

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-AMERICAN WATER COMPANY FOR AN ADJUSTMENT OF RATES)	CASE NO.
)	2018-00358
)	

ORDER

This matter arises upon respective motions filed by Lexington-Fayette Urban County Government (LFUCG) and the Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc. (CAC), requesting to intervene in this matter. By Order entered January 3, 2019, the Commission scheduled a hearing on January 9, 2019 (Hearing) to receive testimony in support of the pending motions. On January 8, 2019, CAC filed notice of withdrawal of its motion to intervene, which was treated as a motion and granted from the bench at the Hearing.¹

In its motion to intervene (Motion), LFUCG stated that it satisfied the requirements for permissive intervention set forth 807 KAR 5:001, Section 4(11), because its special interests will not be otherwise adequately represented, and because it will present issues and develop facts that will assist the Commission in fully considering this matter without unduly disrupting or complicating the proceeding.

¹ Although the Kentucky Rules of Civil Procedure 41.01(1) permit a plaintiff to dismiss voluntarily an action without order of the court by filing a notice of dismissal, the Commission is not bound by the Rules of Civil Procedure. Pursuant to KRS 278.310, the rules adopted by the Commission govern its proceedings. 807 KAR 5:001, Section 5(1) provides that requests for relief not required to be made in an application, petition, or written request shall be by motion. Therefore, the Commission treated the notice of withdrawal as a motion.

In both its Motion and at the Hearing, LFUCG explained that it has a special interest because it takes service from multiple rate classifications: Service Classification No. 1, under the residential and the municipal customer categories; Service Classification No. 3, municipal fire protection; and Service Classification No. 4, public fire hydrant and private fire hydrant.² Additionally, LFUCG owns 6,912 of 7,498, or 92 percent, of the public fire hydrants in Kentucky-American Water Company's (Kentucky-American) service territory, making LFUCG Kentucky-American's largest customer taking service under the public fire hydrant tariff.³ LFUCG explained that public fire hydrants are a unique rate classification because the rate is based on a fixed cost and not volumetric rates.⁴ LFUCG also explained that \$4 million of its \$5 million annual cost for water service is for service received under the fire hydrant tariff.⁵ The proposed rate increase would increase the amount that LFUCG pays under the fire hydrant tariff by \$800,000.⁶ Further, LFUCG contended that it has a special interest arising from the location of fire hydrants in LFUCG's right of way under the franchise agreement between LFUCG and Kentucky-American.⁷

LFUCG asserted that no other party could adequately represent its interests based upon LFUCG's status as Kentucky-American's largest municipal customer, the variety of

² Motion (filed Dec. 11, 2019) at 2; Hearing at 9:14:39; Kentucky-American Water Company Tariff Sheets 29, 31, and 33.

³ Motion at 2; Hearing at 9:16:38.

⁴ Hearing at 9:17:09.

⁵ *Id.* at 9:15:31.

⁶ *Id.* at 9:18:13.

⁷ *Id.* at 9:17:09.

rates under which LFUCG takes service, its unique status as the largest customer taking service under the fire hydrant tariff, and the number of fire hydrants in the right-of-way. By way of example, LFUCG noted that it was the only party, other than Commission Staff, to address the fire hydrant tariff in Kentucky-American's last rate case.⁸ LFUCG and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) are negotiating an agreement to participate jointly by submitting and responding to data requests, and co-sponsoring testimony on relevant issues, similar to their joint participation in the last Kentucky-American rate case.⁹ LFUCG clarified that, although it may co-sponsor discovery and testimony with the Attorney General based upon a commonality of interest in specific issues, LFUCG would provide a unique set of information outside of the Attorney General's interests, or information that does not align with the Attorney General's interests.¹⁰ As of the Hearing, the Attorney General does not plan to offer discovery or testimony on the fire hydrant tariff or franchise agreement.¹¹ In addition, LFUCG's interest in blending, or socialization, of costs, or LFUCG's interest in consolidated rates for newly acquired water systems, may be adverse to the Attorney General's interest in those issues.¹² For the above reasons, LFUCG maintained that, although it intends to co-sponsor discovery and testimony with

⁸ *Id.* at 9:11:50. Kentucky-American's last rate case was Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Aug. 23, 2016).

⁹ *Id.* at 9:19:05.

¹⁰ *Id.* at 9:19:38, 9:27:10.

¹¹ *Id.* at 9:36:28.

¹² *Id.* at 9:24:54, 9:26:20, 9:30:15, and 9:31:40.

the Attorney General, LFUCG has a special interest that cannot be adequately represented by the Attorney General.

LFUCG stated that it would assist the Commission in fully considering this matter by presenting issues and develop facts regarding public fire hydrants and associated rates, return on equity, revenue requirements, unification of rates for acquired systems, the Qualified Infrastructure Plan, and franchise agreement issues.¹³ LFUCG stated that, if granted intervenor status, it intends to play a constructive role in the proceeding by isolating and addressing the issues that are most important to LFUCG.¹⁴ LFUCG pointed to its involvement in prior cases to demonstrate in what way and by what method it will be a productive participant in this proceeding.¹⁵

Having reviewed the request for intervention, Hearing testimony, and being otherwise sufficiently advised, the Commission finds that LFUCG satisfied the statutory and regulatory criteria for permissive intervention, and therefore LFUCG's motion to intervene should be granted. The only person entitled to intervene as a matter of right 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.

In exercising its discretion to determine permissive intervention, the Commission follows its regulation, 807 KAR 5:001, Section 4(11), which requires a person seeking intervention to file a request stating that person's interest in the proceeding. That regulation further provides that:

¹³ *Id.* at 9:21:24; Motion at 2.

¹⁴ Motion at 2.

¹⁵ *Id.*; Hearing at 9:11:13.

The commission shall grant a person leave to intervene if the commission finds that he has made a timely motion for intervention and that he has a special interest in the case that is not otherwise adequately represented or that his intervention 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.

Additionally, in the December 5, 2018 Order that, among other things, established the procedural schedule for this matter, the Commission stated that a mere recitation of the quantity of water consumed or a general statement regarding a potential impact of a possible rate adjustment will not be deemed sufficient to establish a special interest.

The Commission finds that LFUCG established both a special interest and that it would develop issues and present facts to assist the Commission in this proceeding. LFUCG offered specific details to support a finding that it has a special interest that is not otherwise adequately represented. Further, LFUCG identified specific issues relevant to this proceeding for which LFUCG will develop facts that will likely assist the Commission in fully considering this matter. Although our determination regarding intervention is a case-by-case finding of fact and decisions in previous cases are not precedential or binding on the Commission, we note that LFUCG was an active participant in Kentucky-American's last rate case, presenting relevant issues not raised by other parties and co-sponsoring, with the Attorney General, expert testimony that developed relevant facts that assisted the Commission in that proceeding.

The Commission also finds that LFUCG and the Attorney General should jointly file a copy of all documents that evidence LFUCG's and the Attorney General's agreement regarding their joint participation in this matter, whether the agreement is executed by email or in a written agreement.

IT IS THEREFORE ORDERED that:

1. LFUCG's motion to intervene is granted. LFUCG 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 entry of this Order.

2. LFUCG shall comply with all provisions of the Commission's regulation, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.

3. LFUCG shall adhere to the procedural schedule set forth in the Commission's December 5, 2018 Order and as amended by subsequent Orders.

4. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, LFUCG shall file a written statement, with a copy to parties of record, that:

a. Affirms that it, or its agent, possesses the facilities to receive electronic transmissions;

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

5. LFUCG and the Attorney General shall file a copy with the Commission of their agreement regarding their joint participation in this matter within seven days of entering into the agreement.

By the Commission

ENTERED
JAN 10 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2018-00358

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