

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

In the matter of: : CASE NO. 2017-00179

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 AND LIABILITIES; :  
AND (5) AN ORDER GRANTING ALL OTHER :  
REQUIRED APPROVALS AND RELIEF :

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**KENTUCKY SCHOOL BOARDS ASSOCIATION’S MOTION TO STRIKE THE  
DIRECT SETTLEMENT TESTIMONY OF KEVIN C. HIGGINS  
ON BEHALF OF KCUC, INC.**

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Comes the Kentucky School Boards Association (“KSBA”), and moves to strike the direct settlement testimony of Mr. Kevin C. Higgins filed on December 4, 2017 on behalf of KCUC, Inc. (“KCUC”). In support of this motion, KSBA states as follows:

The Commission entered a procedural schedule in this matter on July 17, 2017 (“Procedural Order”). Parties intervened and parties to this point followed the Procedural Order set forth on July 17, 2017 subject to some motions to deviate from the Procedural Order. Of particular importance here, the Attorney General previously filed a motion for leave to file rebuttal testimony regarding cost of service, *cost allocation* and rate of return issues on October 11, 2017. Pursuant to the Attorney General’s motion, the parties, including KCUC, had ample opportunity to weigh in on whether they intended to file or wished to file rebuttal testimony similar to the Attorney General or whether they supported the Attorney General’s motion. KCUC however did not suggest at that time they needed or wanted to file rebuttal testimony.

Thereafter, on October 24, 2017 the Commission issued an Order settling the AG's contested request holding that, "the Attorney General failed to establish good cause to amend the procedural schedule and permit the Attorney General to file rebuttal testimony. Absent the establishment of good cause, the Attorney General's motion will be denied." *Order*, pp. 4-5, October 24, 2017. While the Attorney General did not ultimately prevail on its request herein, the Attorney General did however follow the Procedural Order and properly file a request for leave *before* putting testimony or other documentation in the record outside of the purview of the Procedural Order.

By virtue of the Commission's October 24, 2017 Order, the Commission clearly addressed and denied any intervenor's ability to file rebuttal testimony in this matter or for that matter any additional testimony addressing cost allocation or cost of service. Nonetheless, approximately two (2) days before the scheduled hearing in this matter, KCUC has now improperly filed testimony in contradiction of the clear mandates of the October 24, 2017 Order with no accompanying or prior request for leave where KCUC has sought to attack the cost allocation in the proposed settlement put forth by the settling parties in this case, specifically rate PS (private and public school rate). p. 2, "Direct Settlement Testimony of Kevin C. Higgins" filed on December 4, 2017.

KSBA witness Ronald Willhite clearly addressed KSBA's position regarding rate PS and the rate structure in his properly filed direct testimony. Furthermore, rate PS and the accompanying rate structure are consistent with the prior pilot rate PS created in Kentucky Power Company's last base rate case in 2014-00396 – nothing is new. KCUC's witness Higgins previous first properly filed direct testimony consistent with the Procedural Order and the other parties indicating, "[t]he current subsidies paid by the current Medium General Service

(“MGS”), Public Schools (“PS”) and Municipal Waterworks (“MW”) classes are moderately greater under the Winter 3CP and Summer/Winter CP methods relative to the 12CP method, and the impact is minimal to the current Small General Service (“SGS”) class.” p. 13, Witness Higgins Direct Testimony, filed on October 3, 2017. With respect to revenue allocations Witness Higgins indicated, “I recommend proportionate reductions to Kentucky Power Company’s proposed revenues for the current SGS, MGS, LGS, and PS classes.” p. 16, Witness Higgins Direct Testimony, filed on October 3, 2017.

Meanwhile, on December 4, 2017, two days before the hearing, only after not achieving the settlement desired by KCUC or one of its members, KCUC has chosen to improperly file testimony contradicting the clear mandates of the Commission’s previous October 24, 2017 Order without any motion for leave along with testimony which clearly contradicts KCUC’s actual direct testimony filed on October 3, 2017. Said another way, KCUC had ample opportunity to attack the proposed rate PS with prior knowledge of the rate structure, declining to do so, but instead has chosen to improperly file testimony at the eleventh hour now attacking rate PS only after not getting what it wanted in the form of a settlement. By analogy, a party cannot “feed one can of worms to the trial judge and another to the appellate court.” *Kennedy v. Commonwealth*, 544 S.W. 2d 219, 222 (Ky.1976), overruled on other grounds by *Wilburn v. Commonwealth*, 312 S.W.3d 321 (Ky.2010).

Lastly, Kentucky Power Company did file testimony in support of the settlement here but they bear the burden of proof and, “underlying support for the issues in the case in chief is still sponsored by the Company witnesses sponsoring those issues.” Testimony of Matthew Satterwhite, p. 2, lines 1-4. Testimony by the LDC, who bears the burden of proof, in support of a settlement is routinely filed for expediency purposes to give the Commission some guidance in

justifying the proposed rates are fair, just and reasonable. Conversely, inconsistent testimony from intervenors contrary to Procedural Orders (especially after having multiple opportunities to address opinions and beliefs regarding rate structure of any given rate (in this case rate PS)) is not acceptable or fair and should be stricken from the record as it is impertinent.

Wherefore, KSBA respectfully requests that the Commission strike Witness Higgins' December 4<sup>th</sup> testimony from the record herein.

Respectfully submitted,

/s/Matt Malone

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**KENTUCKY SCHOOL BOARDS ASSOCIATION**

**CERTIFICATE OF SERVICE**

I hereby certify that KSBA's December 5, 2017 electronic filing is a true and accurate copy of the motion to strike to be filed in paper medium; and that on December 5, 2017, the electronic filing has been transmitted to the Commission, and that an original and one copy of the filing will be delivered to the Commission, that no participants have been excused from electronic filing at this time.

/s/Matt Malone  
ATTORNEY FOR KSBA