COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF MONROE COUNTY WATER DISTRICT FOR RATE ADJUSTMENT PURSUANT TO 807 KAR 5:076	)))	CASE NO. 2017-00070

ATTORNEY GENERAL'S RESPONSE TO MONROE COUNTY WATER DISTRICT'S MOTION FOR RECONSIDERATION AND CLARIFICATION

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and tenders his response to Monroe County Water District's ("the District's") request that the Commission reconsider portions of its August 18, 2017 Order.

On August 28, 2017, the District tendered to the Commission a filing styled "Motion for Reconsideration and Clarification" ("Motion"). The Motion requested that the Commission reconsider the portions of its August 18, 2017 Order denying the District's request to establish a procedural schedule for the purpose of conducting discovery of Commission Staff and requiring the District to submit to the Commission, no later than September 20, 2017, a list of witnesses and exhibits to be presented at the hearing. Amongst other requests, the District asked the Commission to require the Attorney General and Commission Staff to provide similar lists of witnesses and exhibits and to limit the hearing to issues which the District believes are in dispute. Although he disagrees with the entire premise of Monroe's request for a rehearing, the Attorney General will respond to two specific arguments raised by the District that are of particular concern.

First, the District argues that requiring it to produce witness lists and copies of exhibits it intends to introduce at the September 27, 2017 hearing, without requiring the same of Commission Staff and the Attorney General, would impair its right to a fair hearing.[1] Contrary to any unfairness the District alleges, this is a long-standing administrative practice specifically intended to facilitate efficient and productive hearings. As the Applicant, the District is a unique party in the matter, because it solely carries the burden of proof in demonstrating that its requested rates are just and reasonable.[2] Since the Attorney General bears no burden of proof in this case, the Commission's obvious rationale for applying this requirement only to the District is reasonable and in accordance with the law. The legislature has intentionally placed the burden of proof upon utilities to show that the applicant's proposed increase is just and reasonable.[3] As no other party in this Matter bears a burden of proof, it makes no sense to require them to provide witnesses and exhibits ahead of a hearing. The Attorney General, as an intervening party, may rightly limit his involvement in the matter to rebutting the District's case. As such, requiring him to provide witnesses or exhibits ahead of a hearing is both nonsensical and against the spirit and application of administrative economy. The Attorney General requests that the Commission deny the District's request that the Attorney General be required to provide an advanced list of any witnesses or exhibits intended to be introduced.

Second, the District's request suggests that the text of 807 KAR 5:076, Section 11 should somehow restrict the topics that may be covered at the hearing. In the process, the District challenges the Attorney General's ability to fully participate on findings to which he "did not

[1] Case No. 2017-00070, "Motion for Reconsideration and Clarification" at 4 (Ky. PSC Aug. 28, 2017).
[2] "At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility…". KRS 278:190(3). *See also*, Energy Regulatory Comm'n v. Kentucky Power Co., 605 S.W.2d 46, 50 (Ky. App. Ct. 1980) ("Applicants before an administrative agency have the burden of proof.").
[3] KRS 278.190(3).

object."[4] As the District does not clearly describe the limits it believes should be placed on the Attorney General's ability to cross-examine witnesses or present evidence, the Attorney General must address this argument in a similarly broad manner. In its Motion, the District apparently conflates the failure to use the word "object" with a waiver of any ability to meaningfully participate further in the case, including the hearing. In the complete reading of the letter and spirit of Section 11 that the District urges, this conclusion is insupportable.

The District's attempt to read Section 11(3)(c) in isolation from the remainder of the Section leads to a narrow and unwieldy argument that the word "object" carries dispositive weight in responding to a commission staff report. Section 11(3)(b) instructs the filing of a written response to a commission staff report, which should contain "all objections to and other comments on the findings and recommendations of commission staff."[5] Read in their totality, these subsections demonstrate the intent that parties should raise any issues or concerns with the staff report in their written comments, without strict instruction as to the form those comments must take, and that parties should contemporaneously request a hearing if needed to resolve those issues. To suggest that the failure to specifically use the word "object" in written comments prevents a party from participating meaningfully in a subsequent hearing creates absurd results, particularly in light of Section 11(3)(e) and Section 3(7).[6] Section 11(3)(e) provides that failure to object to findings in a staff report "shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations established in the commission staff

[4] Motion for Reconsideration and Clarification at 5-6.
[5] 807 KAR 5:076, Section 11(3)(b)(1).
[6] 807 KAR 5:076 Section 3(7) makes it clear that although a hearing may not be necessary in every instance, the record of that hearing shall be considered when the Commission makes it decision in the matter.

report."[7] The idea that Commission retains the discretion to hold a hearing while certain parties would be prevented from presenting evidence on specific topics, even if requested by the Commission, renders the provision illogical. Limiting the Attorney General's right to be heard would reduce his involvement to that of a spectator, rendering any due process rights he and the consumers' he represents have meaningless.

In this case, the Attorney General filed written comments on the Commission Staff's Report on July 14, 2017. The Attorney General raised a number of specific concerns with the Staff Report and urged the Commission to take those concerns into account when issuing its final order in the case. As the District recognizes in its Motion, those positions were in some cases adverse to the requests made in the District's application and in others were critical of methodology used by Commission Staff. On at least two occasions, the Attorney General urged the Commission to deviate from the recommendations in the Staff Report.[8] The format of the Attorney General's written comments clearly satisfies the requirements of Section 11(3)(b). The Attorney General retains the right to fully participate in the hearing in this case and requests that the Commission deny any attempt to limit his cross-examination or continued assertion of any arguments in this case. The District's request would hinder the Attorney General in his representation of consumers and is merely a continuation of its attempt to limit the hearing to findings of the staff report with which the District disagrees. The District's characterization of the scheduled hearing and the role of the parties recklessly disregards the letter and spirit of Section 11(3)(e) and the administrative process for reviewing small rate cases, and should therefore be denied.

[7] 807 KAR 5:076, Section 11(3)(e).
[8] Case No. 2017-00070, "Attorney General's Comments on Commission Staff Report" at 6-7 (Ky. PSC July 14, 2017).

WHEREFORE, the Attorney General respectfully requests that the Commission deny the District's motions for reconsideration and clarification and let the Commission's August 18, 2017 Order stand.

Respectfully submitted,

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