

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE WHOLESALE)	CASE NO.
WATER SERVICE RATES OF LEBANON WATER)	2017-00417
WORKS)	

RESPONSE TO MOTION TO MODIFY PROCEDURAL SCHEDULE

Comes now Marion County Water District (“Marion District”), by counsel, pursuant to 807 KAR 5:001 Section 5(2) and other applicable law, and for its response to the Motion to Modify Procedural Schedule filed by the Lebanon Water Works Company (“Company”) on March 2, 2018,¹ respectfully states as follows:

On March 2, 2018, the Company filed a motion asking the Commission to modify the existing procedural schedule and extend it by an additional four months. Marion District does not agree that such an extension is necessary. Marion District is prepared to abide by the schedule set forth in the Commission’s February 28, 2018 Order, including the holding of a hearing on April 2, 2018. The Commission has only asked three data requests in its initial round of discovery and, presumably, all the information within the possession of the Company that is responsive to said requests would already be readily available.

The Company’s claim that it will be difficult, or impossible, to present all the evidence necessary to support its case unless it given additional time to: (1) provide evidence to the

¹ Marion District is filing this response on an expedited basis as a courtesy. Under the Commission’s rules, Marion District’s response would not be due until March 9, 2018, which is two days after the Company’s current deadline to tender responses to information requests.

Commission; and (2) challenge and refute any contrary evidence offered by Marion District, is misplaced. The Commission's initial information request is sufficiently broad that the Company should have no difficulty presenting all the evidence which it believes supports its requested increase. Indeed, giving the Company the opportunity to quickly and easily present all its evidence appears to have been the very thing which the Commission sought to accomplish. And with regard to the claim that more time is necessary for the Company to be able to fully refute any evidence offered by Marion District, the argument forgets a key tenant of Kentucky law – the applicant in a case before the Commission that must carry its burden of proof, even in the absence of evidence to the contrary. As stated by Kentucky's Court of Appeals in the leading case on what due process rights are afforded in an administrative proceeding:

Repeated references are made to uncontradicted evidence and to the fact that no evidence to the contrary was introduced by the Commission....Standing alone, unimpeached, unexplained and unrebutted evidence may or may not be so persuasive that it would be clearly unreasonable for the board to be convinced by it. There are some questions and circumstances in which no evidence is required to support a negative finding.²

Kentucky law requires the Company to offer persuasive evidence to support its rate increase request. Kentucky law does *not* require the Commission or Marion District to offer any specific evidence to the contrary. If its own evidence is weak or un-credible, the Company's application may fail even in the absence of affirmative proof in opposition. Despite this, the Company now asks the Commission to *mandate* that Marion District present testimony in this proceeding. Historically, intervenors have been given the *option* to file testimony and, if the procedural schedule is extended, it should remain Marion District's option as to whether it wants

² *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

to offer affirmative testimony or simply seek to challenge the persuasiveness of the Company's evidence.

Granting the Company's motion would also cause Marion District to likely suffer injury in two other unique respects. First, any extension of the procedural schedule would likely delay a final adjudication in this case until well beyond the end of the suspension period. While the Company is correct that any interim rate increase it might impose between the time the suspension period ends and a final order is entered could be remedied by collecting the incremental revenue subject to refund and with an interest payment thereon, the Company has not demonstrated that such extraordinary steps are necessary in this proceeding. Second, Marion District is also mindful that the Company appears to have a financial incentive to extend the procedural schedule as a result of its unprecedented inclusion of a rate case expense recovery provision in its tariff.³ Marion District does not desire to engage in protracted litigation for the primary purpose of accruing rate case expense that would otherwise mitigate the value of successfully challenging the Company's proposed rates.

Marion District does not object to a brief extension of the procedural schedule provided that the Company agrees to voluntarily maintain its existing rates until the entry of a final order, notwithstanding the passage of the rate suspension deadline. However, in the absence of such an assurance, Marion District must oppose the Company's motion and respectfully requests that it be overruled.

WHEREFORE, on the basis of the foregoing, Marion District respectfully requests the Commission to overrule the Company's Motion to Modify Procedural Schedule.

³ For example, the Company's motion includes a proposed order, which is neither required by the Commission's regulations nor customary in practice before the Commission.

This 5th day of March, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on March 5, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is being hand-delivered to the Commission on this the 5th day of March, 2018.



Counsel for Marion County Water District