

**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	)	

**KENTUCKY POWER COMPANY’S RESPONSE IN OPPOSITION TO ATTORNEY  
GENERAL’S MOTION FOR LEAVE TO FILE REBUTTAL TESTIMONY**

The Attorney General on October 11, 2017 moved the Public Service Commission of Kentucky for leave to file rebuttal testimony “limited solely to the issues of cost of service, cost allocation, and rate of return as addressed in other intervenors’ pre-filed testimony.”<sup>1</sup> The sole basis offered for the Attorney General’s request to modify the three-month-old procedural schedule is that “some of the viewpoints, opinions and recommendations set forth in testimony of some of these intervenors regarding the issues of cost of service, cost allocation and rate of return have the potential to unduly prejudice residential customers.”<sup>2</sup>

Kentucky Power Company opposes the Attorney General’s motion. The requested relief is extraordinary, the nature of the claimed undue prejudice requiring another round of testimony

---

<sup>1</sup> Attorney General’s Motion For Leave To File Rebuttal Testimony Limited To Intervenor Testimony Regarding Cost Of Service, Cost Allocation, And Rate Of Return Issues, *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 1 (Ky. P.S.C. Filed October 11, 2017).

<sup>2</sup> *Id.*

is neither identified nor supported, and the Attorney General's requested relief will prejudice Kentucky Power.

1. The Attorney General cites no authority in the Commission's regulations or precedent for the relief he requests. Although the decision involved a request by the Attorney General to file sur-rebuttal testimony in response to Kentucky-American Water Company's rebuttal testimony, the general principles identified by the Commission in denying the Attorney General's request to file additional testimony in *In the Matter of: Adjustment Of The Rates Of Kentucky-American Water Co.*<sup>3</sup> are equally applicable to the Attorney General's motion here:

As a general rule, no party has a right to reply to evidence given on rebuttal or to introduce surrebuttal testimony unless a new matter is introduced in rebuttal. 75 Am. Jur. 2d Trial § 377 (2004). This Commission has previously held that a party seeking to introduce surrebuttal testimony must, unless it bears the burden of proof, demonstrate that good cause for such testimony exists. Louisville Gas and Electric Co., Case No. 2002-00232 (Ky. PSC Nov. 22, 2002) at 2.

In the present proceeding, Kentucky-American as the applicant for a rate adjustment bears the burden of demonstrating the reasonableness of its proposed rates. KRS 278.190(3). Except in those instances that he advances proposals in areas or on issues that Kentucky-American has not addressed in its application, the AG has no burden of proof to meet.

Based upon our review of the AG's motion, we find that the AG has failed to demonstrate good cause for surrebuttal testimony and that his motion should be denied. He does not identify any new matter raised in the rebuttal testimony of Kentucky-American's witnesses. The AG also fails to point to any proposal or issue on which he bears the burden of proof and that Kentucky-American has addressed in the rebuttal testimony of its witnesses. Absent such showing, the AG has no entitlement to present surrebuttal testimony.

The Attorney General does not contend in his motion that the issues he seeks to address through rebuttal testimony are new or were not addressed in the Company's application and its witnesses' testimony. For example, revenue allocation among classes and the gradual reduction of the

---

<sup>3</sup> Case No. 2004-00103 (Ky. P.S.C. October 27, 2004).

subsidy provided by other classes to residential customers, which the Attorney General indicates he may wish to address through rebuttal testimony, were addressed in the direct testimonies of Company Witnesses Buck (pages 19-22) and Wohnhas (page 8).

Further, the potential for disagreement among intervenors on the issue of cost and revenue allocation among classes was made plain in the intervention motions or accompanying testimony of Kentucky Commercial Utility Customers, Inc., Kentucky League of Cities, and Wal-Mart. Kentucky Commercial Utility Customers, Inc., for example, stated in its motion to intervene that it planned “to address issues related to the rate classifications on which commercial customers receive power from Kentucky Power. After an initial review of the application, KCUC expects to develop the record on cost-of-service allocations and relative rates of return for rate classifications.”<sup>4</sup> The Kentucky League of Cities similarly indicated its intent to address revenue allocation among the classes: “the currently proposed revenue allocation does little to address the disparity of ROR between classes. The full extent of these impacts cannot be determined without the opportunity to participate fully in this case.”<sup>5</sup> Finally, Mr. Tillman in his pre-filed testimony in support of Wal-Mart’s proposed intervention identified the likelihood of conflict among the positions of different customer classes concerning revenue allocation between customer classes, and noted that Wal-Mart intended to address the issue in its testimony:

---

<sup>4</sup> Motion for Leave To Intervene By Kentucky Commercial Utility Customers, Inc., *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 2 (Ky. P.S.C. Filed July 14, 2017).

<sup>5</sup> Kentucky League of Cities Motion To Intervene, *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 2 (Ky. P.S.C. Filed July 12, 2017).

It is not uncommon for various customer classes to have conflicting interests in rate proceedings. For example, in terms of the allocation of a utility's overall revenues, it is common for one or more classes of customers to be subsidizing the cost to serve other customer classes. *The various customer class advocates will have competing viewpoints of what is a fair allocation of the revenue or the change in revenue.* Representatives from each customer class should have the opportunity to present a case that advances each one's own perspective.

...

While we [Wal-Mart] are still in the process of evaluating the Company's proposals in this particular proceeding, our evidence traditionally relates to our perspective of just and reasonable rates of return and returns on equity, commercial rate design, and *overall cost and revenue allocation between the various rate classes* and within individual commercial rate classes amongst similarly-situated customers.<sup>6</sup>

2. Nowhere in his motion does the Attorney General explain how the Commission's long-standing practice in rate cases of requiring intervenors to file their testimony simultaneously prejudices residential customers. Intervenors oftentimes represent different interests and disagreement among the intervenors occurs in nearly every case. Yet the Commission's long-standing practice of requiring simultaneous intervenor testimony continues to prove fair and workable.

The Attorney General remains free in this case to address any areas of disagreement with other intervenors through discovery, through cross-examination of the other intervenors' witnesses, through post-hearing briefing, and to the extent appropriate, through re-direct testimony of his witnesses at any hearing. These remedies have proven adequate in the past and the Attorney General provides no reason to assume they will not prove equally effective here.

---

<sup>6</sup> Testimony in Support of Intervention of Gregory W. Tillman on Behalf of Wal-Mart Stores East, LP and Sam's East, Inc., *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 5, 7 (Ky. P.S.C. Filed July 21, 2017) (emphasis supplied).

3. The Attorney General also fails to identify the witnesses, or those specific parts of their testimony, he claims unduly prejudice residential customers. Nor does indicate what is unduly prejudicial about the unidentified testimony. The Commission, Kentucky Power, and the other intervenors are left to intuit whether any prejudice – undue or otherwise – justifying the requested relief even exists. Certainly, the mere fact that an intervenor files testimony the Attorney General believes is contrary to this position is hardly unduly prejudicial.

4. Far from resolving the claimed, but unspecified, prejudice from intervenors being required to file their testimony simultaneously, the Attorney General’s requested relief would have the Commission perpetuate the risk of further claims of prejudice by providing for another round of simultaneous testimony. What is to keep the Attorney General, or any other intervenor, from requesting yet another round of rebuttal testimony because of claimed undue prejudice from some statement contained in the intervenor testimony to be filed simultaneously on November 3, 2017?

5. Kentucky Power as the applicant bears the burden of proof in this case. As such, it traditionally is entitled to have the last word on the issues presented by its application.<sup>7</sup> The Attorney General’s motion would move the intervenors to the front of the line with Kentucky Power by providing for intervenor rebuttal testimony to be filed simultaneously with the filing of Kentucky Power’s rebuttal testimony. In so doing, the Attorney General would deny Kentucky Power the ability to see prior to filing its rebuttal testimony, much less have the last word on, the positions presented by the proposed intervenor rebuttal testimony.

---

<sup>7</sup> See *In the Matter of: Investigation Of Louisville Gas And Electric Company's Prepaid Gas And Electric Service*, Case No. 2002-00232 (Ky. P.S.C. November 20, 2002) (“[S]ince LG&E bears the burden of proof in this case, good cause has not been shown to justify the filing of surrebuttal testimony.”)

This prejudice is exacerbated by the broad descriptions of the subject matter the Attorney General seeks to rebut. Rate of return, for example, can implicate return on equity, cost of debt, and the Company's capitalization. Cost of service is even broader, and, without any limitation, could include almost every aspect of the Company's calculation of its proposed revenue requirement. Kentucky Power – not the Attorney General or other intervenors – is entitled to have the last word on these fundamental parts of its case. For this reason alone, the Commission should deny the Attorney General's motion.

If the Commission nevertheless grants the Attorney General's motion it should further amend the procedural schedule to permit Kentucky Power to file sur-rebuttal testimony addressing the intervenors' rebuttal testimony.

Wherefore, Kentucky Power respectfully requests that:

1. The Commission enter an Order denying the Attorney General's motion;
2. In the alternative, if the Commission grants the Attorney General's motion, the Commission enter an order amending the procedural schedule and granting Kentucky Power leave to file sur-rebuttal testimony; and
3. 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  
P. O. Box 634  
Frankfort, Kentucky 40602-0634  
Telephone: (502) 223-3477  
Facsimile: (502) 223-4124  
[moverstreet@stites.com](mailto:moverstreet@stites.com)  
[kglass@stites.com](mailto: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](mailto:kgish@stites.com)

COUNSEL FOR KENTUCKY POWER  
COMPANY