

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF WATER)
SERVICE CORPORATION OF KENTUCKY FOR A) CASE NO. 2020-00160
GENERAL ADJUSTMENT IN EXISTING RATES)

ATTORNEY GENERAL’S POST-HEARING REPLY BRIEF

The intervenor in this proceeding, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), submits the following post-hearing reply brief to the Public Service Commission (“Commission”) in the above-styled matter, pursuant to the Commission’s November 13, 2020 post-hearing scheduling Order.

Water Service Corporation of Kentucky (“Water Service Kentucky” or the “Company”) filed its post-hearing brief with the Commission on November 23, 2020. In the post-hearing brief, Water Service Kentucky states that the intervening parties did not file testimony addressing several issues in its testimony and discovery responses.¹ Water Service Kentucky contends that in Case No. 2018-00358, the Commission explained that when intervening parties submit discovery requests, but offer no evidence or testimony on a specific issue, the Commission has no evidentiary basis to support the intervening parties’ proposed adjustments to the utility’s case.² Water Service Kentucky further states, “[a]ccordingly, it would be consistent with Commission precedent to do

¹ Water Service Kentucky’s Post-Hearing Brief at 8.

² *Id.*; Case No. 2018-00358, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC June 27, 2019).

so in this case.”³

Water Service Kentucky, however, fails to mention that in Case No. 2018-00358, the Attorney General filed a Petition for Rehearing (“Petition”), and argued that the Commission unlawfully placed the burden of proof on the Attorney General, instead of the utility.⁴ Although the Attorney General’s Petition was granted in part and denied in part, the Commission emphasized in the Order on rehearing that pursuant to KRS 278.190(3), the burden of proof in a rate case to prove that the increased rate is just and reasonable is on the utility.⁵ The Commission further declared that when a utility’s evidence is the only evidence in the record, it does not equate to the utility meeting its burden of proof.⁶ The Commission went on to hold that it did not find a specific adjustment by the utility reasonable because the Attorney General had failed to proffer evidence or testimony on certain issues.⁷ As it has held in past cases, the Commission reiterated that except in those instances in which the intervening party advances proposals in areas or on issues not addressed in the utility’s application, an intervening party does not have a burden of proof to meet.⁸

In the pending case, the Attorney General and the City of Clinton proffered testimony by expert witness Lane Kollen recommending the use of a return on equity approach, instead of an operating ratio approach, to calculate Water Service Kentucky’s return on the equity component of invested capital included in the base revenue requirement.⁹ The Attorney General is in compliance with the above-referenced Commission precedent because all other proposals, which the Attorney General advanced, concerned issues presented in Water Service Kentucky’s

³ Water Service Kentucky’s Post-Hearing Brief at 8.

⁴ Attorney General’s Petition at 12.

⁵ Case No. 2018-00358, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Aug. 8, 2019) Order at 13.

⁶ *Id.*

⁷ *Id.* at 14.

⁸ *Id.* at 17 - 18; Case No. 2004-00103, *Adjustment of the Rates of Kentucky-American Water Company* (Ky. PSC Oct. 27, 2004) Order at 2.

⁹ Direct Testimony of Lane Kollen at 3 - 4.

application. Therefore, in this case, Water Service Kentucky's request to shift the burden of proof from the utility to the Attorney General violates KRS 278.190(3) and Commission precedent.

Moreover, the Attorney General and the City of Clinton chose to narrow the testimony of their expert witness to one specific issue due to a limited budget, not because of a lack of substantive issues with the Company's application. Water Service Kentucky is allowed to recover its reasonable rate case expenses, reimbursed by its customers through the water rates.¹⁰ On the other hand, when hiring expert witnesses in cases before the Commission, the Attorney General must operate within the confines of a budget allotted by the General Assembly. Nevertheless, based upon the Attorney General's own expertise in utility ratemaking cases, he issued approximately 232 discovery questions to Water Service Kentucky, fully participated in the cross-examination of Water Service Kentucky's witnesses at the November 12, 2020 hearing, and filed a detailed post-hearing brief summarizing all of his recommendations on a multitude of issues.

Water Service Kentucky would have the Attorney General's involvement in this case be completely dismissed except for the one issue on which he filed testimony. Not only would this leave Water Service Kentucky's customers with no one to advocate on their behalf for the remaining issues, it would also violate the governing statutes. The Attorney General has the statutory authority under KRS 367.150(8)(a) and (b) to appear before regulatory bodies, and to be made a real party in interest, in order to represent and be heard on behalf of consumers' interest. There is no provision within KRS 367.150 that limits the authority of the Attorney General to represent the consumers' interest to instances where he has hired an expert witness to file testimony. Thus, Water Service Kentucky's request to disregard the Attorney General's recommendations on issues other than those on which he filed testimony should be denied, because

¹⁰ See *Driscoll v. Edison Light & Power Co.*, 307 U.S. 104, 120 (1939).

it violates KRS 367.150 and would leave the customers with no voice in Commission proceedings.

CONCLUSION

WHEREFORE, the Attorney General recommends the Commission deny Water Service Kentucky's recommendation to unlawfully shift the burden of proof from the utility to the Attorney General, as it violates both statutory law and Commission precedent. The Attorney General reiterates its recommendations that the Commission set fair, just, and reasonable rates for the customers of Water Service Kentucky.

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Orders dated March 16, 2020 and March 24, 2020, in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that an electronic copy of the foregoing was served by e-mail to the following. A physical copy of the filing will be submitted to the Commission once the State of Emergency has ceased.

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This 1st day of December, 2020.



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