

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	CASE NO.
SERVICE; (2) AN ORDER APPROVING ITS 2017)	2017-00179
ENVIRONMENTAL COMPLIANCE PLAN; (3) AN)	
ORDER APPROVING ITS TARIFFS AND RIDERS;)	
(4) AN ORDER APPROVING ACCOUNTING)	
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (5) AN ORDER)	
GRANTING ALL OTHER REQUIRED APPROVALS)	
AND RELIEF)	

ORDER

On October 11, 2017, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), filed a motion requesting leave to file rebuttal testimony limited to cost-of-service, cost-allocation, and rate-of-return issues that were addressed in other intervenors’ pre-filed direct testimony.¹ The Attorney General proposes to amend the procedural schedule to permit rebuttal testimony to be filed on November 3, 2017, which is the same date that Kentucky Power Company (“Kentucky Power”), the applicant in this proceeding, is scheduled to file its rebuttal testimony.

In support of the motion, the Attorney General asserts that residential customers will be unduly prejudiced unless the Attorney General is afforded the opportunity to

¹ The intervenors in this matter are: the Attorney General; Kentucky Industrial Utility Customers, Inc.; Wal-Mart Stores East, LP and Sam’s East, Inc.; Kentucky Cable Telecommunications Association; Kentucky League of Cities; Kentucky School Board Association; and Kentucky Commercial Utility Customers, Inc.

rebut testimony filed by other intervenors regarding cost of service, cost allocation, and rate of return.² The Attorney General contends that it was not possible to review the other intervenors' testimony in order to address these issues in his own testimony because all intervenors filed their testimony simultaneously. The Attorney General further contends that cost of service, cost allocation, and rate of return are issues of such importance that rebuttal testimony will assist the Commission in reaching a decision.

On October 12, 2017, Kentucky Power filed a response in opposition to the Attorney General's motion. Kentucky Power first argues that the Attorney General fails to satisfy the applicable standard that a party may be permitted to file unscheduled testimony only if the party establishes good cause, which exists if the party bears the burden of proof or seeks to rebut a new matter raised by another party.³ Kentucky Power stresses that it, and not the Attorney General, bears the burden of proof in this case. Kentucky Power asserts that the Attorney General does not identify any new issues raised in testimony filed by other intervenors. Kentucky Power further asserts that the potential for disagreement among intervenors on the issues identified in the Attorney General's motion was made plain in intervenors' motions to intervene and in witness testimony presented at the July 24, 2017 hearing on the motions to intervene.

Second, Kentucky Power argues that the Attorney General fails to explain how residential customers are prejudiced by the Commission's well-established practice of

² Pursuant to KRS 367.150(8), the Attorney General represents consumers' interests in matters before the Commission.

³ See Case No. 2002-00232, *An Investigation of Louisville Gas and Electric Company's Prepaid Gas and Electric Service* (Ky. PSC Nov. 22, 2002); Case No. 2004-00103, *Adjustment of Rates of Kentucky-American Water Company* (Ky. PSC Oct. 27, 2004).

requiring intervenors to file testimony simultaneously in rate cases. Kentucky Power further argues that the Attorney General has the opportunity to address areas of disagreement through discovery, cross-examination and re-direct examination of witnesses, and post-hearing briefs.

Last, Kentucky Power claims that it would be prejudiced if the motion were granted. Kentucky Power states that the broad description of the subject matter the Attorney General seeks to rebut has the potential to implicate the entirety of Kentucky Power's proposed rate adjustment. Kentucky Power maintains that allowing the Attorney General to file rebuttal testimony simultaneously with Kentucky Power's rebuttal testimony deprives Kentucky Power of the opportunity to review and address issues raised by the Attorney General, and therefore prejudices Kentucky Power. In the event that the Commission decides to grant the Attorney General's motion, Kentucky Power requests a further modification of the procedural schedule to permit it to file sur-rebuttal testimony to intervenors' rebuttal testimony.

The Attorney General filed a reply to Kentucky Power's response on October 13, 2017. First, the Attorney General asserts that Kentucky Power will not be prejudiced because the Attorney General will rebut the positions taken by the intervenors only and not by Kentucky Power, and that the Attorney General's rebuttal testimony will likely support portions of Kentucky Power's testimony. Next, the Attorney General asserts that other intervenors presented new evidence and new methodologies regarding cost of service, cost allocation, and rate of return, and that the substance of the other intervenors' testimony could not be discerned prior to their filing the testimony. Third,

the Attorney General cites to previous cases⁴ and asserts that there is precedent to amend the procedural schedule in a rate case to permit intervenors to file additional testimony simultaneously with an applicant's filing of its rebuttal testimony. Last, the Attorney General declares that the inability of intervenors to rebut the testimony of other intervenors is inherently prejudicial.

The Kentucky League of Cities ("KLC") filed its response in opposition to the Attorney General's motion on October 16, 2017. KLC agrees with Kentucky Power that no new issues were raised in the intervenors' testimony and that the Attorney General was on notice that other intervenors, which represent commercial, industrial, and municipal interests, would take positions adverse to the Attorney General's position as a representative of residential customers. KLC also argues that the other intervenors would be unduly prejudiced if the Attorney General were permitted to wait until other intervenors filed testimony, then file rebuttal testimony if the intervenors' testimony were contrary to the Attorney General's position. Last, KLC points out that the precedent cited by the Attorney General for filing unscheduled additional testimony is irrelevant to this matter because the substantive facts are dissimilar.

Having reviewed the motion, responses, and reply, and being otherwise sufficiently advised, the Commission finds that the Attorney General failed to establish good cause to amend the procedural schedule and permit the Attorney General to file

⁴ Case No. 2016-00370, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity* (Ky. PSC Apr. 7, 2017); Case No. 2016-00371, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity* (Ky. PSC Apr. 7, 2017).

rebuttal testimony. Absent the establishment of good cause, the Attorney General's motion will be denied.

Pursuant to KRS 278.190(3), Kentucky Power bears the burden of proof in this proceeding to demonstrate that its proposed rates, which encompass cost of service, cost allocation, and rate of return, are fair, just, and reasonable. The Attorney General failed to identify any relevant issue for which the Attorney General bears the burden of proof. Thus, lacking the burden of proof, the Attorney General failed to establish good cause to file rebuttal testimony.

Similarly, the Attorney General failed to establish good cause by identifying new issues raised in testimony filed by other intervenors. The Attorney General seeks to rebut testimony pertaining to cost of service, cost allocation, and rate of return, which are typically issues raised by parties in a rate cases. Historically, intervenors in rate cases have alleged and challenged the subsidization of one or more customer classes by other customer classes. A customer class that pays rates greater than the cost to serve that class subsidizes other customer classes; a customer class that pays rates lower than the cost to serve the class is subsidized by other customer classes.

The Attorney General had actual notice that other intervenors would raise the issues identified in his motion. For example, KLC stated in its motion to intervene, "the currently proposed revenue allocation does little to address the disparity of [rate of return] between classes."⁵ Kentucky Commercial Utility Customers, Inc. ("KCUC") stated in its motion to intervene that it planned to "develop the record on cost-of-service

⁵ KLC Motion to Intervene (filed July 12, 2017) at unnumbered page 2.

allocations and relative rates of return for rate classifications.”⁶ In testimony supplemental to its motion to intervene, Wal-Mart Stores East, LP and Sam’s East, Inc. stated that it is common for one class of customers to subsidize other customer classes, and that “[t]he various customer class advocates will have competing viewpoints of what is a fair allocation of the revenue or the change in revenue.”⁷

The cases cited by the Attorney General as precedential are not persuasive. In Case Nos. 2016-00370 and 2016-00371, after the utilities filed revised cost-of-service studies, the Commission granted intervenors’ motions to file unscheduled additional testimony. The Commission permitted additional testimony because: 1) the revised studies presented new matters that were evidentiary in nature, the filing of which was unanticipated, and thus could not be decided without affording intervenors the opportunity to review and address the new matters, and 2) the utilities did not oppose amending the procedural schedule to permit the intervenors to file supplemental testimony on the same date that the utilities filed their rebuttal testimony. The substantive facts and rationale of the previous cases are sufficiently different from the instant matter that previous cases cannot be relied upon to justify granting the Attorney General leave to file additional testimony in this case.

The Commission finds that the Attorney General will not be prejudiced by the denial of Attorney General’s motion. The procedural schedule afforded the Attorney General a meaningful opportunity to present his case through pre-filed testimony and discovery. The Attorney General continues to have meaningful opportunities to present

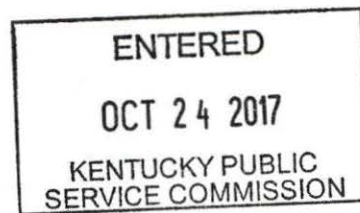
⁶ KCUC Motion to Intervene (filed July 14, 2017) at 2.

⁷ Testimony in Support of Intervention of Gregory W. Tillman (filed July 21, 2017) at 5.

his case and challenge other intervenors' evidence by examining at the December 4, 2017 hearing all witnesses who have presented direct or rebuttal testimony. Further, the Attorney General may submit a post-hearing brief in which he can expand upon his position and rebut any opposing arguments.

IT IS THEREFORE ORDERED that the Attorney General's motion to file rebuttal testimony is denied.

By the Commission



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