

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
NOV 06 2013
PUBLIC SERVICE
COMMISSION

In The Matter Of:

The Application Of Kentucky Power Company For:)
(1) A Certificate Of Public Convenience And Necessity)
Authorizing The Transfer To The Company Of An)
Undivided Fifty Percent Interest In The Mitchell)
Generating Station And Associated Assets; (2) Approval)
Of The Assumption By Kentucky Power Company Of)
Certain Liabilities In Connection With The Transfer Of)
The Mitchell Generating Station; (3) Declaratory Rulings;)
(4) Deferral Of Costs Incurred In Connection With The)
Company's Efforts To Meet Federal Clean Air Act And)
Related Requirements; And (5) For All Other Required)
Approvals And Relief)

Case No. 2012-00578

MOTION OF KENTUCKY POWER COMPANY
TO STRIKE EXHIBIT A TO THE ATTORNEY GENERAL'S
PETITION FOR REHEARING

Kentucky Power Company moves the Public Service Commission of Kentucky pursuant to 807 KAR 5:001, Section 11(4), and KRS 278.400 to strike Exhibit A to the Attorney General's Petition for Rehearing ("Exhibit A"). Exhibit A contains information that with reasonable diligence could have been presented by the Attorney General at the hearing in the case. Because the Attorney General had every opportunity to present the information in Exhibit A during the hearing, and because testimony in this proceeding is closed, Exhibit A must be stricken from the Petition for Rehearing.

A. Exhibit A Must be Stricken From the Record.

Any attempt to add evidence to the record after the close of testimony is prohibited by 807 KAR 5:001 Section 11(4). Specifically, the Commission's rule states:

(4) Except as expressly permitted in particular circumstances, the commission shall not receive in evidence or consider as part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of testimony.

Further, KRS 278.400 provides in relevant part that “[u]pon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.” Because the exercise of reasonable diligence would have allowed the Attorney General to offer Exhibit A at the hearing, no particular circumstances exist that would justify the Commission receiving Exhibit A into evidence on rehearing.¹

Exhibit A consists of the Direct Testimony and Exhibits of Mr. Scott Norwood on behalf of the Virginia Attorney General’s Division of Consumer Counsel in Case No. PUE-2012-00141 before the Virginia Corporation Commission. Appalachian Power Company, Kentucky Power’s sister company, filed Case No. PUE-2012-00141 seeking approval of, along with other relief, the transfer of the 50% undivided interest in the Mitchell generating station that would not be transferred to Kentucky Power. Exhibit A was available to the Attorney General well before the hearing in this case.

Conspicuously absent from the Attorney General’s Petition for Rehearing is the fact that the Virginia Attorney General filed the documents contained in Exhibit A on April 23, 2013 – eleven full weeks prior to the July 10-12, 2013 hearing in this case. In the Petition, the Attorney General cites to Exhibit SN-21 to the Norwood testimony as evidence of recent coal plant sale prices that should be considered on rehearing.² Mr. Norwood’s Exhibit SN-21 contains two documents. The first, Appalachian Power’s response to Virginia Attorney General’s Interrogatory OAG-3-046, was filed on February 19, 2013 – twenty weeks prior to the hearing in

¹ KRS 278.310 provides the Attorney General no relief. Although exempting Commission proceedings from formal rules of evidence, it requires that the Commission conduct its hearings in accordance with “rules adopted by the commission.” One such rule is 807 KRS 5:001 Section 11(4), which prohibits exactly what the Attorney General attempts here.

this case. The second is a copy of Platt's Electric Power Daily published on March 15, 2013 – sixteen and a half weeks prior to the hearing in this case.

Mr. Norwood's testimony and the documents comprising his Exhibit SN-21 were available, with reasonable diligence, to the Attorney General well in advance of the July 10-12, 2013 hearing in this case. Much like the Kentucky Commission's website, the Virginia Corporation Commission's website allows interested parties to view documents filed in a case via a simple docket number search. All of the documents in Exhibit A were available for the Attorney General to use for cross-examination at the hearing, and the documents in Exhibit SN-21, which form the basis of the Attorney General's argument in his Petition, were available before the April 1, 2013 deadline for Intervenor testimony in this case. That the Attorney General failed to offer these readily available documents at the hearing does not represent "particular circumstances" to allow the Commission to reopen testimony in this case.

For the reasons stated above, Kentucky Power respectfully requests that Exhibit A to the Attorney General's Petition for Rehearing and the portions of the Petition relying on Exhibit A³ be stricken from the record.

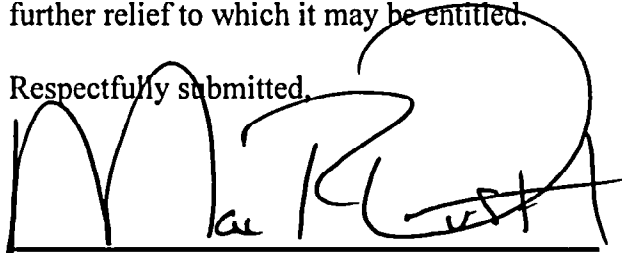
² Petition at 6, fn. 13.

³ Issue 1, Section C, pages 5-6 of the Petition.

WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. Striking from the record in this case Exhibit A to the Attorney General's Petition for Rehearing and the portions of the Petition relying on Exhibit A; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet
R. Benjamin Crittenden
STITES & HARBISON PLLC
421 West Main Street
P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477

Kenneth J. Gish, Jr.
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
Telephone: (859) 226-2300

COUNSEL FOR KENTUCKY POWER
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail, postage prepaid, and by e-mail transmission, upon the following parties of record, this 6th day of November, 2013.

Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
Suite 1510
36 East Seventh Street
Cincinnati, OH 45202
mkurtz@bkllawfirm.com
KBoehm@bkllawfirm.com
jkylercohn@bkllawfirm.com

Jennifer Black Hans
Dennis G. Howard II
Lawrence W. Cook
Gregory T. Dutton
Assistant Attorneys General
Office for Rate Intervention
P.O. Box 2000
Frankfort, KY 40602-2000
jennifer.hans@ag.ky.gov
dennis.howard@ag.ky.gov
larry.cook@ag.ky.gov
Gregory.Dutton@ag.ky.gov

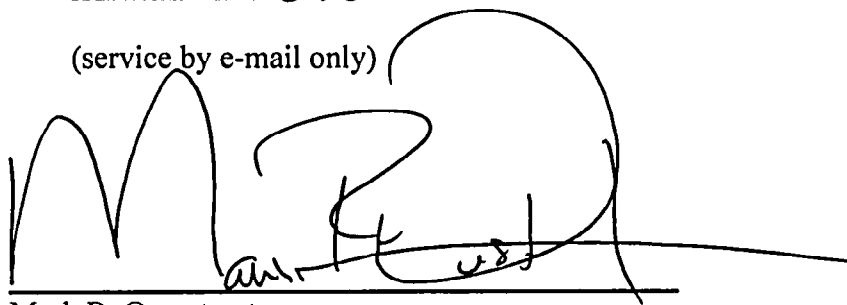
Joe F. Childers
Joe F. Childers & Associates
300 The Lexington Building
201 West Short Street
Lexington, KY 40507
joe@jchilderslaw.com

Shannon Fisk
Earthjustice
1617 JFK Boulevard, Suite 1675
Philadelphia, PA 19103
sfisk@earthjustice.org

Kristin Henry
Sierra Club
85 Second Street
San Francisco, CA 94105
kristin.henry@sierraclub.org

Richard G. Raff
Quang D. Nguyen
Aaron Ann Cole
Public Service Commission of Kentucky
211 Sower Boulevard
Frankfort, Kentucky 40601
Richard.Raff@ky.gov
QuangD.Nguyen@ky.gov
AaronAnn.Cole@ky.gov

(service by e-mail only)



Mark R. Overstreet