

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MALLARD POINT DISPOSAL	)	
SYSTEMS, INC. FOR AN ADJUSTMENT OF	)	CASE NO.
RATES PURSUANT TO THE ALTERNATIVE	)	2005-00235
RATE FILING PROCEDURE FOR SMALL	)	
UTILITIES	)	

O R D E R

Several persons (“Movants”), a list of whom is attached as Appendix A, have moved for full intervention in this proceeding. Mallard Point Disposal Systems, Inc. (“Mallard Point”) has responded in opposition to the motions. Having considered the motions and responses thereto, we deny the motions for full intervention, but grant the Movants limited intervention.

In support of their motions, the Movants assert that, as customers of Mallard Point, they have an interest in this proceeding sufficient to justify their intervention. Peggy and Jeroen van der Gaag and Robert Warhus further argue their intervention in Mallard Point’s last rate case proceeding<sup>1</sup> as a grounds for granting their motion. The Movants identify several issues in their motions, including the level of proposed rates as compared to the rates of neighboring utilities, the reasonableness of the utility’s long-

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<sup>1</sup> Case No. 2003-00284, Application of Mallard Point Disposal Systems, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities (Ky. PSC May 27, 2004).

term debt refinancing, and a \$50,000 loan from Mark Smith, Mallard Point's president and sole stockholder, for the 2004 operating losses.

Opposing the motions, Mallard Point contends that Movants' intervention would unduly disrupt and complicate this proceeding. It states that Mr. van der Gaag has published defamatory statements and documents about Mr. Smith. It further states that Mr. van der Gaag is a defendant in a civil action<sup>2</sup> for alleged defamation against Mr. Smith and suggests that Mr. van der Gaag would use this proceeding as a vehicle to explore Mr. Smith's conduct as president of the Mallard Point Owner's Association. As to the remaining motions, Mallard Point suggests that the Commission join the remaining Movants as a single entity and permit only consolidated discovery requests to reduce the burden on Mallard Point. In the alternative, Mallard Point proposes that the Commission grant limited intervention to all Movants.

Administrative Regulation 807 KAR 5:001, Section 3(8), which governs intervention in Commission proceedings, provides:

If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party 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, such person shall be granted full intervention.

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<sup>2</sup> Mark S. Smith v. Jeroen van der Gaag, Civil Action No. 05-CI-00239 (Scott Cir. Ct. Ky. filed April 22, 2005).

Movants have failed to meet the requirements set forth in 807 KAR 5:001, Section 3(8). They do not state any special interest in this proceeding or special ability that would assist us in developing a complete record. While we have granted Mr. and Mrs. van der Gaag and Mr. Warhus full intervenor status in past Commission proceedings, such action does not establish a right to intervene in all proceedings involving Mallard Point.<sup>3</sup> For each proceeding all Movants must show that they meet the regulatory prerequisites for such status. In this instance, they have not done so. Additionally, the Attorney General has already been granted intervention in this proceeding. He represents and appears on behalf of consumers' interests. See KRS 367.150(8)(a).

While the Movants have failed to meet the regulatory prerequisites for full intervention, their views and opinions are important to the Commission. We find that they should be afforded ample opportunity to comment on the proposed rate adjustment. Accordingly, the motions for full intervention should be denied and the Movants should be granted limited intervention.

As a result of this action, Movants will be entitled to the full rights of a party at any hearing and will be served with the Commission's Orders, but will not be served with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by full intervening parties. 807 KAR 5:001, Section 3(8)(a). Movants will not have "the right to issue data requests or otherwise engage in discovery, attend informal

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<sup>3</sup> See, e.g., Case No. 2000-00120, Adjustment of the Rates of Kentucky-American Water Company (Ky. PSC May 30, 2000) at 2.

conferences, request a hearing, or file a motion or brief.” Louisville Gas & Electric Co.,  
Case No. 2004-00304 (Sep. 17, 2004) at 2.

IT IS THEREFORE ORDERED that:

1. Movants’ motions for full intervenor status are denied.
2. Movants are granted limited intervention.
3. Movants shall be entitled to the full rights of a party at any hearing and shall be served with the Commission’s Orders, but shall not be served with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties and shall not be certified as a party for the purpose of receiving service of any petition for rehearing or petition for judicial review.
4. Movants shall serve on all parties a copy of any and all documents filed by them with the Commission.

Done at Frankfort, Kentucky, this 2nd day of September, 2005.

By the Commission

ATTEST:

*for the*   
Executive Director

Case No. 2005-00235

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2005-00235 DATED September 2, 2005

Peggy van der Gaag  
Lesley Floccare  
Lorie Wise  
Karen Brown  
Leslie Stumbo  
Carol Price  
Tabatha McEldred  
Jim Nelson  
Charles F. Knapp  
John Golding  
Eric Freeman  
Joan Delmoro  
David G. Absher  
Marvin Baker  
Quinn Richter

Jeroen van der Gaag  
David Wise  
Gregory Brown  
Brian Stumbo  
James Price  
Steve McEldred  
Robert A. Patrick  
Rebecca Nelson  
Jeffery R. Hurst  
Sharlyn Golding  
James Delmoro  
Jerry Bratfish  
Catherine A. White  
Don McNamee  
Bob Warhus