

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY INDUSTRIAL UTILITY)	
CUSTOMERS, INC.,)	
)	
COMPLAINANT)	
)	CASE NO. 2018-00036
V.)	
)	
DUKE ENERGY KENTUCKY, INC.)	
)	
DEFENDANT)	

ATTORNEY GENERAL’S RESPONSE IN OPPOSITION

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), and hereby tenders his Response in Opposition (“Response”) to Duke Energy Kentucky Inc.’s Motion to Consolidate (“Motion”). On October 1, 2018, Duke Energy Kentucky, Inc. (“DEK” or “Company”) filed with the Kentucky Public Service Commission (“Commission”) its Motion, moving the Commission to consolidate this matter with the Company’s pending natural gas base rate case, Case. No. 2018-00261.¹ DEK states in support of its Motion that these two cases “involve similar issues of law and fact,” “will reduce the possibility of inconsistent outcomes,” and “will also ensure that the parties do not spent additional time, money and resources litigating the same issues twice.”² Furthermore, DEK avers, “no parties would be prejudiced by consolidating the two cases.”

¹ In Re: Electronic Application of Duke Energy Kentucky, Inc. for Authority to 1) Adjust Natural Gas Rates 2) Approval of a Decoupling Mechanism 3) Approval of New Tariffs 4) and for All Other Required Approvals, Waivers, and Relief, Case No. 2018-00261.

² Motion at 1-2.

The Attorney General disagrees with DEK's Motion for at least two reasons. First, DEK is moving for the Commission to consolidate two cases with different parties and based on significant legal differences. This matter is a complaint case between DEK and Kentucky Industrial Utility Customers ("KIUC"), with the Attorney General as an intervenor, in which the complainant, KIUC, bears the burden of proof.³ Case No. 2018-00261 is a base rate case in which DEK bears the burden of proof⁴ and in which the Attorney General is the *only* other party. Second, this matter was submitted to the Commission for a decision nearly five (5) months ago, after five (5) months of litigation, whereas the rate case has not even begun discovery. Requiring the parties to re-litigate the entirety of the issues, including the disagreement over the use of forecasted and yet-approved capital additions in calculating any savings from the federal income tax rate, would most definitely prejudice the Attorney General. Although not consolidating the matters may lead to some additional expenditure of time and resources on behalf of the Company, it is minimal compared to the prejudice consolidation will cause the Attorney General. Although DEK claims consolidation "will achieve administrative efficiencies," consolidating these matters five (5) months after one has been submitted for decision has the effect of nothing more than providing DEK a re-do.⁵ Accordingly, the Attorney General respectfully requests the Commission deny DEK's Motion.

³ In Re: The Office of the Attorney General the Commonwealth of Kentucky v. Atmos Energy Corporation, Case No. 2005-00057, *stating* "In any complaint proceeding before the Commission, the complainant bears the burden of proof," *citing* Energy Regulatory Comm'n v. Kentucky Power Co., Ky App., 605 S.W.2d 46 (1980).

⁴ See KRS 278.190.

⁵ Motion at 2.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



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