

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On September 21, 2005, Robert A. Patrick (“Movant”) petitioned the Commission to rehear or to reconsider its Order of September 2, 2005 denying him full intervention in this proceeding. In our Order of September 2, 2005, we found that Movant had failed to state a special interest in the proceeding or a special ability that would assist us in rendering a decision. For the reasons set forth below, we find that Movant has not presented any argument or evidence that requires the reconsideration of our Order, and we deny Movant’s petition.

Movant states in support of his petition that the Commission has previously granted full intervention to customers who provided no more information with regard to their interest or ability to assist than that which he provided. While the Commission has previously adopted a more liberal interpretation of 807 KAR 5:001, Section 3(8), to grant customers full intervention in rate proceedings, we have in recent years revised and more narrowly interpreted that administrative regulation. See Louisville Gas & Electric

Co., Case No. 2005-00304 (Sept. 27, 2004); Kentucky Utilities Co., Case No. 2004-00426 (Ky. PSC Feb. 10, 2005).¹

Movant further argues that the Commission has deprived him of administrative due process by preventing him from conducting discovery and adequately testing the applicant's assertions. He states that without discovery he is required to rely upon the representations of the Attorney General ("AG") who, he argues, cannot adequately represent the varied interest of the customers. We find no merit to this argument. Before a party can be deprived due process, he must possess an entitlement to a vested property interest. "Utility ratepayers have no vested property interest in the rates they must pay for a utility service despite the fact that it is provided by a regulated monopoly." Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company, 983 S.W. 2d 493 (Ky., 1998).

While Movant asserts that the customers of Mallard Point Disposal Systems, Inc. ("Mallard Point") have varied interests that the AG cannot adequately represent, he has failed to show that his interest differs from that of any other customer of Mallard Point. Moreover, the AG has been granted intervention and is charged by statute to represent the interests of consumers before this Commission. KRS 367.150(8)(a).

¹ Movant refers to recent decisions in Louisville Gas & Electric Company, Case No. 2005-00142 (Ky. PSC June 9, 2005) and East Kentucky Power Cooperative, Inc., Case No. 2005-00207 (Ky. PSC Aug. 2, 2005) to support his petition. These cases are readily distinguishable. Both dealt with the construction of electric transmission facilities and involved a request for intervention by a person or persons on whose property the facilities would traverse. KRS 278.020(8) expressly identifies such persons as "interested persons" and requires the Commission to permit their intervention. The current case does not involve the construction of electric transmission facilities.

Lastly, Movant asserts that he has demonstrated by his discovery requests that he is likely to present issues or develop facts that will assist the Commission in rendering its decision in this case. Based upon our review of these requests, we fail to see such likelihood. Movant has yet to demonstrate or indicate any special training, education, experience or expertise that would assist the Commission in developing a complete record.

807 KAR 5:001, Section 3(8), “reposes in the Commission the responsibility for the exercise of sound discretion in the matter of affording permission to intervene.” Inter-County Rural Electric Cooperative Corporation v. Public Service Commission, 407 S.W.2d 127, 130 (Ky., 1966). In carrying out this responsibility, the Commission considers each request for intervention on its own merits within the context of the proceeding. Having done so in this case and having considered the Movant’s arguments, we find that Movant has failed to meet the requirements set forth in the regulation and that his request for rehearing should be denied.

IT IS THEREFORE ORDERED that Movant’s petition for rehearing or reconsideration is denied.

Done at Frankfort, Kentucky, this 11th day of October, 2005.

By the Commission

ATTEST:



Executive Director