

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
CASE #: 2017-00120

RECEIVED

AUG 07 2017

PUBLIC SERVICE  
COMMISSION

IN RE:

POLLITT ENTERPRISES, INC.  
WHITNEY CLARK POLLITT, INDIVIDUALLY  
AMANDA DEEANN POLLITT, INDIVIDUALLY  
BASIL C. POLLITT, INDIVIDUALLY  
D/B/A THE GAS GROUP, INC.  
A/K/A THE GAS GROUP

\*\*\*\*\*

OBJECTION TO MOTION TO INTERVENE OF ATTORNEY GENERAL  
OBJECTION TO MOTION FOR EXPEDITED DISCOVERY OF ATTORNEY GENERAL  
EXCEPTIONS TO COMMISSION ORDER OF 7-26-17  
EXCEPTIONS TO COMMISSION ORDER OF 8-3-17

Comes The Gas Group/Basil Pollitt, by counsel and do hereby object to the motion(s) of the Office of Attorney General (Office of Rate Intervention) wherein it seeks: a) intervention; and b) expedited discovery. The Gas Group/Basil Pollitt further take exception with the Commission Order(s) granting said motions. In support of the objections/exceptions The Gas Group/Pollitt state as follows:

CHRONOLOGY OF EVENTS

1. The Office of Rate Intervention (hereinafter ORI) filed a Motion to Intervene with the Commission on 7-25-17. The certificate of service on said document indicates it was served via U.S. Mail upon the undersigned counsel that same date (7-25-17).<sup>1</sup> The following day, 7-26-17, the Commission granted the motion. Not only was Pollitt not afforded the opportunity to object he had

---

1

The undersigned never received a copy of this document via U.S. Mail. Assuming it was mailed as indicated the undersigned would not receive same until 7-26 at the earliest and likely 7-27. Upon request a copy was provided via email on 7-31-17.

yet to receive a copy of the motion. Similarly, on 8-2-17 ORI filed a Motion to Expedite Discovery as to require responses prior to the hearing date (8-9-17).<sup>2</sup> The Motion to Expedite contains supporting argument consisting of 11 numerical paragraphs. Attached to the Motion to Expedite are certain discovery requests consisting of instructions (13 numerical paragraphs) and 12 separate discovery requests not inclusive of subparts. The certificate of service contained on the Motion to Expedite/Discovery Requests indicates service via U.S. Mail on 8-2-17. The following day, 8-3-17, the Commission granted the motion. Once again Pollitt not only was afforded no opportunity to object he had yet to receive a copy of the motion.

#### ARGUMENT

2. The Motion to Intervene is expressly predicated upon KRS 367.150(8) (a)<sup>3</sup> and 807 KAR 5:001 Section 4 (11). KRS 367.150 (a) provides authority only to be heard. It does not authorize intervention. For purposes of intervention ORI looks to the regulation. Things begin badly as the statutory authority for 807 KAR 5:001 contains no mention of KRS 367. Nor does the regulation “relate to” KRS 367. Matters worsen upon consideration of the substantive provisions of Section 4 (11). The motion authorizes intervention by a “person”. Subsections 11 (1) (a) (1) and (2) (b) reference a person by gender (he or she) indicating they are intended only for natural persons. Tis true that the regulation contains a definition for “person” (807 KAR 5:001, Section 1 (b) (11)). As indicated, the context for Section 4 (11) reflects a natural person is intended. Even if the regulatory definition is used however it is of no help to ORI as it is limited to natural persons and public or private corporations. Moreover, the regulation is quite demanding. Subsection 11 (1) (a) (1)

---

<sup>2</sup>A hearing in this matter is scheduled for 8-9-17. The hearing date is contained in the Commission Order of 6-12-17.

<sup>3</sup>The Motion to Intervene parrots the language of Section (a).

requires a statement of “interest” in the case and how “intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting proceedings.” The motion contains none of these requirements. The regulation is equally demanding upon the Commission. In granting such a motion the Commission must find that the motion is timely and that he/she has a special interest in the case not otherwise adequately represented or that “his or her intervention is likely to present issues or develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.” While not completely clear the Order appears to ignore the regulation which is the stated basis for the motion. Instead it references only KRS 367.150 (8). Pollitt can only conclude that the Commission is referencing Subsection (8) (b). Subsection (8) (b) provides for the Department of Law “to be made a real party in interest” and reads as follows:

To be made a real party in interest to any action on behalf of consumer interests involving a quasi judicial or rate making proceeding of any state or local governmental branch, commission, department, agency or rate making body whenever deemed necessary and advisable in the consumer’s interest by the Attorney General.

This is not a rate making proceeding. All alleged violations are within the statutory purview of the PSC and do not implicate “consumer interests” as defined by KRS 367. The Order itself provides “The Attorney General shall be entitled to the full right of a party . . .”. This is beyond what is authorized by statute. The Attorney General is not “entitled to the full right of a party” as its participation is limited to consumer interests particularly “rate making”. Pollitt suspects this limitation is the very reason ORI chose to intervene per regulation.

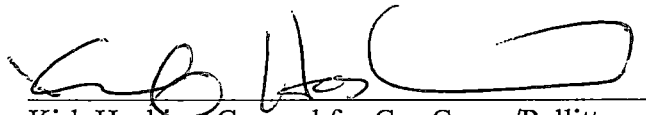
3. Providing Pollitt no opportunity to contest the Motion to Expedite Discovery is a facial “due process” violation. The Order granting the motion provides:

Based upon the motion and *being otherwise sufficiently advised*, the Commission finds good cause to grant the Attorney General's moti to conduct expedited discovery. Emphasis added.

There is no indication as to what "being otherwise sufficiently advised" entails as Pollitt was afforded no opportunity to contest the motion or to contest "good cause". The discovery requests themselves go well beyond consumer "rate making" inquiries which militates against "good cause". Moreover, requiring Pollitt to address the discovery on the eve of the hearing is patently unreasonable and further militates against both the motion and the Order.

#### CONCLUSION

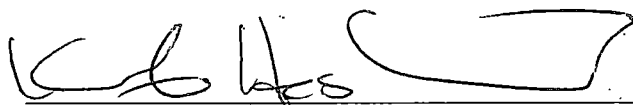
4. For the reasons set forth herein Pollitt objects to the motions and takes exception to the Orders.



Kirk Hoskins, Counsel for Gas Group/Pollitt  
The Landward House  
1387 S. Fourth Street  
Louisville, KY 40208  
502-821-9001-Office  
502-634-9119-Fax  
[Hoskins@Kirk.win.net](mailto:Hoskins@Kirk.win.net) (E-mail)

#### CERTIFICATE OF SERVICE

It is hereby certified that the original and nine copies of this this document was sent via U.S. Mail to the Public Service Commission, P.O. Box 615, 211 Sower Blvd., Frankfort, KY 40602-0615 this 5<sup>th</sup> day of August, 2017. It is further certified that a copy of this document was sent via U.S. Mail to Nancy Vinsel, Counsel for PSC, P.O. Box 615, 211 Sower Blvd., Frankfort, KY 40602-0615 this 5<sup>th</sup> day of August, 2017. It is hereby further certified that a copy of this document was mailed to the Office of Attorney General, c/o Kent Chandler/Rebecca Goodman/Justin McNeil, Assistant Attorney General, Office of Rate Intervention, 700 Capital Avenue, Suite 20, Frankfort, KY 40601 this 5<sup>th</sup> day of August, 2017.



Kirk Hoskins