

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

POLLITT ENTERPRISES, INC.,	)	
WHITNEY CLARK POLLITT, INDIVIDUALLY,	)	
AMANDA DEEANN POLLITT, INDIVIDUALLY,	)	
AND	)	
BASIL C. POLLITT, INDIVIDUALLY,	)	CASE NO.
D/B/A THE GAS GROUP, INC.	)	2017-00120
A/K/A THE GAS GROUP	)	
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ALLEGED VIOLATIONS OF	)	
KRS 278.020, KRS 278.160, KRS 278.140,	)	
AND 807 KAR 5:006, SECTION 4(2)	)	

ORDER

This matter arises on the objections filed by Defendants, Pollitt Enterprises, Inc., Whitney Clark Pollitt, Individually, Amanda Deeann Pollitt, Individual, and Basil C. Pollitt, Individually, d/b/a The Gas Group, Inc. a/k/a The Gas Group (collectively, "Pollitts"), that were overruled from the bench at a formal hearing on August 9, 2017, with an Order to be issued after the conclusion of the hearing.

BACKGROUND

Objection to the Attorney General's Motion to Intervene

On August 7, 2017, the Pollitts filed objections to the Attorney General's motion to intervene, which was granted by Order entered July 26, 2017. As a basis for their objection to the Attorney General's motion to intervene, the Pollitts asserted that the Attorney General does not have statutory authority to intervene in this proceeding and does not meet regulatory standards for permissive intervention. KRS 367.150 sets forth

the functions, powers, and duties of the Attorney General. The Pollitts argue that KRS 367.150(8)(a) grants the Attorney General the authority to be heard before the Commission, but does not authorize intervention. The Pollitts further argue that KRS 367.150(8)(b) provides the Attorney General with the authority to intervene only in ratemaking proceedings before the Commission.

The Pollitts next argue that the Attorney General fails to meet the regulatory standards for permissive intervention set forth in 807 KAR 5:001, Section 4(11). The Pollitts assert that only “natural persons” or “public or private corporations” may intervene in Commission proceedings, and that the Attorney General does not meet either requirement. The Pollitts further assert that the Attorney General did not set forth his special interest in the case or establish that his intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, as is required by the regulation.

In a response filed August 8, 2017, the Attorney General first notes that the Pollitts’ objection was untimely filed pursuant to 807 KAR 5:001, Section 5(2). Next, the Attorney General points out that KRS 367.150(8)(b) provides the Attorney General with the statutory authority to intervene “in any action on behalf of consumer interest involving a quasi-judicial or rate-making proceeding” before the Commission. For this reason, the Attorney General argues, he is not limited to intervene only in ratemaking proceedings, despite the Pollitts’ statutory interpretation otherwise, but also has authority to intervene in quasi-judicial proceedings, such as this matter. The Attorney General further argues that the issues raised by the Pollitts are not novel and have been addressed by the Commission in the past.

The Attorney General also cites to long-standing and controlling Commission precedent finding that KSR 367.150(8) provides the Attorney General with a statutory right to intervene in Commission proceedings, is not limited to intervening in ratemaking proceedings only, and is not required to provide specific, valid reasons for his intervention in any proceeding before the Commission.<sup>1</sup>

#### Objection to Motion for Leave to File Expedited Discovery

In their objections filed on August 7, 2017, the Pollitts also object to the Attorney General's motion for leave to conduct expedited discovery, which was granted by Order entered August 3, 2017. As a basis for the Pollitt's objection to the Attorney General's motion for expedited discovery, the Pollitts argue that they were not afforded the opportunity to contest the Attorney General's motion because the Commission granted the Attorney General's motion on August 3, 2017, one day after the motion was filed. The Pollitts further argue that the Attorney General is limited to making discovery requests regarding consumer ratemaking issues, and that the discovery requests exceed consumer ratemaking issues.

In the Attorney General's response filed on August 8, 2017, he asserts that his motion for leave to conduct expedited discovery was warranted under the circumstances of the case. The Attorney General sets forth the procedural history of this case regarding discovery requests made to the Pollitts and argues that the Pollitts have "deliberately declined or failed to fully participate and cooperate with the Commission." The Attorney General notes that Basil C. Pollitt failed to appear for a scheduled deposition, despite being served with a subpoena, and submitted responses

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<sup>1</sup> See Case No. 2007-00374, *Application of South Kentucky Rural Electric Cooperative Corporation for Approval to Purchase the Fixed Assets of the Monticello Electric Plant Board, Monticello, KY* (Ky. PSC Dec. 13, 2007)

to Commission Staff's data requests two weeks late, with many questions either not fully answered or answered at all. The Attorney General contends that expedited discovery is warranted and that the paucity of discovery obtained in this proceeding, which the Attorney General attributes to the Pollitts' actions or inactions, justify his request for expedited discovery.

#### Objection to Subpoena to Jason Sharp

On August 9, 2017, the Pollitts filed an objection to the subpoena issued by the Commission to a non-party witness, Jason Sharp, on August 7, 2017. As a basis for their objection to the subpoena issued to Jason Sharp, the Pollitts argue that Jason Sharp is not a Kentucky resident, and thus the Commission does not have the authority to command his appearance by subpoena. The Pollitts further argue that the subpoena was issued at the "11th hour," and thus the time permitted for Mr. Sharp to comply with the subpoena is unreasonable. The Pollitts also challenged the service of the subpoena on Mr. Sharp by electronic means.

#### FINDINGS

Based on the Pollitts' objections and Attorney General's response, and being otherwise sufficiently advised, the Commission finds that:

1. The Pollitts' objections to the Attorney General's motion to intervene are wholly without merit and should be denied. Both KRS 367.150(8)(a) and (b) apply with equal force in granting the Attorney General a statutory right of intervention in any proceeding before the Commission, whether it is quasi-judicial or ratemaking. Additionally, neither KRS 367.158(8)(a) or (b) require the Attorney General to provide a specific reason to justify his intervention. Therefore, the Attorney General has the statutory authority to intervene in this proceeding and is not required to set forth a

special interest or the issues and facts he will present. The Commission further finds that, because the Attorney General has statutory authority to intervene in Commission proceedings, the Pollitts' arguments regarding the application of Commission regulations regarding permissive intervention are moot.

2. The objection to the Attorney General's motion for leave to file expedited discovery should be denied. The Attorney General requested to conduct limited discovery with a limited scope and a limited number of requests, and limited the questions to only Basil C. Pollitt and not all of the Defendants. The purpose of conducting the discovery was to carry out the Attorney General's statutory duty to represent consumers' interests, which took on greater import given the Pollitts' failure to respond or to respond fully to previous discovery requests made by Commission Staff. Further, as noted above, the Attorney General's statutory authority to intervene in Commission matters is not limited to ratemaking proceedings. Thus, the Pollitts' argument that the discovery requests exceeded the Attorney General's statutory authority is wholly without merit.

3. The objection to the Commission's subpoena to non-party witness Jason Sharp should be denied. At the August 9, 2017 hearing, counsel for the Pollitts was asked whether he represented Jason Sharp, and confirmed that he did not represent Mr. Sharp.<sup>2</sup> Because the Pollitts' counsel does not represent Mr. Sharp, he has no basis to object to the subpoena on Mr. Sharp's behalf. This is especially so given that Mr. Sharp voluntarily agreed to appear and testify at the hearing, and agreed to provide the Commission with certain relevant documents. Additionally, the Commission acted within its statutory authority to issue a subpoena. Mr. Sharp was called as President

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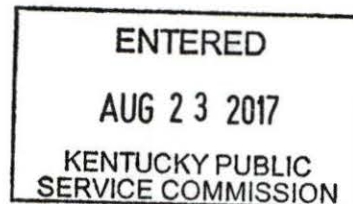
<sup>2</sup> Hearing Video Transcript, 9:23:28.

and Registered Agent of a Kentucky limited liability corporation, Southern Kentucky Energy, LLC. Pursuant to KRS 278.320, the Commission's authority to issue subpoenas extends to all parts of Kentucky. As a registered agent of a Kentucky business, the Commission had authority to serve a subpoena upon Mr. Sharp.


IT IS HEREBY ORDERED that:

1. The Pollitts' objection to the Attorney General's motion to intervene is denied.
2. The Pollitts' objection to the Attorney General's motion for leave to file expedited discovery is denied.
3. The Pollitt's objection to the subpoena to Jason Sharp is denied.

By the Commission



ATTEST:



Acting Executive Director

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