

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE OPERATING)
CAPACITY OF MARTIN COUNTY WATER) CASE NO. 2016-00142
DISTRICT PURSUANT TO KRS 278.280)

ORDER

On August 7, 2017, Martin County Concerned Citizens, Inc. ("MCCC") filed with the Commission, by counsel, a motion to intervene in this proceeding. MCCC states that it sought to protect its members' interests in ensuring that Martin County Water District ("Martin District") provides reasonable, safe, and adequate water services to its customers and to bring to the proceeding its knowledge of Martin District's alleged inadequacies. MCCC's motion was initially denied based upon the lack of the Kentucky Secretary of State's acceptance of MCCC's articles of incorporation, concluding that MCCC lacked standing to intervene in this proceeding at that time.

On September 12, 2017, MCCC tendered a second motion to intervene in the proceeding in which MCCC states that it was incorporated on September 7, 2017. On September 20, 2017, Martin District objected to the second motion, arguing that: 1) the motion is not timely under 807 KAR 5:001, Section 4(11)(b), in that the proceeding had been under way for more than a year; 2) MCCC does not represent a special interest in the case that is not otherwise adequately represented; and 3) MCCC is unlikely to present issues or develop facts that would assist the Commission in fully considering this matter.

Martin District also asserts that this proceeding is a financial strain due to the need for employees to spend time responding to Commission requests for information and documents, and to attend Commission hearings. Martin District asserts that allowing MCCC to intervene will increase this burden, and lengthen the time of future hearings. Last, MCCC asserts that allowing intervention will diminish the possibility of a settlement between the Commission and MCCC.

Based on the motion to intervene, and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.¹ The Court of Appeals has held that the Commission's discretion to grant or deny a motion for intervention is not unlimited, and has enumerated the limits on the Commission's discretion, with one arising under statute, the other under regulation.² The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."³

The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11)(a), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

³ *Id.* at 3.

present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, we find MCCC is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. It is understood that Martin District faces a multitude of problems, spanning the jurisdictions of more than one administrative agency. We remind MCCC, however, that the Commission's jurisdiction is limited to Martin District's rates and services. Specifically, the Commission initiated this proceeding to investigate deficiencies identified in the Commission's December 12, 2014 Inspection Report, Martin District's compliance with the Required Action plan set forth in Case No, 2006-00303,⁴ and the allegations of deficiencies identified by Gary Ball through his complaint.⁵ MCCC's participation in this proceeding will be limited to the parameters identified by the issues in the Commission's initiating Order and the Commission's statutory jurisdiction.

The Commission, being otherwise sufficiently advised, finds that the motion should be granted.

IT IS HEREBY ORDERED that:

1. The motion of MCCC to intervene is granted.

⁴ Case No. 2006-00303, *An Investigation into the Management and Operation of Marin County Water District*, (Ky. PSC, Apr. 2, 2008).

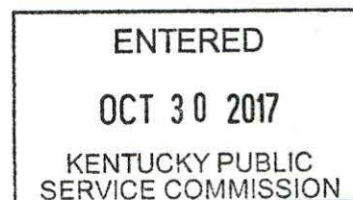
⁵ Case No. 2016-00142, *Investigation of the Operating Capacity of Martin County Water District Pursuant to KRS 278.280*, (Ky. PSC Apr. 11, 2016) at 8.

2. MCCC 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.

3. MCCC 3 shall comply with all provisions of the Commission's regulation, 807 KAR 5:001, Section 7, related to the service and filing of documents.

By the Commission

Chairman Michael Schmitt did not participate in the deliberations or decision concerning this case.



ATTEST:


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