

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

In the Matter of:

Electronic Application Of Kentucky Power)	
Company For (1) A General Adjustment Of Its)	
Rates For Electric Service; (2) An Order)	
Approving Its 2017 Environmental Compliance)	
Plan; (3) An Order Approving Its Tariffs And)	Case No. 2017-00179
Riders; (4) An Order Approving Accounting)	
Practices To Establish Regulatory Assets Or)	
Liabilities; And (5) An Order Granting All Other)	
Required Approvals And Relief)	

**MOTION OF KENTUCKY POWER COMPANY
TO STRIKE SETTLEMENT TESTIMONY OF KCUC**

Kentucky Power Company moves the Public Service Commission of Kentucky pursuant to 807 KAR 5:001, Section 4(11)(d) to strike the December 4, 2017 testimony of Kentucky Commercial Utility Customers, Inc. (“KCUC”) witness Kevin Higgins. The testimony was filed in contravention of the July 17, 2017 procedural schedule established by the Commission without seeking leave from the Commission and represents an effort to rewrite its earlier testimony. Mr. Higgins’ last-minute testimony should be stricken.

Mr. Higgins does not address, much less oppose, the settlement agreement in most respects. Indeed, he explains that his testimony “does not ask the Commission to reject that agreement at the stipulated revenue requirement agreed to by the Signatory Parties.”¹ Instead, his late testimony is purportedly limited to addressing the inter-class revenue allocation provided for by the settlement agreement. Revenue allocation, of course, was one of the two topics

¹ Testimony of Kevin C. Higgins, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets Or Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 at 4 (Ky. P.S.C. Filed December 4, 2017).

addressed in Mr. Higgins' October 3, 2017 testimony: "[m]y testimony addresses the topics of class cost allocation and *the appropriate revenue allocation among classes*."² Significantly, although the revenue allocation provided for by the settlement agreement³ varies from that initially proposed by the Company in its application, Mr. Higgins' October 3, 2017 testimony regarding the appropriate revenue allocation was limited to a single feature of the Company's proposed allocation:

I recommend that the current residential subsidy, according to the Company's 12CP cost-of-service study, be reduced 50% in this case. This 50% reduction in the Residential subsidy represents a meaningful step in aligning customer class rates with cost causation, while at the same time mitigating the impact to residential customers that could result from a more significant movement toward cost at this time.⁴

KCUC remains free to argue in the context of the settlement agreement for the same shift of costs – whether under the Company's application allocation or the settlement allocation – to the residential class that he presented in his October 3, 2017 testimony. What he should not be permitted to do is to propose a completely different allocation, particularly since he could have presented the same late-born allocation methodology in his October 3, 2017 testimony.

Nor do the Commission's regulations and orders countenance such efforts by parties to recast the Commission's procedural schedule. 807 KAR 5:001, Section 4(11)(d) provides that:

² Testimony of Kevin C. Higgins, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets Or Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 at 3 (Ky. P.S.C. Filed October 3, 2017) (emphasis supplied).

³ Kentucky Power filed the Settlement Agreement in this case on November 22, 2017, twelve days before KCUC tendered Mr. Higgins' testimony. The Company filed an updated Settlement Agreement on November 30, 2017 with changes limited only to the proposed cable pole attachment rates. None of the settlement terms relating to the issues raised in Mr. Higgins' December 4, 2017 testimony varied from the November 22 version of the Settlement Agreement. Thus, notwithstanding the assertion in footnote 1 of Mr. Higgins' testimony that Kentucky Power may have altered the rate of return for the LGS/PS class between the November 22 and November 30 versions of Exhibit 1 to the Settlement Agreement, the two versions are identical.

⁴ Higgins October Testimony at 15.

Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

The Commission confirmed this obligation when it granted KCUC's motion to intervene: "KCUC shall adhere to the procedural schedule set forth in the Commission's July 17, 2017 Order and as amended by subsequent Orders."⁵

The July 17, 2017 procedural schedule in this case provided that intervenor testimony was to be filed no later than October 3, 2017. KCUC filed its original testimony in conformity with that schedule. It now seeks to present, through supplemental testimony, filed two months after the last day for filing its original testimony, a different methodology. It makes this effort without even attempting, much less demonstrating, good cause.

Nor does KCUC address the Commission's October 24, 2017 Order denying the Attorney General the same relief from the Commission's July 17, 2017 procedural schedule KCUC seemingly seeks here. In denying the Attorney General's October 11, 2017 motion to file supplemental testimony addressing, among other topics, inter-class revenue allocation, the Commission explained:

Historically, intervenors in rate cases have alleged and challenged the subsidization of one or more customer classes by other customer classes. A customer class that pays rates greater than the cost to serve that class subsidizes other customer classes; a customer class that pays rates lower than the cost to serve the class is subsidized by other customer classes. The Attorney General had actual notice that other intervenors would raise the issues identified in his motion.

...

⁵ Order, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets Or Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 at 4 (Ky. P.S.C., August 3, 2017).

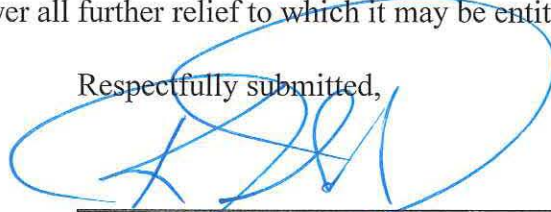
The Commission finds that the Attorney General will not be prejudiced by the denial of Attorney General's motion. The procedural schedule afforded the Attorney General a meaningful opportunity to present his case through pre-filed testimony and discovery. The Attorney General continues to have meaningful opportunities to present his case and challenge other intervenors' evidence by examining at the December 4, 2017 [sic] hearing all witnesses who have presented direct or rebuttal testimony. Further, the Attorney General may submit a post-hearing brief in which he can expand upon his position and rebut any opposing arguments.⁶

The same reasons counsel here for striking Mr. Higgins' testimony. In fact, unlike the Attorney General, KCUC availed itself of the opportunity in Mr. Higgins' October 3, 2017 testimony to address through its testimony inter-class revenue allocation. It now simply wants to present a different allocation methodology two days before the hearing in this matter. The Commission should not reward KCUC's attempt to rewrite, without seeking leave or demonstrating good cause, the July 17, 2017 procedural schedule.

WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. Striking from the record in this case the December 4, 2017 testimony of KCUC Witness Higgins; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



Mark R. Overstreet
Katie M. Glass
STITES & HARBISON PLLC
421 West Main Street

⁶ Order, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets Or Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 at 4 (Ky. P.S.C., October 24, 2017).

P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477
Facsimile: (502) 223-4124
moverstreet@stites.com
kglass@stites.com

Kenneth J. Gish, Jr.
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
Telephone: (859) 226-2300
Facsimile: (859) 253-9144
kgish@stites.com

COUNSEL FOR KENTUCKY POWER
COMPANY