

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**ATTORNEY GENERAL’S OBJECTION TO AND MOTION TO STRIKE  
MONROE COUNTY WATER DISTRICT’S THIRD SUPPLEMENT  
TO APPLICATION**

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and hereby objects to Monroe County Water District’s (“the District”) filing of a Third Supplement to the District’s Application and moves the Commission to strike the Third Supplement from the record in this case. In support of his motion, the Attorney General states as follows:

In its Order dated August 18, 2017, the Commission set a hearing in this case for 10:00 a.m. on September 27, 2017. The Commission also instructed the District to file with the Commission, no later than September 20, 2017, a list of witnesses and exhibits to be presented at the hearing.<sup>1</sup> At 8:42 p.m. on September 25, 2017, the District filed a Third Supplement to its Application which significantly alters the operational expenses and corresponding revenue requirement provided in the District’s Application. The Third Supplement was followed by a second filing at 9:58 p.m. on September 25, 2017 which again revised the total of important personnel costs. This Supplement effectively amends the District’s application at the eleventh

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<sup>1</sup> *Electronic Application of Monroe County Water District for Rate Adjustment Pursuant to 807 KAR 5:076*, Order at 3 (Ky. PSC Aug. 18, 2017).

hour, altering the weight of the previous record and the relevance of large portions of the Commission Staff Report.

The last-minute nature of these amendments to the District's Application unduly prejudices the Attorney General's representation of rate payer interests. Although the District has been aware of these new figures since at least July 10, 2017, the Attorney General effectively has one day to review the new figures which are not reflected anywhere in the previous record or the Commission Staff Report. These new figures are not trivial in nature. The District asserts that pro forma operating expenses should be increased by \$73,862.75. This represents an increase of over thirty percent of the additional revenues requested by the District in its initial Application.<sup>2</sup> The Attorney General cannot adequately address these claims in a hearing held one day after receiving notice of this increase. In response to the District's motion that all parties be required to file witness and exhibit lists prior to the hearing,<sup>3</sup> the Commission noted in its September 18, 2017 Order that all parties should be on "equal footing" for the September 27 hearing.<sup>4</sup> Allowing the District's untimely amendment to its Application certainly does not put the parties on equal footing.<sup>5</sup>

At this stage in the proceedings, allowing the District to amend the Application would be tantamount to restarting this case. Discovery, the Commission Staff Report, and the parties' comments have all been based on the information provided in the Application and earlier supplements – neither of which significantly altered the underlying Application. The Kentucky

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<sup>2</sup> Case No. 2017-00070, Application, ARF Form-1 July 2014 at 3 (Ky. PSC March 16, 2017).

<sup>3</sup> Case No. 2017-00070, Motion for Reconsideration and Clarification (Ky. PSC Aug. 29, 2017).

<sup>4</sup> Case No. 2017-00070, Order at 3 (Ky. PSC Sep. 18, 2017).

<sup>5</sup> The Commission also noted the District's argument regarding procedural fairness, and quoted from its September 6, 2017 Reply: "Requiring Monroe District to identify its witnesses and exhibits in advance of the hearing while not placing a similar requirement on the AG or Commission Staff squarely places Monroe District at a procedural disadvantage and affords it less of an opportunity to adequately prepare for the scheduled hearing than is afforded the other participants." *Id.*

Supreme Court has warned against untimely admission of new information or changed economic conditions. As the Court noted, introduction of new information late in a case "...would result in complete destruction of an orderly process in the legislative scheme for setting rates for utilities. Public policy dictates that these actions not be unnecessarily prolonged."<sup>6</sup> Allowing this kind of untimely amendment to the Application creates the sort of never ending rate case which concerned the Supreme Court.<sup>7</sup>

WHEREBY, the Attorney General moves that the Commission strike the District's Third Supplement to Rate Application and its Errata to the Third Supplement to Rate Application.

Alternatively, if the Commission determines the case cannot proceed without the information contained in the Third Supplement, the Attorney General requests that the Commission dismiss the District's application for rate adjustment, deny its requests to recover attorney's fees, and require that the District submit a new application with its updated information. If the case is not dismissed, the Attorney General requests that the Commission reschedule the September 27, 2017 hearing to provide time for the Attorney General to adequately review and prepare for cross-examination on the amendments to the District's application. Otherwise, he cannot sufficiently protect the interests of the rate payers in this case.

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<sup>6</sup> *Stephens v. Kentucky Utilities Co.*, 569 S.W.2d 155, 158 (Ky. 1978).

<sup>7</sup> "... if changes in the general economic situation should be permitted to be classed as newly-discovered evidence, there would never be an end to a public utility case. The Public Service Commission necessarily must base its decision and actions on the economic conditions existing at the time a case is before it, and it is not in the public interest that a case be prolonged indefinitely by allowing a reconsideration whenever there is a fluctuation in price levels." *Id.* quoting *Kentucky Utilities Co. v. Public Service Commission*, Ky., 252 S.W.2d 885 (1952).

Respectfully submitted,

ANDY BESHEAR  
ATTORNEY GENERAL

*S. M. Faulkner*

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*Certificate of Service and Filing*

Counsel certifies that the foregoing is a true and accurate copy of the same document being filed in paper medium with the Commission within two business days; that the electronic filing has been transmitted to the Commission on September 26, 2017; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 26<sup>th</sup> day of September, 2017.

*S. M. Faulkner*

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Assistant Attorney General