

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WATER SERVICE)	
CORPORATION OF KENTUCKY FOR AN)	CASE NO. 2013-00237
ADJUSTMENT OF RATES)	

ORDER

On May 15, 2014, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), Hickman County Fiscal Court, and the city of Clinton (together as "Intervenors") filed a motion to strike the post-hearing brief filed by Water Service Corporation of Kentucky ("WSKY") on May 9, 2014, or in the alternative, to strike Exhibits 2 through 7 and all portions of WSKY's May 9, 2014 brief relying on information from Exhibits 2 through 7. The Intervenors' motion to strike is based on their assertion that WSKY's post-hearing brief contains information that is not part of the record. WSKY filed a response on May 20, 2014, to the Intervenors' motion to strike.

At the end of the evidentiary hearing held on April 9, 2014, the Commission instructed the parties to file briefs no later than May 9, 2014.¹ The AG and WSKY filed briefs on May 9, 2014.² The AG did not include any exhibits with his brief. WSKY filed

¹ WSKY complied with the Commission's instruction to file no later than April 21, 2014, documents that were requested during the hearing.

² The Commission did not receive briefs from Hickman County Fiscal Court or the city of Clinton.

seven exhibits with its brief. Although the Intervenors seek to strike WSKY's entire brief, the Intervenors do not state any objection to Exhibit 1 of WSKY's brief.³

The Intervenors' motion to strike is premised on two arguments. The first argument relies on 807 KAR 5:001, Section 11(4), which states:

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

The Intervenors' second argument claims that the exhibits are new evidence, and that submission of new evidence in a post-hearing brief prevents the Intervenors' due process. They assert they did not have an opportunity to confront, cross-examine, or generally contest the documents submitted with WSKY's post-hearing brief.

Except for Exhibit 2, WSKY does not dispute that the documents were not previously a part of the record in this case. WSKY asserts the inclusion of Exhibits 3-7 was to explain and discuss the Commission's decision in prior cases regarding allocated costs and Project Phoenix.

EXHIBITS REQUESTED TO BE STRICKEN

Exhibit 2.

Exhibit 2 of WSKY's brief contains portions of Andrea C. Crane's direct testimony in a prior case before this Commission.⁴ Ms. Crane is the AG's expert witness in the case at hand.

³ Exhibit 1 consists of a schedule showing the required revenue increase; a schedule listing actual rate case expenses through April 18, 2014; and a schedule identifying income tax expenses. All schedules are based on the 2012 test year.

⁴ Case No. 2004-00103, *Adjustment of Rates of Kentucky-American Water Company*, Direct Testimony of Andrea C. Crane Re: Revenue Requirements (filed Aug. 27, 2004).

On February 21, 2014, WSKY submitted a request for information to the AG (“WSKY’s Request for Information”). Item 1 of WSKY’s Request for Information sought information regarding Ms. Crane’s testimony in prior utility cases.⁵ The request and the response filed on March 7, 2014, by the AG, subpart 1.a. and b., are summarized as follows:

a. Provide a copy of each written testimony that Ms. Crane has submitted since January 1, 2011 in all utility commissions, in which the topic of her testimony related in part or in whole to revenue requirements.

Response: Objection, this requests information that the company has the same access to as the AG. Without waiving this objection, Attached separately . . . is a list of all testimonies filed by Ms. Crane since January 1, 2004.⁶ This list includes the name of the utility, the type of utility, the date the testimony was filed, the state in which the testimony was filed, the subject matter of the testimony, and the client on whose behalf the testimony was filed.⁷

b. Provide a copy of each written testimony that Ms. Crane has submitted in matters related to water utilities since January 1, 2004, in all utility commissions, in which the topic of her testimony related in part or in whole to revenue requirements.

Response: Objection, this requests information that the Company has the same access to as the AG. Without waiving this objection, see the response to 1.a.

The six-page list of testimonies filed by the AG in response to WSKY’s Request for Information, Item 1.a., starts with testimonies provided by Ms. Crane during February 2004; however, the list does not include Ms. Crane’s testimony filed by the AG on August 27, 2004, in Case No. 2004-00103. Included with the AG’s March 7, 2014

⁵ The last subpart of Item 1 requested work papers for her testimony in the case at hand.

⁶ Although Item 1.a. of WSKY’s Request for Information sought information starting January 1, 2011, the AG’s attachment filed in response to this item provides information starting with February 2004.

⁷ The AG also provided Ms. Crane’s testimony regarding water utility revenue requirements in four cases. All four cases were outside of Kentucky.

response is Ms. Crane's March 3, 2014 affidavit stating that her responses to WSKY's requests for information are true and correct to the best of her knowledge.

WSKY specifically requested information regarding Ms. Crane's testimony related to water utilities since January 1, 2004, but the AG's response did not provide all of the requested information. Had the AG completely provided all the information WSKY requested, Ms. Crane's testimony in Case No. 2004-00103 would have been part of the record in this case. Via WSKY's Request for Information, all parties had notice that WSKY wanted to review Ms. Crane's prior water-related testimony.

Exhibits 3, 4, and 7.

Exhibits 3, 4, and 7 are copies of documents filed in response to requests for information in an unrelated case by an unrelated entity.⁸ These documents existed prior to WSKY's filing of its application in this case. WSKY could have presented these documents prior to the close of evidence. The Intervenors did not have an opportunity to review or to contest the evidence.

In a post-hearing brief, a party may compare and contrast findings in prior Commission orders. In the case at hand, the exhibits WSKY tendered are not referenced in any prior Commission order. WSKY included with its post-hearing brief documents that it had not previously presented and which were not referenced in any prior Commission order.

⁸ All three documents were filed February 20, 2013, in Case No. 2012-00520, *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year*.

Exhibit 5.

In Case No. 2012-00520,⁹ the Commission allowed Kentucky-American Water Company ("KAWC") to recover costs for a Business Transformation Program. In the Order approving those costs, the Commission compared the per-customer cost for the Business Transformation Program with the per-customer cost for a Louisville Water Company customer-care information system. WSKY asserts that the Business Transformation Program is similar to WSKY's customer information system known as Project Phoenix.

WSKY's Exhibit 5 contains pages from Louisville Water Company's 2013 Annual Report ("LWC 2013 Annual Report"). Using numbers present in the LWC 2013 Annual Report, WSKY calculates the cost for Louisville Water Company's customer care and mobile workforce system as \$94.49 per customer.

WSKY asserts in its May 20, 2014 Response to the Intervenors' motion to strike that the LWC 2013 Annual Report is available on the Internet. Prior to WSKY's May 9, 2014 filing of its post-hearing brief, the Intervenors had no knowledge that WSKY would reference the LWC 2013 Annual Report. The Intervenors had no opportunity to question WSKY's witnesses regarding the Louisville Water Company per-customer cost of its customer care and mobile workforce system.

Exhibit 6.

Exhibit 6 contains the testimony of Chris Hermann, Senior Vice President – Energy Delivery Louisville Gas and Electric Company and Kentucky Utilities Company

⁹ Case No. 2012-00520, *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year at 7-12* (Ky. PSC Oct. 25, 2013).

filed in Case Nos. 2009-00548¹⁰ and 2009-00549.¹¹ Mr. Hermann's testimony indicates that Louisville Gas and Electric Company and Kentucky Utilities Company (together "the Companies") spent \$83 million as of October 31, 2009, on a customer information system. Using the Companies' 2009 annual reports, WSKY calculated that the Companies had 901,747 total customers.

In its May 9, 2014 post-hearing brief, WSKY cited the \$83 million cost and the 901,747 customers to calculate the Companies' per-customer cost at \$92 for their customer care and billing information system. WSKY acknowledges in its May 20, 2014 Response to the Intervenors' motion to strike that it incorrectly calculated the Companies' number of customers. Because the incorrect calculation appeared in WSKY's post-hearing brief, the Intervenors had no opportunity to question the calculation.

COMMISSION FINDINGS

Having considered the Intervenors' motion to strike and WSKY's response, and having carefully reviewed WSKY's post-hearing brief, the Commission finds no basis to strike WSKY's brief in its entirety. However, with respect to WSKY's Exhibit 2, the prior testimony of Ms. Crane, we find that it was submitted for the purpose of showing that her current recommendation is inconsistent with her prior testimony. To the extent that her 2004 testimony can be considered new evidence, it is being offered solely for purposes of impeachment. Under the circumstances presented here, the Commission

¹⁰ Case No. 2009-00548, *Application of Kentucky Utilities Company for an Adjustment of Base Rates* at 16 (filed Jan. 29, 2010).

¹¹ Case No. 2009-00549, *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates* at 16 (filed Jan. 29, 2010).


will allow submission of this prior testimony based on the AG's omission, perhaps inadvertently, of any reference to such prior testimony in response to WSKY's Request for Information. This prior testimony should not be stricken and will be taken into consideration and given weight based on all other evidence currently in the record.

The Commission further finds that Exhibits 3 - 7 should be struck as the exhibits are new evidence and the Intervenors did not have the opportunity to question the information presented in the exhibits. For these reasons, we will strike the following portions of WSKY's brief: (1) the last full paragraph that begins at the middle of page 12 through to top of page 13, including footnote nos. 56, 57, 58, 59, 60, and 61; (2) on page 20, the sentence that begins on line 9 through the end of that paragraph, including footnote nos. 92, 93, and 94; and (3) page 24, the portion of footnote 117 starting with the word "KAWC" through the end of the footnote.

IT IS THEREFORE ORDERED that:

1. Intervenors' motion to strike WSKY's May 9, 2014 post-hearing brief is denied.
2. Intervenors' motion to strike Exhibit 2 and all portions of the WSKY's brief relying on information from Exhibit 2 is denied.
3. Intervenors' motion to strike Exhibits 3 through 7 is granted, and those exhibits along with the portions of WSKY's brief as described in the findings above are stricken from the evidence in this case.

By the Commission

ENTERED 
JUL 11 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2013-00237

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