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MAR 21 2014

PUBLIC SERVICE
COMMISSION

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March 21, 2014

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: Jeff M. Short v. Kentucky Utilities Company
Case No. 2013-00287

Dear Mr. DeRouen:

Enclosed please find, for filing, the original and ten (10) copies of Kentucky Utilities Company's Motion in Limine in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our officer courier.

Yours very truly,

Kendrick R. Riggs

KRR:ec
Enclosures as mentioned
cc: Jeff M. Short

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

- LIVE -
MAR 21 2014
PUBLIC SERVICE
COMMISSION

In the Matter of:

JEFF M. SHORT

COMPLAINANT

v.

KENTUCKY UTILITIES COMPANY

DEFENDANT

CASE NO. 2013-00287

KENTUCKY UTILITIES COMPANY'S MOTION IN LIMINE

Kentucky Utilities Company ("KU") respectfully moves the Kentucky Public Service Commission ("Commission") to exclude from the evidentiary record to be taken at the public hearing to be held in this proceeding on March 27, 2014 any and all testimony from Andy McDonald and Joshua Bills, both of whom the Complainant has proffered as witnesses. Neither Mr. McDonald nor Mr. Bills claims any personal, first-hand knowledge of the facts of this case; rather, they say they will offer their views on net metering policy and how the Commission should interpret Kentucky's Net Metering Statutes (KRS 278.465 *et seq.*). Such airing of personal views is appropriate for public comment, not evidentiary testimony in a customer-complaint proceeding. KU therefore further moves the Commission to treat the purported testimony summaries of Messrs. Bills and McDonald as public comments, not evidence in the record of this proceeding.

In its Order denying Mr. Bills intervention in this proceeding, the Commission clearly stated the issues relevant to this proceeding: "Moreover, the issues raised in the instant case relate to the application, and possibly the interpretation, of a section of KRS Chapter 278 and

KU's tariff.”¹ The Commission then stated that Mr. Bills lacked factual knowledge sufficient to support his intervention, and that his opinions about net-metering policy, however well-informed, were not directly relevant to this case, resulting in the Commission’s denial of his motion to intervene:

Therefore, even if Mr. Bills were a KU customer, he still would have failed to demonstrate a special interest in the proceeding or to set forth facts that would assist the Commission in fully considering the specific issues raised in the complaint. Mr. Bills’ employment and advocacy on behalf of certain economic interests, as well as his specialized knowledge and opinions regarding solar energy and net-metering, do not directly relate to the issues of statutory construction and tariff interpretation as raised in this matter.²

The Commission stated that, as a non-intervenor, Mr. Bills could submit comments in the record of the proceeding (as may all members of the public in any Commission proceeding) and follow the case through the Commission’s website.³

Mr. Short’s offer to call Mr. Bills into this case as a witness is tantamount to a collateral attack on the Commission’s Order denying Mr. Bills intervention, an Order that is less than six months old. His offer of testimony fails to demonstrate the discovery of evidence since the Commission’s September 26, 2013 order that could not have been obtained by the reasonable exercise of diligence and will materially affect the merits of the case. There is no evidence he has acquired new relevant expertise; there is no evidence he has acquired new relevant facts. Therefore, for the same reasons the Commission denied Mr. Bills intervention in September 2013, it should refuse to hear testimony from him now.

Indeed, the only substantive difference between Mr. Bills’ Motion to Intervene, which the Commission denied, and his proffered testimony summary is his claimed knowledge of the 2004

¹ Case No. 2013-00287, Order at 3 (Sept. 26, 2013).

² *Id.*

³ *Id.*

legislative process that created Kentucky's Net Metering Statutes, knowledge he inexplicably omitted from his intervention motion. But all of the evidence Mr. Bills claims he will offer on the 2004 legislative process is inadmissible hearsay or irrelevant. What Mr. Bills says Kentucky's legislators said or thought in 2004 is textbook inadmissible hearsay for which the rules of evidence do not provide an applicable exception.⁴ To the extent Mr. Bills desires to testify about his intentions concerning the legislation, his testimony would be irrelevant; KRS 466.080(1) explicitly states that Kentucky statutes should be interpreted to give effect to the General Assembly's intentions, not activists' or lobbyists' intentions.⁵ While the Commission is not bound by the technical rules of evidence, it has not hesitated to exclude cumulative, repetitive and irrelevant evidence from formal evidentiary hearings.⁶ It should not hesitate to do so in this case.

Rather than allowing the testimony of such non-legislators on what they recall was said or not said some 10 years ago when the statute was passed to determine legislative intent, Kentucky's highest court has unambiguously stated that the plain meaning of a statute's words are the appropriate means to discern the legislature's intent: "In construing these statutes our goal, of course, is to give effect to the intent of the General Assembly, and we derive that intent, if at all possible, from the plain meaning of the language the General Assembly chose."⁷ The

⁴ KRE 801(c) ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). See KRE 801 *et seq.* for all of Kentucky's hearsay rules and exceptions; KRE 803(1) – (23).

⁵ KRS 466.080(1): "All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature"

⁶ KRS 278.310; See *In the Matter of: Petition of Se. Tel., Inc., for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Commc'n. Inc., Concerning Interconnection Under the Telecomm. Act of 1996*, Case No. 2006-00316, Order (Aug. 30, 2006); *In the Matter of: Petition by AT&T Commc'n of The S. Cent. States, LLC and TCH Ohio, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecomm., Inc. Pursuant to 47 U.S.C. Section 252*, Case No. 2004-00234, Order (July 2, 2004); *In the Matter of: Petition of Se. Tel. Inc. for Arbitration of Certain Terms and Conditions of the Proposed Agreement with Ky. Alltel, Inc., Pursuant to the Commc'n Act of 1934, as Amended by the Telecomm. Act of 1996*, Case No. 2003-00115, Order (Oct. 27, 2003).

⁷ *Bowling v. Kentucky Dept. of Corrections*, 301 S.W.3d 478, 490-91 (Ky. 2009).

Kentucky Supreme Court has further stated that related statutes, such as Kentucky’s Net Metering Statutes, are to be interpreted together: “We presume, in a case such as this one of related statutes, that the General Assembly intended for the statutes to be construed together and for both to have meaning.”⁸ Concerning the meaning of KRS 278.466(3)—which the Commission has stated is the matter at issue in this case—the statute’s text is clear, and it is particularly clear in the broader context of Kentucky’s Net Metering Statutes. But even if the Commission found the statute to be ambiguous or uncertain, the appropriate means of resolving the ambiguity is to review legislative records,⁹ not the recollection of hearsay from conversations that allegedly occurred during off-the-record legislative proceedings 10 years ago. Therefore, there is no reason to accept Mr. Bills’ testimony as evidence in this case and numerous good reasons not to do so, including the Commission’s recent determination that Mr. Bills lacked sufficient relevant factual or technical knowledge to intervene in this proceeding.

The same objections apply with more force to the proposed testimony of Mr. McDonald. He claims no knowledge at all of the legislative process that created Kentucky’s Net Metering Statutes, and he claims no first-hand, personal knowledge of the dispute between Mr. Short and KU. Instead, he offers to testify about his opinion on how the Commission should interpret KRS 278.466(3). Such opinions are material for public comment, not for taking into evidence in this proceeding.

Moreover, KU and the Complainant have presented fully the relevant facts in this case. Messrs. Bills’ and McDonald’s proffer of testimony seeks to transform a rate complaint into a

⁸ *Id.* at 491.

⁹ See *Temperance League of Ky. v. Perry*, 74 S.W.3d 730, 735 (Ky. 2002) (“Where the language of a statute is doubtful or ambiguous, resort may be had to the journals or to the legislative records showing the legislative history of the act in question in order to ascertain the intention of the Legislature, but this rule does not apply where the language of the statute is plain and unambiguous.” (citing *City of Vanceburg v. Plummer*, 122 S.W.2d 772, 776 (Ky. 1938))).

broader proceeding of public policy. The Complainant has continued to support his position with public policy concerns; the proffered testimony of Messrs. Bills and McDonald is unnecessarily redundant and cumulative because such concerns have already been expressed by the Complainant. And it is important to bear in mind that only Mr. Short and the facts of his complaint are at issue in this proceeding: Mr. Short may not represent anyone but himself in this case.¹⁰ Therefore, this proceeding must address only Mr. Short and his complaint, not the interests of others not before the Commission.

Finally, to the extent Messrs. Bills and McDonald intend to present their legal opinions, the Commission should exclude their testimony because neither is qualified to offer legal opinions.

WHEREFORE, Kentucky Utilities Company respectfully asks the Commission to exclude from the evidentiary record to be taken at the public hearing to be held in this proceeding on March 27, 2014 any and all testimony from Andy McDonald and Joshua Bills, and permit Mr. McDonald and Mr. Bills to make reasonably limited public comments.

¹⁰ See 807 KAR 5:001 §4(4) (“A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2).”).

Dated: March 21, 2014

Respectfully submitted,



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- and -

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*Counsel for Defendant,
Kentucky Utilities Company*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion in Limine was served upon the following person by first class United States mail, postage prepaid, on the 21st day of March 2014:

Jeff M. Short
9180 Kentucky Highway 78
Stanford, KY 40484



*Counsel for Defendant,
Kentucky Utilities Company*