal additional discovery, especially when considered in context of the larger rate proceedings. KCTA would seek discovery regarding the Companies' costs at the time the current rates were instituted, in addition to discovery on the Companies' current costs. The Companies fail to explain how this limited additional discovery for prior and current cost information would "produce a large, confusing, and unwieldy record."

II. Consolidation of the Matter, Rather than Dismissal of KCTA's Complaint, Will Prevent Prejudice to KCTA's Members.

In their opposition to KCTA's Motion to Consolidate, the Companies state that their current rate applications "are based upon a forward-looking test period that runs from July 1, 2015 to June 30, 2016" and that the rate proceedings "thus focus on the Companies' future costs to provide service." Companies' Reply Br., at 9. The Companies therefore admit that KCTA's members that have attachments to the Companies' poles would suffer prejudice from dismissal of KCTA's Complaint because it would deprive KCTA of an opportunity to determine the reasonableness of the current pole attachment rates based on the Companies' costs at the time the rates were instituted. This directly contradicts the Companies' position in its second motion to dismiss, in which the Companies argued that KCTA members would suffer no prejudice if the Commission dismissed its Complaint. Companies Mem. in Support of Second Mot. to Dismiss, at 6-7.

Also, in the Companies' first motion to dismiss, they argued that KCTA members that attach to the Companies' poles would not be prejudiced if the Commission waited to decide this Complaint case until the Companies filed another general rate case to have the reasonableness of its rates determined. Companies' Mem. in Support of First Mot. to Dismiss, at 12. For the Companies' argument that KCTA members would suffer no prejudice from delay of consideration of the issues raised in its Complaint to have any validity, at the very least, the Commission should consider the reasonableness of the Companies' rates from the date of the Complaint. The Companies' argument that its rates must be considered valid through the date when they are determined unreasonable and unlawful – an argument with which KCTA disagrees – flies in the face of its positions that KCTA's members will suffer no prejudice if its

Complaint is now dismissed. The Companies cannot have it both ways, and they should not be heard to argue such inconsistent positions.

III. The Companies' Reply Brief Misquotes KCTA's Prior Filings

In their Reply in Support of their Second Motion to Dismiss, the Companies blatantly misquote KCTA's opposition brief. On page 2 of their reply, the Companies misquote KCTA as saying, "KCTA members *somehow are* entitled to pay the corrected pole attachment rate dating back to at least January 24, 2014 – the date KCTA filed its Complaint." Companies Reply Br. at 2 (emphasis added). The Companies cite KCTA's Opposition to Second Motion to Dismiss at 4. But KCTA's brief actually states, "[I]f the Commission determines that the Companies' pole attachment rates are not supported by the Companies' costs at the time those rates were instituted, KCTA members *would be* entitled to pay the corrected pole attachment rate dating back to at least January 24, 2014 – the date KCTA filed its Complaint." The Companies' erroneous attribution of the phrase "somehow are" to KCTA is prejudicial and must be corrected.

The Companies' brief is misleading and mischaracterizes KCTA's arguments, and the Companies should file a corrected brief with the Commission.

CONCLUSION

For the reasons stated above, and in its Motion to Consolidate, KCTA asks the Commission to grant its Motion to Consolidate Case Number 2014-00025 into the each of the Companies' dual rate proceedings.

Respectfully submitted,

/s/ Laurence J. Zielke

Laurence J. Zielke
Janice M. Theriot
Zielke Law Firm, PLLC
1250 Meidinger Tower
462 South 4th Street
Louisville, KY 40202
(502) 589-4600

Gardner F. Gillespie
Amanda Lanham
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006-6801
(202) 747-1905
ggillespie@sheppardmullin.com
alanham@sheppardmullin.com

**ATTORNEYS FOR THE KENTUCKY CABLE
TELECOMMUNICATIONS ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Kentucky Cable Telecommunications Association's Reply in Support of Its Motion to Consolidate has been served on all parties of record via hand delivery, facsimile, or electronically this 5th day of January, 2015.

/s/ Laurence J. Zielke

Laurence J. Zielke