

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF KENTUCKY FRONTIER) CASE NO. 2016-00287
GAS, LLC FOR A DECLARATORY ORDER)

ORDER

On August 3, 2016, Kentucky Frontier Gas, LLC (“Kentucky Frontier”) filed a petition for a declaratory order (“Petition”), pursuant to KRS 807 5:001, Section (19), requesting that the Commission determine the service status of First Baptist Church of Forest Hills (“First Baptist Church”). The Petition states that Kentucky Frontier has been serving the First Baptist Church pursuant to an “abandoned right of way agreement”¹ between First Baptist Church and Belfry Gas Company, Inc. (“Belfry Gas”), a company whose assets Kentucky Frontier purchased in 2008. First Baptist Church was a longstanding customer of Belfry Gas and has been a customer of Kentucky Frontier since it purchased the assets of Belfry Gas in 2008.² Kentucky Frontier served a copy of its Petition on First Baptist Church.

On September 8, 2016, First Baptist Church filed a motion for extension of time to file a response (“Motion for Extension”) and motion to intervene (“Motion to Intervene”) in this matter. First Baptist Church filed an accompanying response (“Response”) and motion to dismiss (“Motion to Dismiss”). With respect to First Baptist Church’s Motion to Intervene, 807 KAR 5:001, Section 4(11), provides that “[t]he

¹ Petition at 1.

² *Id.* at 2.

Commission shall grant a person leave to intervene if the Commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.” First Baptist Church asserts that the matter being decided by the Commission in this case will have a significant impact on it.³ First Baptist Church maintains that its position cannot be adequately represented by any existing party, that it intends to play a constructive role in this proceeding, and that its participation will not unduly prejudice any party.⁴ Without being granted intervention, First Baptist Church contends that its due process rights will be meaningfully and materially injured.⁵ Upon review, the Commission finds that First Baptist Church has presented a special interest in this proceeding that is not otherwise represented; that First Baptist Church’s participation will assist the Commission in fully considering the matter; and that First Baptist Church’s intervention will not unduly complicate matters. Therefore, First Baptist Church’s Motion to Intervene is granted.

With regards to First Baptist Church’s Motion for Extension, we note that under 807 KAR 5:001, Section (19)(4), First Baptist Church had 21 days from the date of Kentucky Frontier’s filing of its Petition to file a response. However, 807 KAR 5:001(19)(8) authorizes the Commission to “take any action necessary to ensure a

³ Motion to Intervene at 1.

⁴ *Id.* at 2.

⁵ *Id.* at 2.

complete record . . . and may extend the time for the filing of a reply or response under this section.” Here, First Baptist Church has requested the Commission extend the response period because First Baptist Church only recently retained counsel to aid in this matter, and was previously unaware of the 21-day response period.⁶ First Baptist Church therefore requests an additional 15 days to file a Response to Kentucky Frontier’s Petition.⁷

Accompanying its Motion for Extension, First Baptist Church tendered a Response to Kentucky Frontier Gas, LLC’s Petition and Motion to Dismiss. Upon review, the Commission finds that extending the time for filing a response is necessary in this case to ensure a complete record and accordingly grants First Baptist Church’s Motion for Extension. The Commission accepts First Baptist Church’s Response and Motion to Dismiss as filed. The Commission, however, denies the Motion to Dismiss.

On September 13, 2016, Kentucky Frontier filed a reply to First Baptist Church and submitted the matter to the Commission for final decision on the record. On September 16, 2016, First Baptist Church filed a motion for leave to file a Sur-reply (“Motion to file Sur-Reply”), and attached its proposed Sur-reply. As a basis for its Motion to file Sur-Reply, First Baptist Church asks for the opportunity to correct what it characterizes as several statements contained within Kentucky Frontier’s reply which create a false impression, as well as to address various legal authorities cited in Kentucky Frontier’s reply.⁸ The Commission finds that allowing First Baptist Church

⁶ Motion for Extension at 1.

⁷ *Id.*

⁸ Motion of First Baptist Church of Forest Hills for Leave to File a Sur-reply at 1.

leave to file a Sur-reply would create a more thorough record. Accordingly, First Baptist Church's Motion to File a Sur-reply is granted and its Sur-reply is accepted as filed.

On September 20, 2016, Kentucky Frontier filed a motion to submit this case for a decision based on the record ("Motion to Submit"). Therein, Kentucky Frontier clarified two issues raised in First Baptist Church's Sur-reply. The Commission finds that to ensure a thorough review of this case, First Baptist Church shall, within seven days of the date of this Order, submit a filing indicating its position on whether this case should be submitted for a decision based on the record, or whether it requests a hearing. If First Baptist Church requests a hearing, it shall include in its request a detailed statement of the facts in dispute relating to service at the rates provided under the 1971 Agreement. Kentucky Frontier's Motion to Submit is held in abeyance pending this submission by First Baptist Church.

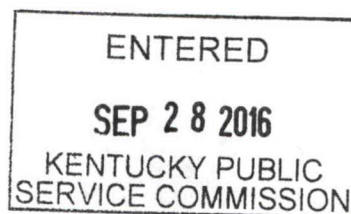
IT IS THEREFORE ORDERED that:

1. First Baptist Church's Motion to Intervene is granted.
2. First Baptist Church's Motion to Dismiss is denied.
3. First Baptist Church shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
4. First Baptist Church shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 7, related to the service and filing of documents.
5. Within seven days of the date of this Order, First Baptist Church shall provide to the Commission its electronic mail address to which all electronic documents

issued by the Commission and all parties of record may be served upon First Baptist Church in accordance with 807 KAR 5:001, Section 4(8)(b).

6. First Baptist Church's Motion for Extension is granted.
7. First Baptist Church's Response is accepted as filed.
8. First Baptist Church's Motion to File a Sur-reply is granted and its Sur-reply is accepted as filed.
9. Within seven days of the date of this Order, First Baptist Church shall indicate whether it requests that this case be submitted for a decision based on the record, or whether it requests a hearing. If the latter, First Baptist Church shall include in its request a detailed statement of the facts in dispute relating to service at the rates provided under the 1971 Agreement. Kentucky Frontier's Motion to Submit is held in abeyance pending this submission by First Baptist Church.

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Jalina R. Matthews". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Director

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